TRANSPARÊNCIA INTERNACIONAL Brasil

UNCAC Coalition CIVIL SOCIETY

CIVIL SOCIETY REPORT

on the implementation of
Chapter II (Prevention) & Chapter V (Asset Recovery) of the

UNITED NATIONS CONVENTION AGAINST CORRUPTION

IN BRAZIL

by Transparency International - Brazil

Acknowledgements

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The findings in this report are those of the authors but do not necessarily reflect the views of the UNCAC Coalition and the donors who have made this report possible.

Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of September 9th, 2021.

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Transparency International - Brazil acts to promote integrity and build a corruption-free society. We understand that this is a problem that has deep roots and is caused by multiple factors. Therefore, we act above all to promote systemic changes. To us, the fight against corruption is not and will never be an end in itself. This is a fight for social justice, prosperity and peace. It's a fight for rights.

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Abbreviations

While the abbreviations are provided in both Portuguese and English in the following table, they are used in their original Portuguese version throughout the report for institutions and laws and in their English version for names of international institutions or initiatives.

Abbr.	Portuguese	English
AGU	Advocacia-Geral da União	Office of the Attorney General
BACEN	Banco Central do Brasil	Central Bank of Brazil
CGU	Controladoria-Geral da União	Office of the Comptroller General
CNJ	Conselho Nacional de Justiça	National Council of Justice
CNMP	Conselho Nacional do Ministério Público	National Council of the Public Prosecution
COAF	Conselho de Controle de Atividades Financeiras	Council for Financial Activities Control
CVM	Comissão de Valores Mobiliários	Securities and Exchange Commission
ENCCLA	Estratégia Nacional de Combate à Corrupção e à Lavagem de Dinheiro	National Strategy Against Corruption and Money Laundering
MJSP	Ministério da Justiça e Segurança Pública	Ministry of Justice and Public Security
MPF	Ministério Público Federal	Federal Prosecution Service
MPU	Ministério Público da União	Public Prosecution of the Union
MRE	Ministério das Relações Exteriores	Ministry of Foreign Affairs
PF	Polícia Federal	Federal Police
PGR	Procuradoria Geral da República	Office of the Prosecutor General
RFB	Receita Federal do Brasil	Federal Revenue Service
SUSEP	Superintendência de Seguros Privados	Superintendence of Private Insurance
TCU	Tribunal de Contas da União	Federal Court of Accounts
TSE	Tribunal Superior Eleitoral	Superior Electoral Court
UNODC	United Nations Office on Drugs and Crime	

List of Persons Consulted

For this report, Transparency International – Brazil interviewed 15 specialists, comprising scholars, lawyers, consultants, former public servants and an acting councilor at the National Council of Justice (CNJ). Their contributions, although not individually identified throughout the report, have enabled a deep understanding of Brazil's advances and shortcomings in the anti-corruption and anti-money laundering agendas. In addition, Transparency International – Brazil invited 11 bodies to contribute to the report during the consultation period, but only three effectively did so: two of them with written contributions and one with a virtual interview. In general, written contributions were based on a questionnaire tailored for the specific institution and sent in advance. Besides, 17 FOIA requests were sent to five different bodies and most of them were adequately answered considering the limitations of available information (for more information, see Annex).

Name	Job title	Affiliation	Date of interview
Ana Carolina Carlos de Oliveira, Ph.D.	Senior Researcher	Max Planck for the Study of Crime, Security and Law	July 27, 2021
Ana Mara Machado, Ph.D.	Lawyer and consultant	N/A	August 4, 2021
Bernardo Antonio Machado Mota	President	Institute for the Prevention of Money-Laundering (IPLD)	November 3, 2021
Eduardo Saad-Diniz, Ph.D.	Professor	University of São Paulo	July 22, 2021
Élida Graziane Pinto, Ph.D.	Professor	Fundação Getúlio Vargas	December 6, 2021
Fabiano Angélico	Senior Researcher consultant; PhD candidate	UNODC and World Bank; Fundação Getúlio Vargas and Università Svizzera Italiana	November 16, 2021
Fernando Dias Menezes, Ph.D.	Professor	University of São Paulo	October 25, 2021
Georghio Tomelin, Ph.D.	Lawyer	N/A	November 3, 2021
Guilherme Jardim Jurksaitis, Ph.D.	Professor of Administrative Law	Fundação Getulio Vargas	August 11, 2021
José Paulo Micheletto Naves	Lawyer and Ph.D. Candidate in Criminal Law	University of São Paulo	December 2, 2021
Luís Gustavo F. Guimarães	Ph.D. Candidate	University of São Paulo	October 29, 2021
Marcio Camargo Cunha Filho, Ph.D.	Professor of Law	Instituto de Desenvolvimento e Pesquisa (IDP)	November 1st, 2021
Mário Guerreiro	Councilor; Judge	National Council of Justice (CNJ); State Court of Rio Grande do Sul	October 6, 2021
Raphael Rodrigues Soré	Lawyer	Author of the book "A Lei Anticorrupção em Contexto: Estratégias para a prevenção	July 21st, 2021

		e o combate à corrupção corporativa".	
Wallace Paiva Martins Junior, Ph.D.	Professor of Law; Prosecutor	Catholic University of Santos; Prosecution Service of the State of Minas Gerais	November 1, 2021

Official Letters

Institution	Date of sending	Date of relevant answer	Outcome
Office of the Attorney General (AGU)	26/08/2021	N/A	The body did not answer.
Office of the Comptroller General (CGU)	26/08/2021	13/10/2021	Meeting with the Comptroller-General to discuss the CGU's contribution to the report. No effective contribution was received after that.
Council for Financial Activities Control (COAF)	26/08/2021	N/A	The body did not answer.
Ministry of Justice and Public Security (MJSP)	26/08/2021	N/A	No communication beyond a formal answer acknowledging that the letter was received.
Federal Police (PF)	26/08/2021	N/A	The body did not answer.
Federal Revenue Service (RFB)	26/08/2021	N/A	The body did not answer.
Superior Electoral Court (TSE)	26/08/2021	16/11/2021	Written contribution answering questions from TI Brazil.
Federal Court of Accounts (TCU)	26/08/2021	N/A	The body did not answer.
Ministry of Foreign Affairs (MRE)	26/08/2021	N/A	The body did not answer.
Office of the Prosecutor General (PGR)	27/08/2021	16/12/2021	Written contribution answering questions from TI Brazil.
National Council of Justice (CNJ)	27/08/2021	06/10/2021	Interview with Councilor Marcio Guerreiro, member of the CNJ.

Written Contributions

- Associação da Auditoria de Controle Externo do Tribunal de Contas da União (AudTCU) - Ofício AUD-TCU nº 07/2021, signed by Nivaldo Dias Filho, President of the Association, on November 17, 2021.
- Tribunal Superior Eleitoral (Superior Electoral Court) - Ofício GAB-SPR nº 4881/2021, signed by Aline Rezende Peres Osorio, Secretary-General of the Court's Presidency, on November 16, 2021.
- Ministério Público Federal, 5ª Câmara de Coordenação e Revisão (Federal Public Prosecution Service, Fifth Chamber for Coordination and Review) - Ofício nº 41/2021/GABSUB63-SCD, signed by Maria Iraneide Olinda Santoro Facchini, Associate Federal Prosecutor General and Coordinator of the Fifth Chamber, on December 16, 2021.

I. Introduction

Brazil signed the United Nations Convention against Corruption (UNCAC) on 9 December 2003 and ratified it on June 15, 2005.

This report reviews Brazil's implementation of selected articles of Chapter II (Preventive measures) and Chapter V (Asset recovery) of the UNCAC. The report is intended as a contribution to the UNCAC implementation review process currently underway covering these chapters. Brazil was selected by the UNCAC Implementation Review Group by a drawing of lots for review in the fourth year of the second cycle. This parallel report will be shared with the government of Brazil.

Scope. The UNCAC articles and topics that receive particular attention in this report are those covering preventive anti-corruption policies and practices (Article 5), preventive anti-corruption bodies (Article 6), public sector employment (Article 7.1), political financing (Article 7.3), codes of conduct, conflicts of interest and asset declarations (Articles 7, 8 and 12), reporting mechanisms and whistleblower protection (Articles 8.4 and 13.2), public procurement (Article 9.1), the management of public finances (Article 9), judiciary and prosecution service (Article 11), private sector transparency (Article 12), access to information and the participation of society (Articles 10 and 13.1), and measures to prevent money laundering (Art. 14). Under Chapter 5, the UNCAC articles and topics that receive particular attention in this report are those covering anti-money laundering (Articles 52 and 58).

In this report, special attention was given to environmental issues related to matters covered by the UNCAC. Corruption and money laundering have dramatic consequences for the environment in Brazil as it fosters environmental crimes, land grabbing and the low enforcement of environmental regulations, among others. At the international level, Resolution 8/12 of the Conference of the States Parties to the UNCAC held in 2019 stressed the importance of preventing and fighting corruption related to crimes that have an impact on the environment. Other international organizations in the anticorruption field have decided to look into environmental crimes in more depth. For instance, the Financial Action Task Force (FATF) has made money laundering related to environmental criminality one of its key priorities under the current Presidency[1]. Similarly, the UNODC, which acts as the Secretariat for the UNCAC, has also focused on environmental crimes such as illegal fishing and logging and wildlife trafficking[2].

Structure. The report begins with an executive summary, including the condensed findings, conclusions and recommendations about the review process, the availability of information, as well as the implementation and enforcement of selected UNCAC articles. The following part covers the findings of the review process in Brazil as well as access to information issues in more detail. Subsequently, the implementation of the Convention is reviewed and examples of good practices and deficiencies are provided. Then, recent developments are discussed and lastly, recommendations for priority actions to improve the implementation of the UNCAC are given.

[1] FATF/GAFI (2020). Priorities for the Financial Action Task Force (FATF) under the German Presidency. Objectives for 2020-2022, https://www.fatf-gafi.org/media/fatf/documents/German-Presidency-Priorities.pdf, accessed on December 2, 2021.
[2] UNODC (2020). World Wildlife Crime Report, https://www.unodc.org/unodc/en/data-and-analysis/wildlife.html, accessed on December 2, 2021.

Methodology. The report was prepared by Transparency International - Brazil with technical and financial support from the UNCAC Coalition. The group made efforts to obtain information for the report from government offices and to engage in dialogue with government officials.

The report was prepared using guidelines and a report template designed by the UNCAC Coalition and Transparency International for use by CSOs. These tools reflected but simplified the United Nations Office on Drugs and Crime (UNODC) checklist and called for relatively short assessments as compared to the detailed official self-assessment checklist. The report template included a set of questions about the review process and, in the section on implementation, asked for examples of good practice and areas in need of improvement in articles of UNCAC Chapter II on prevention and Chapter V on asset recovery.

II. Executive Summary

Since its ratification of the United Nations Convention Against Corruption (UNCAC) in 2005, Brazil has seen many improvements to its anti-corruption and anti-money laundering systems, although several shortcomings remain. This report analyzes the implementation of Chapters II and V of the Convention in Brazil, with recommendations to address setbacks and other remaining issues. The overall finding is that Brazil has advanced in the implementation of UNCAC obligations, but still needs to further develop institutions, policies and practices. At the same time, the country must fight risks to democracy and rule of law and revert recent setbacks that harm previous developments.

Description of process

In the second cycle of the Implementation Review Mechanism of the UNCAC, Brazil has been unable to grant sufficient participation to civil society organizations and to offer updated information on the review process. Although the review was affected by the Covid-19 pandemic, with a country visit being postponed, no new developments were disclosed until a country visit was set to take place on May 12th, 2022. In that occasion, Transparency International – Brazil was invited to join a civil society meeting. Before that, however, the Office of the Comptroller General (CGU) had stated its intention to invite civil society organizations to monitor future steps of the process, but failed to grant access to reports, relevant documents and the self-assessment checklist elaborated by Brazilian authorities.

Availability of information

This report was made possible by a comprehensive analysis of Brazil's legal and institutional framework on anti-corruption and anti-money laundering and was complemented by many access to information requests and contributions from specialists and government bodies.

Implementation in law and practice

Brazil has advanced in relation to preventive anti-corruption policies and practices (article 5) by creating the National Strategy Against Corruption and Money Laundering (ENCCLA), an effort to foster cooperation among anti-corruption agencies. This forum published its first Anti-Corruption Action Plan in 2018, which was an important measure that nevertheless still lacks specificity and clear responsibilities. In addition, ENCCLA has made efforts to advance in the connection of anti-corruption actions and the broader fight against organized crime, including in relation to environmental crimes. Besides the difficulty in effectively coordinating anti-corruption bodies and actions, ENCCLA has also suffered from a lack of institutionalization, since its structure and functioning are not established in law. More recently, Brazil went through another setback in its anti-corruption framework, with legislative changes that limited the scope of the Administrative Improbity Act.

Concerning preventive anti-corruption bodies (article 6), in 2003 Brazil created the Office of the Comptroller General, a centerpiece of the federal government's efforts to fight corruption. This model has helped with the development of integrity measures within the government structure and has been replicated in states and municipalities. The CGU, however, is still understaffed and lacks legal footing granting the necessary institutional autonomy, making it vulnerable to undue interference.

Brazil also has a consolidated public service (article 7.1). Rules to access effective positions in the public service and gain stability (similar to a tenure) are clear and reasonably enforced. However, important gaps remain when it comes to freely nominated positions, which are often subject to nepotism, embezzlement, logrolling and other irregular practices. The country lacks due legal references to fight these practices, which negatively affects the enforcement of anti-corruption standards. Oversight mechanisms, risk assessments, clear hiring standards and selection procedures for some offices would be important measures to tackle this issue.

Regarding anti-corruption measures in political financing (article 7.3), Brazil has advanced in the transparency of legal donations and in its capacity to identify illegal contributions, although shortcomings remain. The Superior Electoral Court has strived to increase transparency, accountability and the use of open data, monitoring resources and expenditures during and after elections. However, there are still gaps in relation to the use of slush funds ("caixa dois") by political parties and electoral campaigns, a practice that was widely uncovered by Operation Carwash. The criminalization of "caixa dois" could be a way to more efficiently identify and fight this practice, as well as the transfer of criminal competence from the Electoral Justice to courts of general jurisdiction. In addition, the Supreme Court decision that prohibited donations from legal entities helped balance access to resources during elections but created a rush to increase the amount of public funds available to candidates and parties – another issue that must be tackled.

Brazil has also implemented codes of conduct, mechanisms to prevent conflicts of interest and some monitoring of asset declarations for civil servants (articles 7, 8 and 12). The Clean Record Act, currently at risk, was an important improvement to regulate the right to run for office in electoral procedures, not allowing individuals who were convicted to run in two instances. Besides, the federal government and many subnational governments have adopted codes of conduct and the Office of the Comptroller General monitors the evolution of asset declarations for federal civil servants. However, there is still a lack of a systematized effort to monitor conflicts of interest in the Legislative and in the Judiciary, whereas the existing Federal Administration's policy on this issue is poorly enforced.

The country has adopted insufficient actions to implement effective and safe reporting mechanisms and whistleblower protection measures (articles 8.4 and 13.2). Brazil has no centralized system for the collection of corruption reports, but the Office of the Comptroller General offers a platform regarding cases in the federal administration. Law No. 13,608/2018 fosters the adoption of reporting mechanisms in Brazilian states and municipalities, a role that is normally supervised by local ombudspersons or comptrollers. However, enforcement remains insufficient, which aggravates in light of the lack of effective protection measures. Furthermore, Brazil has failed to implement a coordinated national system to foster whistleblowing and protect whistleblowers, currently relying on sparse initiatives without proper legal footing. This is especially worrying due to the perils faced by those who decide to report wrongdoings and violations in the country.

On the matter of public procurement (article 9.1), Brazil holds a complex system formed by multiple rules that concentrate regulation on the federal level. Transparency and integrity have been increasing, with good levels of access to information due to transparency portals. The Covid-19 pandemic, however, represented a challenge to access to information, with laxer oversight mechanisms and higher risks of corruption. In 2021, Brazil approved Law No. 14,133/2021, promoting a wide reform of procurement legislation. Among the changes to

modernize the sector, this piece of legislation inaugurated a National Platform of Public Procurement, created the role of “procurement officer” within the administration, introduced the obligation that companies have compliance and integrity programs to bid for certain contracts, instituted performance bonds and increased criminal penalties for procurement-related crimes.

Legislation on the management of public finances (article 9.2) has been generally enforced since the Fiscal Responsibility Act, approved in 2000, and the Federal Court of Accounts has built important expertise in this area, despite the fact that its councilors have political ties and lack the necessary independence. One relevant deadlock in Brazil’s finances regards the use of parliamentary amendments to the budget as currency for political support. In 2021, it was revealed that the government was using a so-called ‘secret budget’ to grant support in the Legislative. In exchange for the power to define the use of resources, members of Congress would vote within the government’s interests. This is a serious violation of transparency and integrity in the management of public finances and puts the national budget at stake, representing a setback in Brazil’s commitment to implement the UNCAC.

Access to information and participation of society (articles 10 and 13.1) have increased since the Constitution of 1988 came into force, but obstacles remain. The Access to Information Act was an important achievement to civil society and the media. Although it increased social oversight of government bodies, it still lacks measures to grant the necessary independence to access to information authorities on each federative level and to regulate exceptions to publicity - an aspect that recently became an opening to excessive secrecy. Public participation has also advanced throughout the years, but developments in the past years have led to a massive extinction of collegiate bodies by the Brazilian government. Environmental bodies are among the most affected ones, as the space for civil society in that area has been seriously constrained.

In Brazil, both the Judiciary and prosecution services (article 11) are independent institutions with functional and administrative autonomy. They are overseen by specific bodies, namely the National Council of Justice (CNJ) and the National Council of the Public Prosecutor’s Offices (CNMP), created in 2004 to increase transparency, efficiency and integrity within both institutions. The councils, however, still lack a robust integrity program, reliable reporting mechanisms and effective sanctions for wrongdoings. Besides, high-level authorities in the Judiciary and the Public Prosecution have been questioned for having connections with politicians and for lacking the necessary independence to perform their duties.

In the private sector (article 12), the approval of the Clean Company Act (Law No. 12,846/2013) represented a major stride to prevent corruption, having led to the conclusion of leniency agreements, the imposition of sanctions and the adoption of integrity programs. Nevertheless, it has raised some doubts regarding the ability of enforcement agencies to implement the law, since one of the main challenges concerns the uncertain extent of powers attributed to them and their general lack of coordination. Also, Brazil still lacks effective measures to promote beneficial ownership transparency, although there are already rules on the collection of such data.

Regarding the measures to prevent (article 14) and to monitor and sanction money laundering (articles 52 and 58), Law No. 9,613/1998 represented an important advance, creating a comprehensive legal framework and originating the Council for the Control of Financial Activities (COAF). The law was amended in 2012 to expand the scope of predicate crimes, increase procedural efficiency, impose obligations to new entities and expand those that apply to financial and non-financial institutions.

Some issues remain, such as the need to regulate anti-money laundering obligations of political parties and law firms. Besides, there is an increasing need to improve regulation and enforcement of money laundering connected to environmental crimes, as well as in sectors such as factoring, precious metals and jewels, virtual asset service providers, among others. Furthermore, Brazil's financial intelligence unit, COAF, lacks the resources to adequately perform its wide-ranging functions and has suffered recent attacks to its independence and efficacy from the Executive and the Supreme Court.

In addition, financial services are under robust regulation from different institutions: the Central Bank of Brazil (BACEN) supervises financial institutions and monitors the financial system, the Securities and Exchange Commission (CVM) supervises the securities and exchange market and the Superintendence of Private Insurance (SUSEP) supervises the insurance, reinsurance, pension plans and capitalization markets. Although regulation in this sector seems to meet international standards, there is a lack of data on the actual enforcement performed by such agencies.

Regarding direct recovery of property (articles 53 and 56), Brazilian legislation allows other states to directly pursue the recovery of assets through national courts, although no concrete case was found. The same applies to the possibility of proactively sharing information with foreign states: although there is no prohibition in law, no example of such practice was identified.

Finally, Brazil's efforts to foster international cooperation for the purpose of confiscation (articles 51, 54, 55, 56 and 59) are based on its anti-money laundering legislation, signed treaties and recent legal developments, such as the mechanism of "expanded confiscation" (confisco alargado). The country's main authority on international cooperation is the Department for Asset Recovery and International Cooperation (DRCI), a division within the structure of the Ministry of Justice created in 2004 that largely draws its members from the Federal Police. The DRCI, although responsible for important advances during the Car Wash investigations, still lacks adequate resources and staff to perform its duties and has low institutional independence, being vulnerable to political interference as in recent episodes.

After years of institutional development with the consolidation of both preventive and sanctioning practices, the country now faces setbacks that compromise democracy, rule of law and human rights. Since 2019, legal and institutional anti-corruption frameworks in Brazil have suffered several blows, with political interference in agencies, eroding practices and policies, conflicts between branches of government and threats to civil society and the media. Due to such recent developments, Brazil's compliance with the UNCAC is at risk, despite the developments seen in the past and now registered in this report.

TABLE 1: Implementation and enforcement summary

UNCAC articles	Status of implementation in law	Status of implementation and enforcement in practice
Art. 5 – Preventive anti-corruption policies and practices	Partially implemented	Good

Art. 6 – Preventive anti-corruption body or bodies	Partially implemented	Good
Art. 7.1 – Public sector employment	Partially implemented	Moderate
Art. 7.3 – Political financing	Partially implemented	Good
Art. 7, 8 and 12 – Codes of conduct, conflicts of interest and asset declarations	Largely implemented	Moderate
Art. 8.4 and 13.2 – Reporting mechanism and whistleblower protection	Partially implemented	Poor
Art. 9.1 – Public procurement	Largely implemented	Good
Art. 9.2 – Management of public finances	Largely implemented	Moderate
Art. 10 and 13.1 – Access to information and the participation of society	Partially implemented	Moderate
Art. 11 – Judiciary and prosecution services	Partially implemented	Moderate
Art. 12 – Private sector transparency	Largely implemented	Moderate
Art. 14 – Measures to prevent money-laundering	Largely implemented	Moderate
Art. 52 and 58 – Anti-money laundering	Largely implemented	Moderate
Art. 53 and 56 – Measures for direct recovery of property	Fully implemented	Poor
Art. 51, 54, 55, 56 and 59 – International cooperation for the purpose of confiscation	Largely implemented	Good

TABLE 2: Performance of selected key institutions

Name of institution	Performance in relation to responsibilities covered by the report	Brief comment on performance

Office of the Comptroller General (CGU)	Good	The CGU has been important to create and implement anti-corruption actions within the federal government, although it lacks resources and institutional autonomy.
Council for Financial Activities Control (COAF)	Moderate	The COAF has developed expertise in anti-money laundering, but still lacks institutional autonomy and stability, as well as adequate resources to perform its duties.
Federal Prosecution Service (MPF)	Good	The MPF has built strong expertise in anti-corruption and anti-money laundering. However, the institution lacks transparency regarding its functioning, as well as clear and enforceable integrity measures.
Superior Electoral Court (TSE)	Good	The TSE has granted the transparency and monitoring of political financing for parties and campaigns, besides its responsibilities in organizing the elections in Brazil.
Department of Asset Recovery and International Cooperation (DRCI)	Moderate	The DRCI has been responsible for recent developments in Brazil's stance on international cooperation, but it lacks institutional autonomy, adequate resources and staff.
Federal Police (PF)	Good	The Federal Police has become increasingly independent and has developed strong expertise in anti-corruption investigations since the 2000s, but recent developments indicate a loss of autonomy and more frequent political interference.
Federal Court of Accounts (TCU)	Good	TCU has developed important expertise in the oversight of government expenditure and budget management, especially in what concerns the work developed by its civil servants. However, councilors still lack independence, as their nomination is frequently related to political ties, instead of being based on technical capacity.
National Council of Justice (CNJ)	Moderate	The CNJ has taken measures to foster integrity, transparency and efficiency, but they have not been strong enough to tackle the lack of accountability within the Judiciary. In general, the institution lacks independence from other judicial bodies and its decisions lack enforceability and authority.
National Strategy Against Corruption and Money Laundering (ENCCLA)	Moderate	ENCCLA has allowed cooperation among multiple anti-corruption bodies, but it lacks legal footing and enforcement capacity.
Federal Public Prosecutor's Office (PGR)	Poor	The PGR lacks institutional independence, as the nomination for Prosecutor General exclusively depends on the President and the Senate and is not subjected to

		objective criteria. Due to its role as head of the Federal Prosecution Service, it represents a high risk to the institution's independence and efficacy.

Recommendations for Priority Actions

1. Strengthen institutional guarantees for anti-corruption bodies, such as the National Strategy Against Corruption and Money Laundering (ENCCLA), the Council for Financial Activities Control (COAF), the Federal Police and the Office of the Comptroller General (CGU), and protect them from external interference, ensuring legal footing, autonomy, financial stability and the staff needed to pursue their activities;
2. Leverage the capacities and the experience of anti-corruption and anti-money laundering institutions to tackle environmental crimes;
3. Adopt and improve oversight and integrity mechanisms in the public service, especially those related to evolution of assets, conflicts of interest, nepotism and freely nominated positions;
4. Develop an integrated national program specifically dedicated to corruption reports and to the protection of whistleblowers, including land and environmental defenders, providing safe channels and publishing updated and transparent data on their efficiency;
5. Encourage the development of safe reporting channels and whistleblower protection measures in the private sector;
6. Revoke the Special Fund for Campaign Financing or approve limitations to the amount of resources directed to it and to how parties and campaigns can deploy them;
7. Redistribute criminal attributions in cases connected with electoral crimes from the Electoral Justice to the Federal Justice, so that electoral courts, judges and prosecutors may focus on monitoring campaign and party accounts and organizing elections;
8. Improve transparency and auditing practices over the approval and execution of parliamentarian amendments to the budget;
9. Approve rules creating a cooling-off period for the nomination of individuals to public offices, such as the Supreme Federal Court, the Office of the Prosecutor General, the Federal Court of Accounts and other national and subnational institutions;
10. Develop stricter accountability mechanisms for judges and prosecutors, respectively, at the National Council of Justice and the National Council of the Public Prosecution;
11. Ensure the disclosure of all data of public interest, including environmental, where possible in open format, and respect deadlines and legal requirements for responses to freedom of information requests;
12. Revert measures that extinguished councils to reduce civil society participation from public collegiate bodies and increase the space dedicated to civil society participation in anti-corruption bodies and in the development of anti-corruption policies;
13. Enforce rules on the registration of beneficial ownership and grant the transparency of such data, to be presented in a publicly accessible, online database in open data and a timely manner;
14. Protect the anti-money laundering system against external interference, increase its integration with Brazil's multiple anti-corruption bodies and implement specific anti-money laundering regulations for environmental goods.

III. Assessment of Review Process in Brazil

Brazil's second review cycle of the Implementation Review Mechanism of the United Nations Convention Against Corruption was initiated in 2019. Within the Brazilian government, the process was coordinated by the Office of the Comptroller General (CGU), more specifically by the Special Division for International Affairs (Assessoria Especial para Assuntos Internacionais). The appointed focal point was Ms. Mônica Bulhões e Silva, Federal Auditor of Finance and Control in CGU.

During the 10th session of the Implementation Review Group in Vienna, Austria, in May 2019, Portugal and Nicaragua were selected as the reviewing countries for Brazil.[3] Nicaragua was later replaced by Mexico. In the following months, Brazil initiated the process of answering the self-assessment checklist[4], which was submitted on January 22, 2020. It should be noted that there is no record of civil society organizations being consulted during the preparation of the self-assessment checklist.

In early 2020, CGU announced in an official bulletin that the country visit would take place between March 31st and April 2, 2020, in which period experts from Portugal and Mexico would meet Brazilian officials in CGU headquarters, in Brasília.[5] According to a CGU report, during the desk-review stage, experts from the reviewing States submitted more than 300 questions to Brazilian authorities concerning the implementation of UNCAC, the response to which was coordinated by CGU.[6]

Due to precautionary measures taken in response to the Covid-19 pandemic, and following the guidance of the United Nations Office on Drugs and Crimes (UNODC), the country visit was postponed indefinitely.[7] Since then, the review process seemed to have stagnated for a long period. The bulletin issued every two months by CGU's Special Division for International Matters had not mentioned any new developments in the review cycle since the edition of June/July, 2020. Likewise, the Governmental Experts List available at the UNODC website had not been updated since March, 2020, in spite of changes in the personnel[8].

[3] Controladoria-Geral da União (CGU). Gabinete do Ministro (GM). Assessoria Especial para Assuntos Internacionais (AINT). Boletim CGU Internacional: Edição 2 (May/Jun 2019), https://repositorio.cgu.gov.br/handle/1/34682, accessed on December 3, 2021.
[4] Controladoria-Geral da União (CGU). Gabinete do Ministro (GM). Assessoria Especial para Assuntos Internacionais (AINT). Boletim CGU Internacional: Edição 4 (Sep/Oct 2019), https://repositorio.cgu.gov.br/handle/1/39020, accessed on December 3, 2021.
[5] Controladoria-Geral da União (CGU). Gabinete do Ministro (GM). Assessoria Especial para Assuntos Internacionais (AINT). Boletim CGU Internacional: Edição 5 (Jan. 2020), https://repositorio.cgu.gov.br/handle/1/43618, accessed on December 3, 2021.
[6] Controladoria-Geral da União (CGU). Gabinete do Ministro (GM). Assessoria Especial para Assuntos Internacionais (AINT). Boletim CGU Internacional: Edição 6 (Jun/Jul. 2020), https://repositorio.cgu.gov.br/handle/1/46423, accessed on December 3, 2021.
[7] Controladoria-Geral da União (CGU). Gabinete do Ministro (GM). Assessoria Especial para Assuntos Internacionais (AINT). Boletim CGU Internacional: Edição 6 (Mar. 2020), https://repositorio.cgu.gov.br/handle/1/43967, accessed on December 3, 2021.
[8] UNODC. Brazil. Available at https://www.unodc.org/unodc/en/corruption/country-profile/countryprofile.html#?CountryProfileDetails=%2Funodc%2Fcorruption%2Fcountry-profile%2Fprofiles%2Fbra.html, accessed on February 9, 2022.

In response to a Freedom of Information request[9], CGU explained that it was still waiting for the setting of a new date for the country visit. Furthermore, the agency informed that civil society organizations would be invited to meet with the experts from the reviewing States once there was a new schedule for their visit. CGU provided a list of six organizations to whom it intended to extend the invitation: Movimento de Combate à Corrupção Eleitoral, Instituto Brasileiro de Governança Corporativa, Transparência Internacional - Brasil, Open Knowledge Brazil and Centro de Estudos em Administração Pública e Governo (Fundação Getúlio Vargas), Associação Contas Abertas. When the country visit was finally rescheduled for May 12th, 2022, Transparency International – Brazil was invited to join the civil society meeting with reviewing States.

Finally, it should be noted that CGU has also created an online "Panel of Recommendations by International Fora"[10] to publicize the country's compliance with international anti-corruption conventions. According to the agency's evaluation, Brazil received 25 recommendations related to UNCAC, of which 14 have been attended to, four have been partially adopted, three have not been adopted yet and four involve continuous implementation.

TABLE 3: Transparency of the government and CSO participation in the UNCAC review process

Did the government disclose information about the country focal point?	Yes	The appointed focal point is Ms. Mônica Bulhões e Silva, Federal Auditor of Finance and Control in CGU.
Was the review schedule published somewhere/publicly known?	No	The review schedule was not published, but the Special Division for International Affairs published broad updates in its bimonthly bulletins.[11]
Was civil society consulted in the preparation of the self-assessment checklist?	No	
Was the self-assessment checklist published online or provided to civil society?	No	In response to a FOIA request, CGU did not disclose the self-assessment checklist under the argument that it is a "preparatory document", which can only be disclosed after the completion of the process it intends to subsidize, as per art. 7, §3, of the Freedom of Information Act.
Did the government agree to a country visit?	Yes	

[9] FOIA Request No. 00106.030566/2021-11, authored by Vinicius Reis, response signed by Ms. Daniella Correa da Anuciação, on November 29, 2021.
[10] http://paineis.cgu.gov.br/recomendacoesinternacionais/index.htm.
[11] Available at https://repositorio.cgu.gov.br/handle/1/34049, accessed on December 3, 2021.

Was a country visit undertaken?	Yes	After being postponed due to Covid-19 restrictions, a country visit took place on May 12th, 2022.
Was civil society invited to provide input to the official reviewers?	Yes	CGU informed that civil society organizations would be invited to meet with official reviewers once there was a new schedule for their visit. In response to a FOIA request, it provided a list of six organizations: Movimento de Combate à Corrupção Eleitoral, Instituto Brasileiro de Governança Corporativa, Transparência Internacional - Brasil, Open Knowledge Brazil and Centro de Estudos em Administração Pública e Governo (Fundação Getúlio Vargas), Associação Contas Abertas. On May 12th, 2022, the civil society meeting during the country visit included representatives from four of those organizations: Movimento de Combate à Corrupção Eleitoral, Instituto Brasileiro de Governança Corporativa, Transparência Internacional – Brasil and Open Knowledge Brazil.
Was the private sector invited to provide input to the official reviewers?	Unknown	There is no information on whether the private sector was or will be invited to provide input.
Has the government committed to publishing the full country report?	No	The government published the report for the first review cycle. In response to a FOIA request, CGU informed that the self-assessment checklist will be made public after the conclusion of the review process, “as it happened in the first cycle”. No similar statement was made with regards to the full report, but one might expect that if the same standard is applied, the full report will be published.

IV. Assessment of Implementation of Chapter II and Chapter V Provisions

This chapter assesses the extent to which Brazil has implemented Chapters II and V of the United Nations Convention against Corruption and provides a description of relevant laws, policies, mechanisms, and practices in place, as well as of the institutions involved in monitoring, enforcement and sanctioning in the respective areas.

4.1 Chapter II

4.1.1 Article 5 – Preventive Anti-Corruption Policies and Practices

Article 5 of the Convention obligates States Parties to create and maintain effective and coordinated policies aimed at preventing corruption.

In Brazil, the implementation of anti-corruption policies must be understood within the larger context of institutional development prompted by the advent of the Constitution of 1988.[12] Since then, Brazil has developed what scholars have referred to as a 'system of integrity'.[13] It is beyond the scope of this report to reconstruct that complex process, about which there is abundant literature. Among the key developments in the area, the following should be highlighted:

- The creation and/or strengthening of agencies assigned with controlling public expenditure and the exercise of public functions, such as:
    - Federal Prosecution Service (Ministério Público Federal - MPF);
    - Federal Court of Accounts (Tribunal de Contas da União - TCU);
    - National Council of Justice (Conselho Nacional de Justiça - CNJ)
    - Office of the Comptroller General (Controladoria Geral da União - CGU);
    - Law enforcement agencies, such as the Federal Police, the Federal Revenue Service and the Council for Financial Activities Control.
- Modernization and professionalization of civil service, with new regulations on access to governmental positions;
- Development of a robust electoral system under the coordination of the Superior Electoral Court;
- New regulations as to the management of public finance, including procurement laws;
- Strengthening of public accountability through the deployment of new mechanisms for public participation and transparency;
- Legislation on private sector liability for corruption transgressions.

These developments will be addressed in further detail throughout this report. It should be noted, however, that such measures did not come about according to a centralized strategy; instead, they result from the complex interaction between relevant stakeholders in Brazil, a dynamic that often involves as much cooperation as it does competition. The noteworthy progress achieved in the development of an integrity system, however, has lately been threatened by a series of legislative and executive measures, as will be discussed throughout the report. While Brazil was able to put in place a fairly robust legal framework, the lack of a consistent national anticorruption strategy has led to a significant number of inconsistencies. Furthermore, progress is extremely

[12] An English translation of the Constitution, including all Amendments approved until 2013, is available at https://www2.senado.leg.br/bdsf/handle/id/243334, accessed on November 9, 2021.
[13] See, for example, Instituto Ethos (2016). Sistema Nacional de Integridade, http://www.oas.org/juridico/pdfs/mesicic5_bra_visit_4.27.pdf, accessed on November 29, 2021.

uneven across the different branches and levels of government, and even where legal provisions are clear and robust, there are still multiple challenges in implementing and enforcing those rules.

A particularly salient challenge for the success of anti-corruption efforts in Brazil is the need to achieve some level of coordination between the multiple agencies with some degree of anti-corruption attributions, a problem that has often been highlighted by existing literature on the matter.[14] The complexity of this challenge is a consequence not only of the multiplicity of existing agencies, but of the fact that they are spread out across different levels of government, i.e. federal, state and municipal level.

Multiple agencies have attempted to address the problem of coordination by creating, in 2003, the National Strategy Against Corruption and Money Laundering (Estratégia Nacional de Combate à Corrupção e à Lavagem de Dinheiro - ENCCLA), a network that provides a forum for the joint development of anti-corruption policies. ENCCLA brings together over 70 federal, state and municipal agencies. The group holds a yearly plenary session, usually in November, where members deliberate on the 'actions' to be pursued in the following year. Each action is assigned to a working group, which reports to the Integrated Management Office (Gabinete de Gestão Integrada - GGI), composed of a subset of the affiliated agencies.[15]

Throughout its years of activities, ENCCLA has proven to be an important forum, and many of its actions have resulted in significant improvements of the anticorruption efforts.[16] It should be pointed out, however, that its effectiveness is severely limited by the lack of institutionalization and by the non-binding character of its decisions and recommendations. ENCCLA has no legal footing, statutory or otherwise, so the success of its actions depends almost entirely on the commitment of individual participating agencies. The network also has no independent staff and presents a high turnover. More importantly, the actions pursued by the group cannot be traced back to a consistent anticorruption strategy; more often than not, they are the product of *ad hoc* decision-making. Moreover, there is a lack of follow-up on the effectiveness of the actions previously developed through the network.

In 2018, ENCCLA published its first Anti-Corruption Action Plan, putting forward 70 guidelines in eight strategic areas: (i) strengthening of public institutions; (ii) public governance; (iii) transparency; (iv) fight against money-laundering; (v) inter-agency cooperation; (vi) international cooperation; (vii) public participation; and (viii) law enforcement.[17] Although the initiative is an important step in the development of an anti-corruption policy, it is noticeably limited. There is no indication as to how the action plan is supposed to be implemented or who is responsible for it. Most guidelines are fairly generic, providing no indicators that allow tracking of progress.

ENCCLA's Anti-Corruption Action Plan also lacks a more complete consideration on how corruption relates to other societal problems and how anti-corruptions efforts should interact with

[14] See, for example: Aranha, Ana Luiza (2020). "Lava Jato and Brazil's web of accountability institutions: A turning point for corruption control?." In Corruption and the Lava Jato Scandal in Latin America (edited by Paul Lagunes and Jan Svejnar). London: Routledge, p. 94-112; Pimenta, Raquel de Mattos (2020). A Construção dos Acordos de Leniência da Lei Anticorrupção. São Paulo: Editora Edgard Blücher Ltda.
[15] ENCCLA. Estrutura, http://enccla.camara.leg.br/quem-somos/gestao, accessed on November 9, 2021.
[16] The outputs from ENCCLA working groups are listed on their website http://enccla.camara.leg.br/resultados, accessed on November 9, 2021.
[17] ENCCLA (2018). Plano de Diretrizes de Combate à Corrupção. http://enccla.camara.leg.br/acoes/ENCCLA2018Ao01PlanodeDiretrizesdeCombateCorrupo.pdf, accessed on November 9, 2021.

other social policies. For example, while violence remains one of the biggest challenges for human development in Brazil, little is known about the complex relationship between corruption practices and criminal organizations such as drug cartels or police militias. Likewise, only recently has the complex relationship between corruption and environmental crimes garnered more attention from activists and authorities. In 2020, for the first time since its creation, the work plan of ENCCLA included activities to analyze how anti-corruption and anti-money laundering institutions can be better mobilized to curb environmental crimes. Other past actions had included an indirect link with environmental issues such as the modernization of property registers (which have a strong relation to land-grabbing and related deforestation), but this was the first time that environmental crimes were explicitly addressed. These kinds of activities are still at a very early stage and the ENCCLA will need to deepen its work so that it can build and coordinate the necessary capacities to effectively prevent, detect and sanction such crimes.

Finally, it should be noted that the development of the integrity system in the decades following the promulgation of the Constitutions of 1988 seemed to follow a relatively stable and positive trend, with important anti-corruption measures being adopted in different administrations. More recently, however, this general trend toward a solid anticorruption system appears to be jeopardized. Since President Bolsonaro took office in January 2019, multiple measures that run counter to best anti-corruption practices have been adopted, thus threatening to undermine whatever progress had been made in previous years. Examples of such actions will be presented in further detail throughout the report.

The Administrative Improbity Act

Since the 1990s, a central piece of Brazilian anti-corruption efforts was the Administrative Improbity Act (AMA, Law No. 8,429/1992).[18] The AMA was first approved by Congress in June 1992, in the midst of multiple corruption accusations levelled at the then president, Mr. Fernando Collor de Mello. The passing of the law was regarded as an attempt to signal a commitment to anti-corruption efforts, both by Congress and by the administration. The statute allowed Public Prosecution Services to file civil complaints against public officials for a number of conducts broadly categorized as “administrative improbity”.[19] If the official is found guilty, sanctions include disgorgement, fines, dismissal from public service and, importantly, the suspension of political rights.

The law quickly became one of the key instruments used by Public Prosecution Services to control administrative action, with thousands of suits being filed each year. According to data from the National Council of Justice, for example, in 2019 alone more than 10 thousand complaints were filed based on AMA.[20] The extensive use of the law, however, was never free from controversy. The statute was often criticized for its broad definition of the types of conduct that might lead to civil liability, which granted Public Prosecution Services great power.

[18] The Administrative Improbity Act as well as the enacted reforms are available at http://www.planalto.gov.br/ccivil_03/leis/l8429.htm, accessed on November 15, 2021.
[19] The statute also applies to individuals or organizations that, while not holding public office, concur to the infraction (article 3).
[20] CNJ. Justiça em Números, https://www.cnj.jus.br/pesquisas-judiciarias/justica-em-numeros/, accessed on December 1, 2021.

In October 2021, Congress enacted Law No. 14,230/2021, which introduced a broad and controversial reform of the Administrative Improbity Act (Law No. 8,429/1992). The many changes introduced can be grouped into three main areas:

- First, the reform aimed to reduce the scope of application of the statute. It excluded liability for mere negligence, restricting it to cases of intentional behavior toward an illicit goal. The description of offenses was also made clearer and narrower, particularly regarding article 11, which previously allowed for the prosecution of unspecified behavior that violated 'principles of the administration';
- Second, the reform dampened the sanctions in case of conviction. The maximum amount of the fine, for example, was significantly reduced. Whereas originally the law prescribed a fine of up to 300% of the amount profited by the agent in the event of violation of articles 9 or 10, the new provision caps it at 100%. The reform extended the suspension of political rights from ten to fourteen years, but at the same time limited it to offenses related to articles 9 and 10, excluding it from article 11. Dismissal from civil service was also restricted insofar as it now applies solely to the same position held by the individual at the time of the offense. If a person currently holding a position in Congress is convicted for a violation committed while they were holding the office of mayor, the sanction is therefore inapplicable.
- Third, the reform changed some procedural aspects of the prosecution. It created more stringent requirements for freezing or seizing defendants' assets (art. 16) and changed the way restitution is to be calculated (art. 18). The law also introduced the possibility of non-prosecution agreements. More controversially, the reform imposed a maximum duration for investigations and changed the calculation of the prescriptive period.

Supporters of the reform argued that the AMA created excessive uncertainty for public officials and interfered with their ability to carry out their duties successfully, out of fear that a good-faith mistake would be misconstrued as administrative improbity.[21] Furthermore, it is alleged that the new statute would not hinder the fight against corruption; instead, it would increase the quality of prosecution by allowing prosecutors to focus on more impactful cases.[22] On the other hand, critics of the reform, key among which are public prosecutors, have argued that the reform is a severe blow to Brazilian anti-corruption efforts, creating significant hurdles for the accountability of public officials.[23] In November 2021, the 5th Chamber of Coordination and Revision of the Federal Prosecution Service issued an orientation to federal prosecutors in which it argues for the unconstitutionality of a number of the reformed items.[24] Particularly significant is the agency's interpretation that the reform, where constitutional, does not apply retroactively to offences committed before the statute's entry into force.[25]

[21] Guimarães, L.G. "Mitos e Verdades da reforma da Lei de Improbidade Administrativa", https://www.jota.info/opiniao-e-analise/artigos/mitos-e-verdades-da-reforma-da-lei-de-improbidade-administrativa-13102021, accessed on December 2, 2021.
[22] Sundfeld, CA. Interview to Filipe Vidon. "Concordamos em discordar: nova lei da Improbidade Administrativa", available at: https://oglobo.globo.com/politica/epoca/concordamos-em-discordar-nova-lei-da-improbidade-administrativa-1-25228345, accessed on December 2, 2021.
[23] Nota Técnica No. 4/2020, from the 5th Chamber of Coordination and Revision of the Federal Prosecution Service, http://www.mpf.mp.br/atuacao-tematica/ccr5/notas-tecnicas, accessed on December 2, 2021.
[24] Orientação No. 12, from the 5th Chamber of Coordination and Revision of the Federal Prosecution Service, http://www.mpf.mp.br/atuacao-tematica/ccr5/orientacoes, accessed on December 2, 2021.
[25] Nota Técnica No. 1/2021, from the 5th Chamber of Coordination and Revision of the Federal Prosecution Service, http://www.mpf.mp.br/atuacao-tematica/ccr5/notas-tecnicas, accessed on December 2, 2021.

Good practices:

- Creation of ENCCLA - National Strategy Against Corruption and Money Laundering as a forum for cooperation among anti-corruption agencies.
- Publication of an Anti-corruption Action Plan.

Deficiencies:

- Lack of legal footing for ENCCLA's activities.
- Lack of institutionalization of ENCCLA.
- Difficulty in coordination between agencies with anticorruption attributions.
- Insufficient integration between anti-corruption efforts and other social policies.
- Undermining of the Administrative Improbity Act, a key mechanism for anti-corruption initiatives in Brazil.

4.1.2 Article 6 – Preventive Anti-Corruption Bodies

According to article 6 of UNCAC, each State Party must ensure the existence of a body or bodies dedicated to the prevention of corruption. In the case of Brazil, there is no single anti-corruption agency responsible for promoting anti-corruption policies. That role is carried out by multiple institutions.

The Brazilian Constitution assigns the broadest anti-corruption mandate to the Prosecution Services, both at the federal level (Ministério Público Federal - MPF) and at the state-level (Ministérios Públicos Estaduais - MPE). Prosecution Services are able to pursue both civil and criminal remedies to a wide range of illegal behaviors, including corrupt practices. Although its mandate is mostly understood to be repressive, prosecutorial bodies have become increasingly active in the advancement of preventive measures. One example is the Transparency Ranking, a website in which MPF rates the level of compliance of all states to the requirements of the Access to Information Act.[26] MPF also has been one of the leading actors in ENCCLA.

In the Federal Administration, it is the Office of the Comptroller General (CGU) that is responsible for elaborating and implementing policies aimed at preventing corruption, particularly through its Secretary of Transparency and Prevention of Corruption. CGU was created in 2003, with a broad anti-corruption mandate that included, among other things, the (i) investigation of wrongdoings by federal civil servants; (ii) the promotion of transparency and public participation; (iii) the development of awareness-raising and training programs; (iv) the performance of internal audits. In July 2021, CGU was also designated as the central unit of the Federal Integrity System, although the implications of this remain unclear.[27]

In recent years, CGU's budget has revolved between R$ 800 million and R$ 1 billion (ca. $140 to $175 million USD[28]), as shown in the chart below. In terms of staff, the agency reached its peak around 2010, when it had ca. 2,300 civil servants, corresponding to approximately 0.41% of total federal employees. Since then, the staff has decreased to about 1,700 servants, which amounted to about 0.28% of all federal employees. In order to revert that trend, the government

[26] MPF. Transparency Ranking, http://combateacorrupcao.mpf.mp.br/ranking, accessed on November 29, 2021.
[27] Available at http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2021/Decreto/D10756.htm, accessed on December 1, 2021.
[28] As per exchange rate of November, 2021.

authorized a selection process for 375 new civil servants, which are expected to join the agency in 2022.[29]

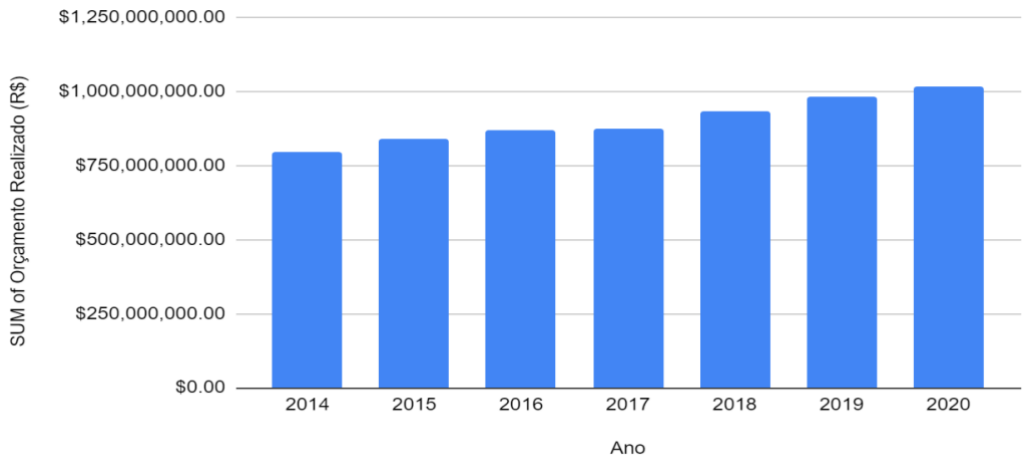

Figure 1 - Annual budget of the Office of the Comptroller General (CGU)[30]

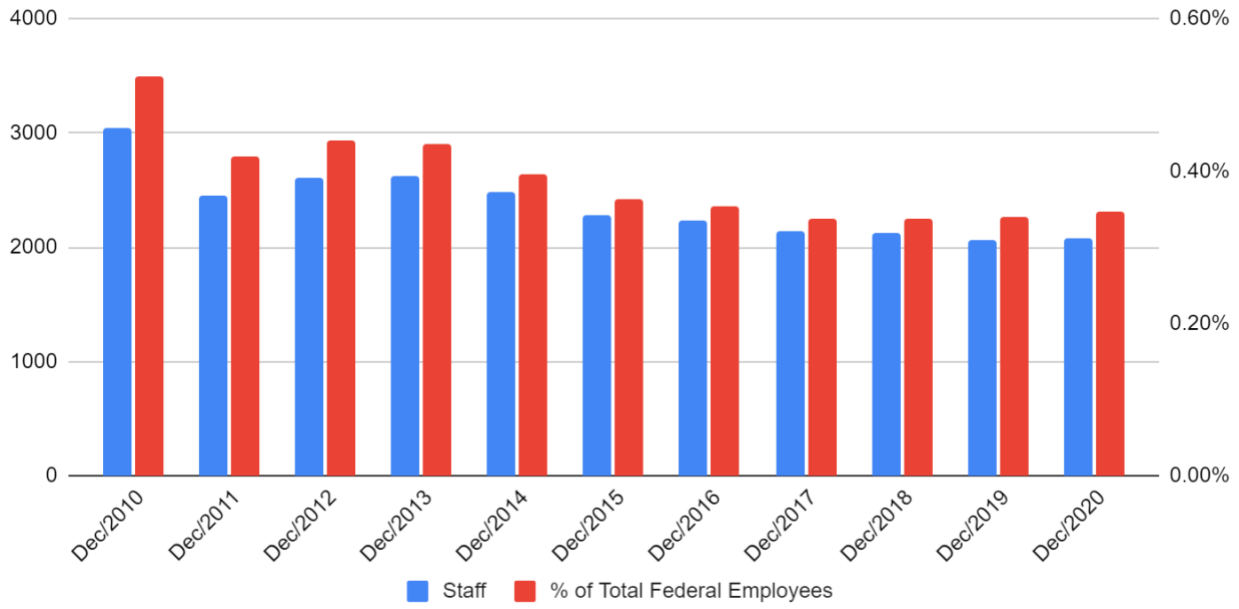

Figure 2 - Staff of the CGU vs. % of total federal employees in Brazil[31]

The significant resources assigned to CGU made it possible for the agency to make important contributions to the country's anti-corruption efforts, and CGU quickly evolved into one of the key anti-corruption agencies in Brazil, providing a model of anti-corruption agency that has been widely replicated by the majority of the states and a few municipalities.[32] In 2007, internal control

[29] Brazil. Official Journal of the Union, July 27, 2021, https://www.in.gov.br/en/web/dou/-/portaria-sedgg/me-n-8.949-de-26-de-julho-de-2021-334557644, accessed on November 29, 2021.
[30] Portal da Transparência, https://www.portaltransparencia.gov.br, accessed on February 24, 2022.
[31] Yearly Governance Reports, https://repositorio.cgu.gov.br/handle/1/38846 , accessed on February 25, 2022.
[32] For an overview of the history of CGU, see Odilla F. and Rodriguez-Olivari, D. (2021). Corruption control under fire: a brief history of Brazil's Office of the Comptroller General. In: Pozsgai-Alvarez, J., The Politics of Anti-Corruption Agencies in Latin-America. London: Routledge, p. 108-133.

agencies founded the National Council of Internal Control (CONACI), a forum for exchange among municipal, state and federal agencies that perform similar tasks as those of CGU.[33]

Since 2019, CGU also chairs the newly created Inter-ministerial Anti-corruption Committee, integrated by four additional ministries, as well as by the head of the Central Bank.[34] In keeping with its advisory attributions, the Committee was responsible for drafting an anti-corruption plan for the Federal Administration, which was made public in December 2020 and includes 142 actions to be undertaken until 2025 across multiple domains.[35] Each action is assigned to a specific agency and has a proposed deadline, which is supposed to facilitate the evaluation of its execution, although no assessment of the current implementation status is available thus far.

In spite of its noteworthy importance for anti-corruption policy, a key limitation of CGU is the lack of formal autonomy to perform its functions. According to the law, the head of the agency can be freely appointed by the president, without any need for congressional approval, and can be removed at will. The same applies to the heads of all key departments within the agency. This significant lack of autonomy has raised concerns, since it puts into question the ability of the agency to tackle politically sensitive subjects and to pursue investigations with the necessary depth and rigor.

Critical setbacks

Concerns about CGU's lack of institutional autonomy were fueled by a number of events that took place since 2019 and that reflect the current administration's willingness to interfere in control agencies and limit these bodies' activity. Although the President has not directly interfered in the CGU, the body has demonstrated some alignment with his interests, which can be exemplified by starting an administrative procedure against professors in the Federal University of Pelotas who criticized the administration.[36] Besides, the federal government has reduced its compliance with the Access to Information Law, increasing secrecy and request denials.[37] Being the body responsible for monitoring and enforcing this act on the federal sphere, the CGU has been lenient towards this behavior.

Other anti-corruption bodies, however, have suffered multiple interferences by President Bolsonaro. Starting in 2003, the head of MPF was appointed by the President from a list of three prosecutors elected by their peers. Although such a selection procedure was not required by law, it had been observed by all presidents until 2019, when the then recently-elected President Jair Bolsonaro ignored the list and appointed a name of his choosing, Mr. Augusto Aras, raising concerns that the departure from tradition would imply an alignment of the prosecutorial body with the new administration. Indeed, in the following years, Mr. Aras's tenure was heavily criticized for failing to take a stance on multiple controversial decisions made by the government. Data collected by Professor Eloísa Machado and Luiza Pavan Ferraro, both from Fundação Getulio Vargas, indicated that Mr. Aras failed to take action on Supreme Court lawsuits against

[33] CONACI. Quem somos, http://www.conaci.org.br/quem-somos, accessed on December 1, 2021.
[34] Decree No. 9,755/2019, https://bit.ly/3FUXHGU, accessed on November 29, 2021.
[35] Available at https://bit.ly/3p4scDu, accessed on November 29, 2021.
[36] Conjur (2021). Rafa Santos, "Professores tornam-se alvos da CGU após criticarem Bolsonaro", https://www.conjur.com.br/2021-mar-03/professores-tornam-alvo-cgu-criticarem-bolsonaro, accessed on December 1, 2021.
[37] O Globo (2021). Francisco Leali, "Maioria dos ministérios de Bolsonaro reduz atendimento a pedidos de acesso à informação", https://oglobo.globo.com/politica/maioria-dos-ministerios-de-bolsonaro-reduz-atendimento-pedidos-de-acesso-informacao-1-25258921, accessed on December 16, 2021.

the government and that he frequently sided with the Office of the Attorney General.[38] In 2021, President Bolsonaro ignored the list once again, reappointing Mr. Aras for a second two-year tenure.[39]

On multiple occasions since taking office, President Bolsonaro also interfered in the activities of the Federal Police. In 2019, he removed Mr. Ricardo Saadi from his position as head of the Regional Federal Police Office in Rio de Janeiro, a decision that angered investigators and almost led to a collective resignation. In 2020, the President decided to fire the Director of the Federal Police, Mr. Maurício Aleixo. The decision led to the resignation of the Justice Minister, Mr. Sérgio Moro, who claimed it reflected the President's intent to interfere with the regular operations of the Federal Police. The President attempted to appoint as minister Mr. Alexandre Ramagem, an investigator known for his proximity to the president's family, but had to back down after a decision from the Supreme Court suspended the nomination.[40] Other control agencies were also subject to political interference under the current administration, including the Federal Revenue Service,[41] the Administrative Council of Economic Defense[42] and the Council for Financial Activities Control.[43]

Besides these controversial interferences by the current administration, oversight agencies also saw their autonomy at risk by the passing of an Abuse of Authority Act (Law No. 13,869/2019[44]) in 2019. Under the guise of improving control over public officials, this piece of legislation leaves leeway for biased interpretations that may affect the independence of judges, prosecutors and investigators. The statute contains a number of vague provisions which create uncertainty for those in charge of law enforcement. The potential impact of the law on anti-corruption efforts led the OECD Working Group on Bribery to issue warnings against Brazil, calling it to "end threats to independence and capacity of law enforcement to fight corruption".[45]

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[38] Folha de São Paulo (2021). Eloísa Machado and Luiza Pavan Ferraro, "PGR e AGU se alinham na defesa de atos de Bolsonaro, aponta estudo sobre ações movidas no Supremo", https://www1.folha.uol.com.br/poder/2021/08/pgr-e-agu-se-alinham-na-defesa-de-atos-de-bolsonaro-aponta-estudo-sobre-acoes-movidas-no-supremo.shtml, accessed on December 1, 2021.

[39] Poder 360 (2021). Paulo Roberto Netto, "Bolsonaro ignora lista tríplice e reconduz Aras para mandato de 2 anos", https://www.poder360.com.br/justica/bolsonaro-ignora-lista-triplice-e-reconduz-aras-para-novo-mandato-de-2-anos/, accessed on December 1, 2021.

[40] G1 (2020). Andréia Sadi, "Ministro do STF suspende nomeação de Alexandre Ramagem para diretor-geral da PF", https://g1.globo.com/politica/blog/andreia-sadi/post/2020/04/29/ministro-do-stf-suspende-nomeacao-de-alexandre-ramagem-para-a-diretoria-geral-da-pf.ghtml, accessed on December 1, 2021.

[41] G1 (2019). "Governo demite chefe da área de inteligência fiscal da Receita Federal", https://g1.globo.com/economia/noticia/2019/09/24/governo-demite-chefe-da-area-de-inteligencia-fiscal-da-receita-federal.ghtml, accessed on December 1, 2021.
Estadão (2019). Daniel Weterman and Breno Pires, "Com cargo ameaçado, delegado da Receita relata em carta interferência de 'forças externas'", https://politica.estadao.com.br/noticias/geral,com-cargo-ameacado-delegado-da-receita-relata-em-carta-interferencia-de-forcas-externas,70002971995, accessed on December 1, 2021.

[42] Estadão (2019). Lorenna Rodrigues, Breno Pires and Daniel Weterman, "Por aliados, Bolsonaro retira indicações ao Cade", https://politica.estadao.com.br/noticias/geral,por-aliados-bolsonaro-retira-indicacoes-ao-cade,70002951625, accessed on November 29, 2021.

[43] G1 (2019). Juliana Lima, Filipe Matoso and Guilherme Mazui, "Bolsonaro edita medida provisória e transfere Coaf do Ministério da Economia para o Banco Central", https://g1.globo.com/economia/noticia/2019/08/19/bolsonaro-edita-medida-provisoria-e-transfere-coaf-para-o-banco-central-informa-bc.ghtml, accessed on November 29, 2021.

[44] Available at https://bit.ly/3xHDhOH, accessed on November 29, 2021.

[45] OECD (2019). "Brazil must immediately end threats to independence and capacity of law enforcement to fight corruption", https://www.oecd.org/newsroom/brazil-must-immediately-end-threats-to-independence-and-capacity-of-law-enforcement-to-fight-corruption.htm, accessed on November 29, 2021.

These significant setbacks to the interdependence of anti-corruption bodies give cause to serious concerns. It is crucial to preserve the progress obtained in the consolidation of a strong anti-corruption institutional framework in Brazil since the 1988 Constitution.

Good practices:

- Creation of an anti-corruption agency at the Federal Administration with a broad mandate - the Office of the Comptroller General - CGU.
- Publication of an Anti-corruption Plan for the Federal Administration, with clear actions and deadlines (2021-2025).
- Replication of the CGU model in states and municipalities.
- Creation of the National Council of Internal Control (CONACI).

Deficiencies:

- Lack of autonomy of CGU.
- Understaffing of CGU.
- Attempt to interfere in oversight agencies by passing the Abuse of Authority Act (Law No. 13,869/2019).
- President Bolsonaro's recent interference in anti-corruption bodies.

4.1.3 Article 7.1 – Public Sector Employment

Article 7 of the Convention provides that States Parties must put in place systems for the "recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials".

Under the Constitution of 1988, there are two broad categories of non-elective civil service positions, each one with a different form of access. On the one hand, there are *freely nominated positions* ("cargos de livre provimento"), that is, positions that can be filled by the relevant authority with broad discretionary margin. Such positions are limited to either senior management or direct assistance to senior management or elected officials.[46] Second, there are *effective positions* ("cargos efetivos"), which can only be accessed through a competitive public selection process.

Effective positions

Effective positions in civil service are filled by means of a competitive public selection process.[47] According to legislation, the selection process must be widely publicized and involves an examination in which applicants are to be evaluated based on objective and previously stipulated criteria. Candidates are ranked based on their performance and the positions must be filled according to that ranking. Applicants can file appeals against decisions in the selection procedure before both the administration and the judiciary. Overall, the selection process for

[46] Article 37, V, of the Constitution. These positions can be divided into "positions of trust" and "commissioned positions". The former can only be occupied by effective civil servants; whereas the latter can be occupied by any individual with the necessary qualification.
[47] Article 37, II, of the Constitution.

effective civil servants in Brazil is considered to be fairly objective and transparent,[48] although criticisms are often made as to its efficiency in selecting the best candidates.[49]

The appointed civil servants acquire tenure after three years in their position, thus shielding themselves from summary dismissal. In the last two decades, particularly at the federal level, there was a concerted effort to structure civil service careers more efficiently, which has led to a significant professionalization of the administration.

In spite of those positive trends, there are still many points for improvement regarding anti-corruption policy to access civil service. A key weakness derives from the fact that it remains rare for the public administration to carry out comprehensive risk analysis in order to identify the degree of vulnerability to corruption of each governmental position. This prevents the development of strategic interventions aimed at reducing those risks, such as special training requirements or job rotation procedures.

Freely nominated positions

Freely nominated positions have been a source of much concern when it comes to anti-corruption efforts. The broad discretionary power assigned to authorities has often been misused to advance private interests in the administration. Four kinds of behaviors stand out as particularly problematic.

Nepotism. The power to freely nominate individuals to public positions has often been used to favor people with personal ties to the nominating authority. This has been a pervasive problem for many years. An important measure to fight this practice was introduced by the Supreme Court in 2008. Through Binding Precedent No. 13, the Court decided that the appointment of partners or relatives[50] of the nominating authority or of any senior manager from the same governmental branch violates the Constitution.

The Supreme Court's decision was an important measure to curb the misuse of public authority. However, it still presents considerable limitations. First, because it does not apply to "political positions", understood as those positions that respond directly to the head of the Executive branch (such as ministers or secretaries). Although there are reasonable arguments in favor of that exception, a number of cases have drawn the public's attention. According to media reports, for example, after winning the 2020 municipal elections, the mayor of a municipality in the state of Rio de Janeiro nominated seven relatives - sister, fiancée, brother-in-law, uncle, and three cousins - to senior positions in the administration - including secretary of finance, secretary of education, secretary of labor, secretary of infrastructure.[51] Second, because it does not cover all the possible forms of personal relationships that might be characterized as nepotism. Often

[48] For an overview of the evolution of recruitment processes in Brazil and how current rules have contributed to a significant professionalization of civil service, see Loureiro, M.R. et al (eds.) (2010). Burocracia e política no Brasil: desafios para a ordem democrática no século XXI. Rio de Janeiro: FGV Editora. In particular, see: Marconi, N. Uma radiografia do emprego público no Brasil: análise e sugestões de políticas and Pacheco, R. Profissionalização, mérito e proteção da burocracia no Brasil.

[49] For example, Coelho, F.S. and Menon, I. (2018). A quantas anda a gestão de recursos humanos no setor público brasileiro? Um ensaio a partir das (dis)funções do processo de recrutamento e seleção - os concursos públicos. Revista do Serviço Público, v. 69, https://bit.ly/3llShgm, accessed on November 29, 2021.

[50] This rule encompasses direct and collateral relatives up to the third degree.

[51] G1 (2021). Por nepotismo, MP recomenda que prefeito de Magé exonere quatro parentes do próprio secretariado, https://glo.bo/32OhVE9, accessed on December 1, 2021.

authorities are able to negotiate the nomination of relatives to positions in different agencies, a practice sometimes referred to as "crossed nepotism". In 2019, for example, the media reported that an appeal judge was under federal investigation after recordings emerged in which the magistrate negotiated the nomination of his son and his wife for public positions.[52] In short, although specialists often point to the positive impact of the ruling on the fight against nepotism, there is a dearth of empirical data on how successful the measure proved to be.

Embezzlement and clientelism. Discretionary power to nominate individuals for public positions has also been used as a strategy for promoting embezzlement or clientelistic relationships. A widely disseminated practice consists in nominating individuals in exchange for a quota of their remuneration, a scheme that is popularly known as "*rachadinha*". In many cases, this is coupled with nepotism, when the authority nominates a relative or a friend and collects a share of the salary. In the most flagrant cases, the nominated individuals do not even perform any of the functions associated with the position and their only role is to provide a justification for collecting part of the salary or to perform personal or electoral services for the authority. These are often referred to as "ghost servants" ("funcionários fantasmas").[53]

Although "rachadinhas" can take place in all branches of government, they appear to be more pervasive in the Legislative branch, particularly at the state and municipal level, where parliamentarians enjoy broad discretionary power to nominate individuals for their political offices while being subject to hardly any control, partly because, by the nature of legislative activity, working hours do not follow the same rules as other areas of the public service.

It is important to point out that, since 2018, a number of accusations of "rachadinha" and nepotism have emerged against sitting President Jair Bolsonaro and two of his sons, Carlos and Flávio Bolsonaro.[54] The accusations span a 30-year period in which Jair Bolsonaro was a federal congressman (1991-2018), Flávio was a state representative in Rio de Janeiro (2003-2018) and Carlos was a municipal councilor in the city of Rio de Janeiro (2000-present). Although the sitting President has criminal immunity for actions prior to taking office, the state prosecution service in Rio de Janeiro has been conducting investigations into Flávio and Carlos Bolsonaro.[55]

Logrolling. A controversial practice associated with the power to freely nominate civil servants is logrolling, in which the head of the Executive agrees to nominate allies of lawmakers for key positions in exchange for their support for projects sponsored by the administration. It should be noted that the negotiation of key government positions in exchange for political support can be a legitimate part of the process of coalition building in a multi-party democracy; however, the *ad-hoc* nature of many of those transactions and their disconnection to any policy discussion often raises concerns as to the real motivation behind those agreements.

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[52] G1 (2020). Thais Pimentel, "Desembargador investigado por corrupção passiva toma posse como presidente do TRE em Minas Gerais", https://g1.globo.com/mg/minas-gerais/noticia/2020/06/18/desembargador-investigado-por-corrupcao-passiva-toma-posse-como-presidente-do-tre-em-minas-gerais.ghtml, accessed on December 1, 2021.
[53] BBC Brasil (2019). Giuliana Vallone, "O que é a 'rachadinha' e por que é tão difícil investigar casos como o de Queiroz", https://www.bbc.com/portuguese/brasil-50842595, accessed on December 1, 2021.
[54] BBC Brasil (2021). "De rachadinha a inquéritos no STF, relembre acusações e investigações contra Bolsonaro e filhos", https://www.bbc.com/portuguese/brasil-57730263, accessed on December 7, 2021.
[55] UOL (2021). Carolina Brígido, "Por que rachadinha de Carlos avança e as de Flávio e Jair Bolsonaro não", https://noticias.uol.com.br/colunas/carolina-brigido/2021/09/02/sem-foro-rachadinha-carlos-acelerar-mais-flavio-bolsonaro.htm, accessed on February 10, 2022.

The fact that it is hard to distinguish logrolling from legitimate coalition-building efforts makes it difficult to combat the practice from a law enforcement perspective. For this reason, specialists have often pointed to the need for reforms in the political system that strengthen political parties while simultaneously reducing their number, in order to encourage a more transparent and programmatic process of forming government coalitions in the Legislative branch.[56] Besides, the "New Measures Against Corruption", a collection of bills sponsored by a coalition of civil society organizations under the leadership of Transparency International - Brazil, includes a proposal to introduce technical and integrity criteria in the selection of individuals for freely nominated positions (Measure 31).[57]

Political Interference in public agencies – Freely nominated positions have also been used to interfere with the activities of public institutions. This tactic has been used to sideline officials who stuck to their institutional mission and defended technical positions even when it clashed with the political discourse of the Federal Government. For instance, the Director of the National Institute for Spatial Research (INPE) was sacked in 2019 after many attempts of the government to discredit and interfere in deforestation data produced by the Institute. The director's dismissal followed an argument over the surging deforestation rates since the beginning of the Bolsonaro administration evidenced by INPE, a reference institution in this field.[58] Similarly, senior public servants of environmental agencies have been replaced with people with close ideological and political ties with the government but little experience with environmental issues[59], while others have been intimidated by their new superiors. The TCU has criticized some of these nominations since, according to the Court, the appointed individuals do not meet the minimum qualification criteria for their position.[60]

Preventive measures against the misuse of nomination powers. As a response to abuses in exercising nomination powers, a few measures have been adopted in an attempt to curb such behavior. Several state prosecution services started dedicating more energy to the investigation of "rachadinhas" in the local legislatures.[61] In recent years, the Judiciary has played an

[56] Nexo Jornal (2020). Maria do Socorro Sousa Braga, "O Brasil está no caminho para reduzir o número de partidos?" Available at https://www.nexojornal.com.br/ensaio/debate/2020/O-Brasil-est%C3%A1-no-caminho-para-reduzir-o-n%C3%BAmero-de-partidos, accessed on December 1, 2021.
[57] Measure No. 31 of the New Measures Against Corruption, https://web.unidoscontraacorrupcao.org.br/novas-medidas/processo-seletivo-para-cargos-em-comissao/, accessed on December 16, 2021.
[58] G1 (2019). "Exoneração de diretor do Inpe é publicada no 'Diário Oficial'", https://g1.globo.com/natureza/noticia/2019/08/07/exoneracao-de-diretor-do-inpe-e-publicada-no-diario-oficial.ghtml, accessed on December 1, 2021.
[59] Istoe Dinheiro (2020). "Servidores do Ibama protestam contra nomeações de militares por Salles", https://www.istoedinheiro.com.br/servidores-do-ibama-protestam-contra-nomeacoes-de-militares-por-salles/, accessed on December 1, 2021.
[60] TCU (2021). "Aumento do desmatamento e redução na aplicação de sanções administrativas", https://portal.tcu.gov.br/imprensa/noticias/aumento-do-desmatamento-e-reducao-na-aplicacao-de-sancoes-administrativas.htm, accessed on December 1, 2021.
[61] For example: MPRS (2021). "Operação Rachadinha: MPRS cumpre mandados de busca e apreensão em Uruguaiana", https://www.mprs.mp.br/noticias/criminal/52702/, accessed on December 1, 2021. MPSC (2021). "Bloqueados R$ 1,79 milhão do atual Prefeito e de ex-Prefeito de Guaraciaba por suposta "rachadinha" de salário de comissionados", https://www.mpsc.mp.br/noticias/bloqueados-r-179-milhao-do-atual-prefeito-e-de-ex-prefeito-de-guaraciaba-por-suposta-rachadinha-de-salario-de-comissionados, accessed on December 1, 2021. MPPR (2021). "A pedido do MPPR, Justiça manda bloquear bens de ex-vereadora de Curitiba e seu companheiro, acionados por prática de "rachadinha"", https://mppr.mp.br/2021/10/24041,11/A-pedido-do-MPPR-Justica-manda-bloquear-bens-de-ex-vereadora-de-Curitiba-e-seu-companheiro-acionados-por-pratica-de-rachadinha.html, accessed on December 1, 2021.

increasingly proactive role in examining the legality of nominations to public positions.[62] In 2010, Congress passed the Clean Record Act (Supplementary Law No. 135/2010[63]), which greatly expanded the conditions of ineligibility in Brazil to include a number of corruption or mismanagement practices. Due to public pressure, a number of states have decided to include those ineligibility criteria among the conditions for access to freely nominated positions. More recently, the Federal administration adopted the same rule.[64] Another important measure was the passing of Law No. 13,303/2016[65], which regulated the nomination for board and managerial positions in state-owned enterprises, introducing a number of restrictions directed toward restricting conflicts of interests and increasing professionalization.

Good practices:

- Public and competitive selection procedures for careers within the public administration.
- Adoption of ineligibility criteria in the selection of individuals for freely nominated positions.
- Prohibition of nepotism by the Supreme Court through the Binding Precedent No. 13.
- Law No. 13,303/2016, which regulated access to board and managerial positions in state-owned enterprises.

Deficiencies:

- Lack of a comprehensive risk assessment aimed at identifying offices particularly vulnerable to corruption.
- Lack of control over freely nominated individuals, particularly in the Legislative.
- The continuing practice of nepotism in appointments to positions within the public administration.

4.1.4 Article 7.3 – Political Financing

Article 7.3 of the Convention encourages State Parties to adopt measures that "enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties". This section describes the Brazilian legal and institutional framework for funding of candidatures and political parties. This section presents an outline of the existing framework, which is followed by a brief discussion of the Car Wash investigations, which revealed a broad corruption network largely geared toward generating hefty political contributions to some of the largest political parties.

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[62] For example: G1 (2019). "Justiça suspende nomeação de secretários de Nova Timboteua por nepotismo", https://g1.globo.com/pa/para/noticia/2019/03/13/justica-suspende-nomeacao-de-secretarios-de-nova-timboteua-por-nepotismo.ghtml, accessed on December 1, 2021. MPPA (2019). "A pedido do MPPA, Justiça suspende nomeação de dois secretários por nepotismo", https://www2.mppa.mp.br/noticias/a-pedido-do-mppa-justica-suspende-nomeacao-de-dois-secretarios-por-nepotismo.htm, accessed on December 1, 2021. MPRS (2021). "São José dos Ausentes: a pedido do MPRS, Justiça suspende a nomeação de namorada do prefeito por nepotismo", https://www.mprs.mp.br/noticias/53197/. accessed on December 1, 2021.

[63] Available at https://bit.ly/3Eb0ds3, accessed on November 29, 2021.

[64] Decree No. 9,727/2019, http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decreto/D9727.htm, accessed on December 1, 2021;
Decree No. 9,916/2019, http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decreto/D9916.htm, accessed on December 1, 2021.

[65] Available at https://bit.ly/3riY2Ps, accessed on November 29, 2021.

Legal and institutional framework

Brazilian elections are organized and carried out by the Electoral Justice, a branch of the Judiciary created in 1932 and given a prominent role in the Constitution of 1988. The highest body of the Electoral Justice is the Superior Electoral Court (Tribunal Superior Eleitoral – TSE), composed of seven magistrates, including two Supreme Court justices, one of which acts as chair. Since the Constitution of 1988, TSE is credited with having developed a robust and credible electoral system, including intensive use of electronic voting.

In Brazil, Political financing is mostly regulated by the Political Parties Act (Law No. 9,096/1995)[66] and the Elections Act (Law No. 9,504/1997).[67] In 2015, a major shift in political financing regulation took place when the Supreme Court ruled that the legal authorization for political contributions by private firms was unconstitutional.[68] Until then, companies were allowed to contribute to political campaigns, up to the limit of 2% of their revenue in the year prior to the election.[69] The majority ruling, however, concluded that corporate contributions in those terms distorted the political process and represented a breach of political equality.

Currently, therefore, legal entities are not allowed to make political contributions. Individuals are still allowed to make donations, limited to 10% of their income in the year prior to the election (Article 23, §1). Candidates can also subsidize their campaign with their own resources, but that value cannot exceed 10% of the legal maximum limit for campaign expenditure for the relevant office. Private individual donations have also left leeway for bulky contributions from businesspersons, who act as representatives of their companies.[70]

In addition to private contributions, parties rely on public financing organized through two main sources: (i) the Special Fund for Financial Assistance to Political Parties (Parties Fund); and (ii) the Special Fund for Campaign Financing (Electoral Fund).

The former was included in Article 17, §3, of the Constitution and was instituted in its current form by the Political Parties Act of 1995 (Chapter II). Although initially the Parties Fund was accessible to all registered parties, Constitutional Amendment No. 97/2017 conditioned access to performance criteria in national elections. In 2021, the allocated budget for the fund laid slightly below 1 billion reais (ca. 180 million USD).[71]

The Electoral Fund, on the other hand, was created in 2017 (Laws No. 13,487 and 13,488), following the Supreme Court's decision that forbade corporate contributions. The fund is constituted from transfers from the National Treasury, according to the values approved in the federal budget. The funds are distributed to the parties according to criteria defined by statute,

[66] Available at http://www.planalto.gov.br/ccivil_03/leis/l9096.htm, accessed on December 1, 2021.
[67] Available at http://www.planalto.gov.br/ccivil_03/leis/l9504.htm, accessed on December 1, 2021.
[68] Supreme Court. Direct Action of Unconstitutionality No. 4650, https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=10329542, accessed on December 1, 2021.
[69] Article 81 of Law No. 9,504/1999.
[70] UOL (2018). Aiuri Rebello e Leonardo Martins, "Empresários ampliam doações e assumem lugar de suas empresas nas eleições", https://noticias.uol.com.br/politica/eleicoes/2018/noticias/2018/09/14/empresarios-doacoes-de-campanha-eleicoes-2018.htm, accessed on December 1, 2021.
[71] TSE (2022). "Partidos políticos receberam R$ 939 milhões do Fundo Partidário em 2021", https://www.tse.jus.br/imprensa/noticias-tse/2022/Janeiro/partidos-politicos-receberam-r-939-milhoes-do-fundo-partidario-em-2021, accessed on February 10, 2022.

mostly in proportion to votes received in the previous election.[72] In the 2018 elections, this fund contained over 1.7 billion reais (ca. 320 million USD), whereas in 2020 this amount increased to 2 billion reais (ca. 380 million USD).[73] In 2021, Congress approved a 5.7 billion reais (ca. 1 billion USD) fund for the 2022 elections, but the amount was vetoed by President Bolsonaro, who submitted a new proposal of 2.12 billion reais (ca. 380 million USD), currently under consideration.[74] The Electoral Fund has been criticized by many for diverting large sums of public resources to campaigns and parties instead of social policies[75]; furthermore, the size of the Fund has been used as a bargaining chip in negotiations between the government and Congress.

TSE has strived to increase transparency and accountability related to the financing of political parties and campaigns. Candidates are required to centralize all received contributions - either private or from their parties - in a single bank account, and the resources and expenditures are monitored by the Superior Electoral Court, both during and after the election. TSE makes available online a wide range of information, including political parties' reports of their expenditures from the Parties Fund[76] as well as detailed information about campaign expenditures both by political parties and individual candidates.[77] Moreover, candidates are required to provide a declaration of assets, which is also made publicly available.[78] TSE has also taken significant steps toward promoting open data. Within the scope of the Open Government Partnership, it sponsored the introduction of the topic "public participation in the improvement of open electoral data" in Brazil's 5th Action Plan, currently being elaborated. It has also issued Portaria No. 93/2021[79], which creates an Open Data Policy for the Superior Electoral Court.

Illegal financing and Operation Car Wash

[72] TSE. Fundo Especial de Financiamento de Campanha (FEFC) [2020], https://www.tse.jus.br/eleicoes/eleicoes-2020/prestacao-de-contas/fundo-especial-de-financiamento-de-campanha-fefc, accessed on December 1, 2021.
[73] TSE. Fundo Especial de Financiamento de Campanha (FEFC) [2020], https://www.tse.jus.br/eleicoes/eleicoes-2020/prestacao-de-contas/fundo-especial-de-financiamento-de-campanha-fefc, accessed on December 1, 2021. Fundo Especial de Financiamento de Campanha (FEFC) [2018], https://www.tse.jus.br/eleicoes/eleicoes-2018/prestacao-de-contas-1/fundo-especial-de-financiamento-de-campanha-fefc, accessed on December 1, 2021.
[74] Agência Senado (2021). Nelson Oliveira, "Veto de Bolsonaro mantém expectativa sobre valor do fundo eleitoral", https://www12.senado.leg.br/noticias/infomaterias/2021/08/valor-do-fundo-eleitoral-gera-debate-sobre-financiamento-de-campanhas, accessed on December 1, 2021.
[75] For example: Congresso em Foco (2021). "Aprovação do "fundão" é alvo de críticas: "Retrocessos graves"", https://congressoemfoco.uol.com.br/area/pais/aprovacao-do-fundao-e-alvo-de-criticas-retrocessos-graves/, accessed on December 16, 2021.
Estado de Minas (2021). "Randolfe critica 'Fundão Eleitoral' de R$ 4 bi: 'Dinheiro pra aliado!'", https://www.em.com.br/app/noticia/politica/2021/07/27/interna_politica,1290311/randolfe-critica-fundao-eleitoral-de-r-4-bi-dinheiro-pra-aliado.shtml, accessed on December 16, 2021.
[76] https://www.tse.jus.br/partidos/contas-partidarias/prestacao-de-contas.
[77] Superior Electoral Court. Prestação de Contas - Eleições 2018, https://www.tse.jus.br/eleicoes/eleicoes-2018/prestacao-de-contas-1, accessed on December 1, 2021.
G1 (2020). Fábio Vasconcellos, "Candidatos gastam mais de R$ 2,8 bilhões na campanha eleitoral de 2020", https://g1.globo.com/politica/eleicoes/2020/eleicao-em-numeros/noticia/2020/12/18/candidatos-gastam-mais-de-r-28-bilhoes-na-campanha-eleitoral-de-2020.ghtml, accessed on December 1, 2021.
[78] The information is made available at https://divulgacandcontas.tse.jus.br/divulga/#/, accessed on December 1, 2021.
[79] Available at https://www.tse.jus.br/legislacao/compilada/prt/2021/portaria-no-93-de-12-de-fevereiro-de-2021, accessed on December 2, 2021.

On March 17, 2014, the Federal Prosecutor's Office and the Federal Police launched Operation Car Wash, one of the country's most influential anti-corruption investigations. By tracking illegal financial operations of clandestine money dealers, the taskforce uncovered a complex web of illegal campaign financing, bribery, embezzlement, bid rigging and money laundering that involved, at first, Petrobras, construction companies, intermediaries and state officials.[80]

As investigations revealed corruption schemes for political and electoral purposes, the operation also had a significant impact on citizens' perceptions of their elected officials. Campaign financing became a controversial issue that involved accusations of bribery and embezzlement, but also unregistered donations via slush funds, popularly known as 'caixa 2'[81] – with amounts estimated at billions of dollars.[82] Candidates accused of such practices encountered different levels of difficulty in their attempts to get elected in 2014, 2016 and 2018. In the 2018 elections, the anti-corruption discourse was strongly prompted by citizens and some candidates. This strong anti-corruption sentiment, however, does not seem to have been translated into policies and, as pointed out, Brazil has seen a number of setbacks in its anti-corruption efforts under President Jair Bolsonaro.[83]

In over six years, Operation Car Wash had 79 phases, with over 1,450 search warrants, 295 temporary arrests, 179 court cases and 553 individuals charged. Investigations spread from Curitiba to several locations in Brazil, such as Brasilia, Rio de Janeiro and São Paulo. Besides, it is estimated that the operation recovered over 14 billion reais (2.5 billion USD) in assets.[84] Operation Car Wash also prompted investigations in more than 40 countries, including Switzerland, the United States, Peru and Angola. During the operation, Brazilian authorities made 597 requests for international cooperation to 58 countries, and received 653 requests from 41 countries.[85]

Since 2019, Operation Carwash has suffered a blow from leaked information in the episode known as 'Vaza Jato'[86], as well as from investigations conducted by Operation Spoofing[87] on such leaks. In both cases, alleged conversations between former judge Sergio Moro, former prosecutor Deltan Dallagnol and other members of the taskforce came to light after their Telegram accounts were hacked. Although they contest the authenticity of such conversations, their disclosure was enough to tarnish some of the cases under Operation Carwash. The most

[80] Reis, V. C.; France, G. 'Operation Car Wash and the Fight Against Corruption in Brazil'. In Relational Leadership – Case Studies from Brazil, edited by Julika Baumann Montecinos, Jessica Geraldo Schwengber and Josef Wieland. Transcultural Management Series, Vol. 7. Marburg: Metropolis-Verlag, 2021.
[81] The expression "caixa dois" refers to the practice of keeping parallel accounting books in electoral campaigns and other contexts, an idea somewhat equivalent to the concept of "slush fund". The "caixa dois" is a destination for bribery and illegal donations, granting parties and candidates an opportunity to spend illicit money beyond the limits established by law. This illegal practice puts electoral balance at risk and creates dangerous opportunities for state capture and corruption.
[82] Transparency International Brazil (2020): Brazil: Setbacks in the Legal and Institutional Anti-Corruption Frameworks - 2020 Update. Retrieved from https://transparenciainternacional.org.br/retrocessos/.
[83] Transparency International Brazil (2021). Retrospectiva Brasil 2020. Retrieved from https://comunidade.transparenciainternacional.org.br/retrospectiva-brasil-2020.
[84] MPF. Resultados - Caso Lava Jato, http://www.mpf.mp.br/grandes-casos/lava-jato/resultados, accessed on November 20, 2021.
[85] MPF. Efeitos no Exterior - Caso Lava Jato, http://www.mpf.mp.br/grandes-casos/lava-jato/efeitos-no-exterior, accessed on November 20, 2021.
[86] The Intercept Brasil. As mensagens secretas da Lava Jato, https://theintercept.com/series/mensagens-lava-jato/, accessed on November 21, 2021.
[87] G1 (2019). "O que se sabe sobre a Operação Spoofing e o hacker que interceptou mensagens de autoridades", https://g1.globo.com/politica/noticia/2019/07/24/o-que-se-sabe-sobre-a-operacao-spoofing-e-os-suspeitos-de-interceptar-mensagens-de-autoridades.ghtml, accessed on November 21, 2021.

notorious consequence was the Supreme Court ruling that found former judge Moro partial due to how he conducted the case against former president Luiz Inácio Lula da Silva involving a triplex apartment in the town of Guarujá. Although the decision was officially based on the use of coercive measures and the suspension of secrecy on Mr. Lula's taped conversations, it was influenced by Mr. Moro's leaked dialogues with Car Wash prosecutors, as well as his decision to accept an appointment as Minister of Justice under President Bolsonaro.[88] Since then, the investigation and its tactics have been facing rampant criticism, with repercussions on other judicial procedures. In addition, Prosecutor-General Augusto Aras' decision to trade the so-called 'taskforce model' for the 'Gaeco model' weakened the operation even further. Under this format, investigations were incorporated into decentralized groups dedicated to targeting criminal organizations in each state (Gaecos). The Gaecos, however, lack structure, personnel and exclusivity for the prosecutors, much of which allowed the taskforces to succeed.[89]

Monitoring and off-the-books contributions

Since the Constitution of 1988, under the supervision of the Superior Electoral Court, Brazil has managed to develop a robust electoral system, with clear and sophisticated electioneering rules. As Operation Carwash has brought to light, however, that sophisticated electoral system has coexisted with widespread off-the-books contributions associated with a number of corruption practices. In recent years, such practices have become more complex: in 2018, business executives paid for mass messaging packages to promote candidates and tarnish rivals, which included fake news.[90] As such payments were not declared, they constitute a form of illegal financing.

Illegal campaign donations can lead to the capture of political decision-making by interest groups, which might result in decisions detrimental to the public interest. For instance, illegal political financing has biased the decisions and the tenders for the Belo Monte dam project, a huge hydroelectric plant in the Amazon Region mired in corruption scandals. As a result, beyond the fact that the project was not technically viable, it has caused devastating impacts for the environment and local communities including indigenous peoples.[91] Even legal campaign financing can foster risks of policy and regulatory capture. For instance, in the electoral campaign of 2014, 20 of the 27 congresspersons who were sitting members of the Special Commission for the new Mining Code received funds from private companies of the metals and mining sector.[92]

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[88] G1 (2021). Rosanne D'Agostino, "Plenário do STF reconhece decisão da Segunda Turma que declarou Moro parcial ao condenar Lula", https://g1.globo.com/politica/noticia/2021/06/23/plenario-do-stf-reconhece-decisao-da-segunda-turma-que-declarou-moro-parcial-ao-condenar-lula.ghtml, accessed on December 16, 2021.

[89] Conjur (2020). Thiago Crepaldi, ""Gaecos trarão institucionalidade às investigações do MPF", afirma Aras", https://www.conjur.com.br/2020-dez-14/gaecos-trarao-institucionalidade-investigacoes-mpf-aras, accessed on December 1, 2021.

[90] Folha de São Paulo (2018). Patrícia Campos Mello, "Empresários bancam campanha contra o PT pelo WhatsApp", https://www1.folha.uol.com.br/poder/2018/10/empresarios-bancam-campanha-contra-o-pt-pelo-whatsapp.shtml, accessed on December 16, 2021.

[91] France, Guilherme (2020). Grand Corruption and the SDGs: Belo Monte and the devastating impact of corruption in the Amazon, https://knowledgehub.transparency.org/product/grand-corruption-and-the-sdgs-belo-monte-and-the-devastating-impact-of-corruption-in-the-amazon, accessed on December 1, 2021.

[92] Oliveira, Clarissa Reis (2014). Quem é quem nas discussões do Novo Código da Mineração, https://www.socioambiental.org/sites/blog.socioambiental.org/files/nsa/arquivos/quem_e_quem_-_comite_0.pdf, accessed on December 1, 2021.

Considering the high levels of corruption in the electoral context, a close examination of the vulnerabilities of the electoral system is crucial to understand how it was possible for such pervasive corruption practices to go undetected by electoral authorities, despite the latter's considerable sophistication. Among the multiple reasons for this failure at the enforcement level, two stand out. First, the large number of political parties and candidates create a vast volume of information, while the Electoral Justice depends on limited human and financial resources to perform its activities. Brazil currently has 33 political parties registered at TSE, 23 of which have access to the Parties Fund. In Brazil's 2018 general elections, the average of candidates per seat in Parliament was 16.7[93], versus an average of 8.4 in the German general elections of 2021[94] and an average of 7.5 in the United States 2020 election.[95] Second, the high costs of running for office, which are partly a consequence of Brazil's electoral system, create strong incentives for candidates to expand their sources of campaign contributions.[96]

To some extent, such problems can only be thoroughly addressed by changes in the electoral system, aiming at: (i) reducing the number of parties and of candidates; and (ii) reducing campaign costs. In recent years, a few measures have been adopted toward these goals, such as the introduction of electoral thresholds to access the Electoral Fund and the reduction of campaigning time.[97] These reforms, alongside the prohibition of corporate contributions, have contributed to a reduction in campaign expenditures in the 2018 elections.[98]

Although that trend seems positive, it should be noted that the frequency and volume of off-the-books contributions is unknown and, therefore, it is not possible to fully assess the impact of recent reforms. Indeed, the Supreme Court's decision to prohibit corporate contributions was criticized by many as encouraging "*caixa dois",* particularly since it was not accompanied by any significant measure to fight this practice.[99] As a way to address the concern, a number of proposals have been made in recent years to criminalize off-the-books contributions. The civil society-led "New Measures Against Corruption", for example, include a proposal for the criminalization of this practice (Proposal 20).[100]

TSE has acknowledged that the prohibition of corporate contributions raises concerns about the possibility of illegal contributions or of the use of intermediaries to disguise the corporate origin

[93] TSE. Estatísticas Eleitorais, https://www.tse.jus.br/eleicoes/estatisticas/estatisticas-eleitorais, accessed on December 16, 2021.
[94] Der Spiegel (2021). Maren Hoffman, "Das ist der deutsche Durchschnittspolitiker", https://www.spiegel.de/karriere/thomas-michael-christian-das-sind-die-haeufigsten-vornamen-deutscher-politiker-a-f21c63c0-5ce4-47ce-8bfa-c3e2d0dce0e6, accessed on December 16, 2021.
[95] Ballotpedia. United States House of Representatives elections, 2020, https://ballotpedia.org/United_States_House_of_Representatives_elections,_2020#Filed_candidates_by_political_party, accessed on December 16, 2021.
[96] Biderman et al. (2019) Os Custos da Campanha Eleitoral no Brasil: uma análise baseada em evidência, http://www.cepesp.io/publicacoes/os-custos-da-campanha-eleitoral-no-brasil-uma-analise-baseada-em-evidencia/, accessed on December 2, 2021.
[97] Rádio Senado (2018). Floriano Filho, "Novas regras eleitorais restringem acesso ao fundo partidário e à propaganda gratuita", https://www12.senado.leg.br/radio/1/noticia/2018/02/01/recursos-eleitorais-e-tempo-de-radio-e-tv-vao-depender-do-desempenho-dos-partidos-politicos, accessed on December 1, 2021.
[98] See Biderman et al (2019), Os Custos da Campanha Eleitoral no Brasil: uma análise baseada em evidência.
[99] Agência Brasil (2015). Pimentel, C. "Proibição de financiamento empresarial favorece caixa 2, diz Gilmar Mendes", https://agenciabrasil.ebc.com.br/politica/noticia/2015-09/veto-financiamento-empresarial-favorece-caixa-dois-diz-gilmar-mendes, accessed on December 2, 2021.
[100] Available at: https://web.unidoscontraacorrupcao.org.br/, accessed on December 9, 2021.

of campaign contributions.[101] In order to address that risk, TSE created in 2016 the Intelligence Center of the Electoral Justice (Núcleo de Inteligência da Justiça Eleitoral - NIJE), in an effort to improve information-sharing between multiple agencies, such as TCU, RFB, COAF and the Federal Police. In 2020, ENCCLA elaborated a proposal to institutionalize NIJE as a permanent anti-corruption policy[102], which is currently under consideration by the court.

In spite of these efforts, anti-corruption specialists have expressed concerns about the dysfunctionality of the current institutional framework for detection and prosecution of illegal campaign contributions, particularly regarding the concentration of both tasks within the electoral courts. The Electoral Justice is not formed by full-time judges and prosecutors, but by agents from other courts and bodies of the Judiciary branch who partially dedicate their time to electoral cases. Courts are tasked with organizing and overseeing elections, monitoring campaign expenditures and ruling on controversial matters. Furthermore, the electoral courts have also been assigned with the responsibility of trying electoral crimes. Specialists concur, however, that the Electoral Justice is not properly equipped to deal with criminal matters, which would be better handled in regular criminal courts.[103] The trial of electoral crimes diverts energy and resources from the much-needed areas of auditing and monitoring, working thus as a bottleneck for productivity. For these reasons, when in 2019 the Supreme Court decided, by 6 votes to 5, to reaffirm the criminal attribution of the Electoral Justice, the decision was seen by specialists as a severe blow to national anti-corruption efforts.[104] Since this is a recent ruling, it is not possible to compare the data available so far and confirm whether the new criminal attribution has harmed the processing of criminal cases.

Following the Supreme Court's controversial decision, TSE issued Resolution No. 23,618[105], which authorized regional courts to concentrate the trial of criminal cases in particular electoral zones, in an effort to foster specialization and develop the necessary resources. This strategy, however, is limited by the fact that legally each Electoral Zone can only have one judge, who must then cumulate both electoral and criminal responsibilities.[106] So far, at least eleven regional courts (out of 27) have decided to follow the guideline and concentrate criminal trials in a limited number of electoral zones. In November 2020, TSE created a working group to suggest improvements to this strategy[107], and a reform proposal is under consideration.

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[101] Mensagem SEI/TSE 1843875, "Contribuições ao relatório independente sobre o cumprimento da Convenção das Nações Unidas contra a Corrupção no Brasil", signed by Aline Rezende Peres Osorio, General-Secretary of the Chair of TSE.
[102] Available at http://enccla.camara.leg.br/acoes/arquivos/resultados-enccla-2020/proposta-de-resolucao, accessed on December 9, 2021.
[103] Gazeta do Povo (2020). "Lava Jato perde celeridade na Justiça Eleitoral: nenhuma condenação em 16 meses", https://www.gazetadopovo.com.br/republica/lava-jato-perde-celeridade-justica-eleitoral/, accessed on December 1, 2021.
[104] Supreme Court. Inquiry No. 4,435, https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=750577279, accessed on December 1, 2021.
DW (2019). "STF decide que Justiça Eleitoral pode julgar crimes comuns", https://www.dw.com/pt-br/stf-decide-que-justi%C3%A7a-eleitoral-pode-julgar-crimes-comuns/a-47927233, accessed on December 1, 2021.
[105] https://www.tse.jus.br/legislacao/compilada/res/2020/resolucao-no-23-618-de-7-de-maio-de-2020.
[106] Mensagem SEI/TSE 1843875, "Contribuições ao relatório independente sobre o cumprimento da Convenção das Nações Unidas contra a Corrupção no Brasil", signed by Aline Rezende Peres Osorio, General-Secretary of the Chair of TSE.
[107] Portaria TSE 825/2020, https://www.tse.jus.br/legislacao/compilada/prt/2020/portaria-no-825-de-18-de-novembro-de-2020, accessed on December 2, 2021.

Finally, another set of important reforms is related to the role of political parties. Specialists argue that the current system creates almost no incentives for parties to exercise integrity controls over their candidates. In this sense, proposals have been made with the aim of putting additional pressure on political parties to contribute to the prevention of illegal electioneering practices. Activists have argued, for example, in favor of including political parties among the legal entities liable under the Clean Company Act (Law No. 12,846/2013).[108] Another proposal suggests subjecting political parties to anti-money laundering requirements.[109] Yet a third proposal, which is currently under discussion in the Senate, involves compelling political parties to create compliance programs within their organizations.[110] While each of these proposals involves a number of complex considerations, it seems clear that political parties should play a more active role in preventing and fighting illicit activities pursued by their affiliates.

Good practices:

- Prohibition of corporate contributions and limitation of individual and candidate donations.
- Transparency of campaign donations and expenditures.
- Transparency of candidates' asset declarations.
- Creation of the Intelligence Center of the Electoral Justice (Núcleo de Inteligência da Justiça Eleitoral – NIJE).

Deficiencies:

- Insufficient monitoring of campaign expenditures.
- Candidates are allowed to run for office even if their reports on expenditures are rejected by the Electoral Court.
- Compromising large sums of public resources with the Special Fund for Campaign Financing.
- Cumulative attribution of the Electoral Court to trial electoral crimes.
- Lack of involvement of political parties in ensuring candidate compliance with electoral regulations.

4.1.5 Articles 7, 8 and 12 – Codes of Conduct, Conflicts of Interest & Declarations of Assets and Interests

Article 7.2 of the Convention provides that States Parties shall consider adopting measures to "prescribe criteria concerning candidature for and election to public office".

In Brazil, eligibility criteria for candidature for and election to public office are regulated by Supplementary Law No. 64/1990.[111] The law was significantly amended by Supplementary Law

[108] Measure No. 15 of the New Measures Against Corruption seeks to advance transparency and democracy around party-level decisions and accounts, proposing accountability rules and sanctions if any irregular activity should occur, https://web.unidoscontraacorrupcao.org.br/novas-medidas/transparencia-responsabilidade-e-democracia-partidarias/, accessed on December 1, 2021.
[109] Measure No. 19 of the New Measures Against Corruption extends anti-money laundering rules to political parties, including preventive and active obligations that apply to companies and banks, https://web.unidoscontraacorrupcao.org.br/novas-medidas/estende-os-deveres-da-lei-de-lavagem-de-dinheiro-para-partidos-politicos/, accessed on December 1, 2021.
[110] Senate Bill (PLS) No. 429/2017, https://www25.senado.leg.br/web/atividade/materias/-/materia/131429, accessed on December 1, 2021.
[111] Available at http://www.planalto.gov.br/ccivil_03/leis/lcp/lcp64.htm, accessed on December 1, 2021.

No. 135/2010,[112] originated from a citizens' legislative initiative and popularly known as the "Clean Record Act". The statute considers ineligible those who, among other things, (i) have been criminally convicted by a judicial panel, even if a final decision by a superior court is still pending; (ii) have been found guilty by the Electoral Justice of abuse of economic or political power; (iii) have had their financial records rejected by the competent control body; (iv) those who were found guilty of administrative improbity by a judicial panel.

The law is generally credited with having contributed to stronger public accountability, although concerns have been raised about the fairness of some of its provisions. The statute prompted the National Council of Justice to create the National Register of Convicts for Administrative Improbity[113], a database that gathers information on administrative improbity convictions, thus facilitating the implementation of the ineligibility rules.

In December 2020, Supreme Court Justice Nunes Marques, appointed by President Bolsonaro, issued a controversial, unilateral decision reducing the ineligibility period prescribed by the law.[114] The decision was criticized by civil society organizations and by public prosecutors[115] based on the fact that it contradicts established precedents from the Supreme Court[116] and from the Superior Electoral Court.[117]

The UNCAC establishes further that States Parties are expected to institute systems to prevent conflicts of interest (Art. 7.4), including the implementation of codes of conduct (art. 8.2) and declarations of assets and conflicts of interests (Art. 8.5).

Law No. 8,112/1990[118] creates the general provisions for civil servants in the federal administration, including incompatibilities and duties. Decree No. 1,171/1992[119] establishes the Code of Professional Ethics for Federal Civil Servants. Compliance with the code of ethics is monitored by a system of ethics committees, which is coordinated by the Public Ethics Commission, a collegiate body which acts as an advisory board to the President. This Commission also oversees the implementation of the Code of Conduct of the High Federal Administration. Agencies also have the authority to establish more detailed codes of conduct within their organizations.[120] Although such a system has been in place for over 20 years, it is generally criticized for its lack of effectiveness and specificity. Besides, the existence of a federal system has inspired some subnational governments to adopt codes of conduct and rules against conflicts of interest, but these measures remain at an incipient stage.

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[112] Available at http://www.planalto.gov.br/ccivil_03/leis/lcp/lcp135.htm, accessed on December 1, 2021.
[113] Available at https://bit.ly/3pc65ek, accessed on November 30, 2021.
[114] Conjur (2020). Tiago Angelo, "Marques suspende trecho da Ficha Limpa que permite inelegibilidade indeterminada", https://www.conjur.com.br/2020-dez-20/liminar-nunes-marques-suspende-trecho-lei-ficha-limpa, accessed on December 1, 2021.
[115] DW (2020). Bruno Lupion, "Nunes Marques reduz alcance da Lei da Ficha Limpa", https://www.dw.com/pt-br/nunes-marques-reduz-alcance-da-lei-da-ficha-limpa/a-56014054, accessed on December 1, 2021.
[116] In 2012, in analyzing the constitutionality of the Clean Record Act, the Supreme Court discussed the issue and ruled that the ineligibility period prescribed in the law was constitutional (ADC 29/ADC 30/ADI 4578, Majority Opinion by Justice Luiz Fux, decided on Feb. 2, 2012, available at https://bit.ly/3l4qlHn, accessed on November 30, 2021).
[117] See Summary Statement No. 61, from the Superior Electoral Court, available at https://bit.ly/3rkUnAT, accessed on November 30, 2021.
[118] Available at http://www.planalto.gov.br/ccivil_03/leis/l8112cons.htm, accessed on December 1, 2021.
[119] Available at http://www.planalto.gov.br/ccivil_03/decreto/d1171.htm, accessed on December 1, 2021.
[120] Act No. 13,848/2019, http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/lei/l13848.htm, accessed on December 1, 2021.

The Administrative Improbity Act (Law No. 8,249/1992)[121] requires individuals who hold public office to provide an annual declaration of assets. Civil servants who fail to provide the declaration in a timely manner or who provide false information are subject to dismissal.[122] In the Federal Administration, declarations of assets are regulated by Decree No. 10,571/2020[123], according to which the declarations are gathered in a database under the control of the Office of the Comptroller General (CGU) and are not available to the public. The CGU is authorized to monitor the evolution of assets; should there be grounded suspicions of unexplained enrichment, it can open an investigation. The 2021 reform of the Administrative Improbity Act excluded the need for the declaration of assets to include information on the public official's consort and children. The Federal Prosecution Service argues that such an exclusion is unconstitutional and violates the United Nations Convention Against Corruption.[124]

In regards to the High Federal Administration - i.e., ministers, heads of agencies, and senior management - a similar system is in place. Under Law No. 12,813/2013,[125] senior officials are required to present an annual declaration of assets and of potential conflicts of interests either to CGU or to the Public Ethics Commission. The statute also establishes cooling-off periods for certain professional activities after the period of civil service.

Three recent episodes have shed light on the work of the Public Ethics Commission. In 2020, after then Minister Sérgio Moro asked for his resignation, the body understood that he should refrain from practicing law for a period of six months, in which he was only allowed to teach courses and write opinion articles.[126] This decision aimed at avoiding conflicts of interest due to his status as a senior government official. However, two other cases highlighted the insufficient actions of the Public Ethics Commission to ensure compliance with integrity rules at the federal level. The Pandora Papers scandal revealed that Minister of the Economy Paulo Guedes and President of the Central Bank Roberto Campos Neto had offshore accounts in the British Virgin Islands and Panama, respectively. The Commission, although notified of these facts in 2019, failed to prevent what is clearly understood as a potential, if not actual, conflict of interest.[127] Later on, it was revealed that Mr. Campos Neto's accounts were closed, but Mr. Guedes' were not. This scandal generated a temporary crisis, but both have managed to stay in office.

In an attempt to centralize questions on conflicts of interest, CGU has developed an Electronic System for Conflicts of Interests, through which civil servants can formalize consultations or request authorization to pursue activities in parallel to their public position. In the Federal Anti-corruption Plan, CGU actions 11 through 14 concern the improvement of the control of conflicts of interests, including the issue of new regulations on the subject and new monitoring activities.

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[121] Available at http://www.planalto.gov.br/ccivil_03/leis/l8429.htm, accessed on December 1, 2021.
[122] Art. 13, §3º, of the Administrative Improbity Act.
[123] Available at http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/decreto/D10571.htm, accessed on December 1, 2021.
[124] Nota Técnica No. 1/2021, from the 5th Chamber of Coordination and Revision of the Federal Prosecution Service, http://www.mpf.mp.br/atuacao-tematica/ccr5/notas-tecnicas, accessed on December 2, 2021.
[125] Available at http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/l12813.htm, accessed on December 1, 2021.
[126] O Globo (2020). Guilherme Amado, "Comissão de Ética da Presidência mantém quarentena a Moro", https://oglobo.globo.com/epoca/guilherme-amado/comissao-de-etica-da-presidencia-mantem-quarentena-moro-24639297, accessed on December 1, 2021.
[127] Congresso em Foco (2021). Lucas Neiva, "Comissão de Ética Pública confirma conhecimento de offshores de Guedes", https://congressoemfoco.uol.com.br/temas/corrupcao/comissao-de-etica-publica-confirma-conhecimento-de-off-shores-de-guedes/, accessed on December 1, 2021.

While the Federal Administration system for the control of conflicts of interests and asset declarations has potential for improvement, it should be noted that it is much more robust than the controls exercised in the Legislative or in the Judiciary. Even though asset declaration requirements also apply to these branches, there is no systematized effort to monitor the evolution of assets or to control conflicts of interests, which constitutes a serious gap in anti-corruption efforts.

Good practices:

- Mandatory asset declaration for all civil servants.
- Monitoring of evolution of asset declarations by CGU for civil servants in the Federal Administration.

Deficiencies:

- Lack of systematized effort to monitor the evolution of assets or to control conflicts of interests in the Legislative and in the Judiciary.
- Lack of systematized control of conflict of interests for civil servants in the Federal Administration.

4.1.6 Articles 8.4 and 13.2 – Reporting Mechanisms and Whistleblower Protection

The Convention also contains a number of provisions regarding the institution of reporting mechanisms (Art. 8.4 and 13.2) and measures to protect witnesses (Art. 32) and reporting persons (Art. 33) (i.e., whistleblowers).

Reporting mechanisms

Brazil has no centralized system for collecting reports on corruption. Most states maintain a hotline for receiving reports on criminal activity, including crimes against the public administration. When using the hotline, individuals can choose to remain anonymous or to reveal their identity; in the latter case, the identity is to be kept secret by the authority. Article 4 of Law No. 13,608/2018[128] authorizes states to offer rewards for reports. Although some states indicate a significant increase in the number of reports received,[129] there is a dearth of data on the effectiveness of these hotlines. Most states do not regularly provide statistics on reports received and the measures taken in response to them. It remains unknown, therefore, which fraction of the criminal activity reported is related to corruption practices.

Brazil has also instituted a system of Ombudsperson offices, whose attributions include receiving reports on administrative wrongdoings. Under Law No. 13,608/2018, as amended by Law No. 13,964/2019,[130] all governmental agencies must maintain such an office with the

[128] http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/L13608.htm, accessed on December 1, 2021.
[129] In the state of Espírito Santo, for example, the number of yearly reports went from less than 6,000 in 2004 to over 60,000 in 2020, https://disquedenuncia181.es.gov.br/estatistica2021, accessed on December 1, 2021.
[130] Available at http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/lei/L13964.htm, accessed on December 1, 2021.

necessary resources to receive those reports.[131] At the Federal Level, a centralized platform is maintained by the CGU (Fala.BR)[132], enabling citizens to communicate wrongdoings in the federal administration, even anonymously. Since 2014, the CGU has registered 178,210 reports of wrongdoings, out of which 157,427 have been responded and 3,196 have been referred to external bodies for further measures. It is not possible to infer, however, which corruption cases have been uncovered by this mechanism.[133]

Finally, it is worth pointing out that under Law No. 8,112/1990,[134] civil servants have an obligation to report any wrongdoings they are aware of either to their superiors or to a competent agency (article 116).

Protection of witnesses and whistleblowers

Law No. 9,807/1999[135] put in place a service for the protection of victims and witnesses, under the supervision of the Ministry of Justice. In addition to that, Decree No. 6,044/2007[136] created the National Program for the Protection of Human Rights Defenders. These programs, however important in their respective domains, are quite narrow, and do not offer significant protection to whistleblowers.

Recently, Law No. 13,964/2019,[137] which amended Law No. 13,608/2018, introduced protection mechanisms for whistleblowers, among which the following aspects are included:

- Confidentiality: the identity of the whistleblower is to remain secret and can only be disclosed in case of "relevant public interest or concrete interest for elucidation of facts" (Article 4-B), after prior agreement by the whistleblower;
- Immunity: unless the whistleblower knowingly provides false information to authorities, they are immune to civil or criminal liability;
- Protection against retaliation: the law includes a few provisions aimed at protecting whistleblowers from retaliation, including (i) the threat of sanctions, including dismissal, for officials that adopt retaliatory measures; and (ii) the award of doubled damages for any losses accruing from retaliatory actions.

Finally, the statute also introduces the possibility of a financial reward of up to 5% of the value of the assets recovered as a result of the report. The law was supplemented by Decree No.

[131] The existence of the Ombudsman offices, however, predates that law. For instance, in 1986, the city of Curitiba created Brazil's first Public Ombudsman Office for the municipal level, whereas in 1992 the Ministry of Justice created the Office of the Ombudsman General of the Republic,: https://www.ipea.gov.br/ouvidoria/index.php?option=com_content&view=article&id=726&Itemid=38, accessed on December 2, 2021.
[132] CGU. Fala.BR - Plataforma Integrada de Ouvidoria e Acesso à Informação, https://falabr.cgu.gov.br/publico/Manifestacao/SelecionarTipoManifestacao.aspx?ReturnUrl=%2f, accessed on December 2, 2021.
[133] CGU. Painel Resolveu?, http://paineis.cgu.gov.br/resolveu/index.htm, accessed on February 10, 2022.
[134] http://www.planalto.gov.br/ccivil_03/leis/l8112cons.htm, accessed on December 2, 2021.
[135] http://www.planalto.gov.br/ccivil_03/leis/l9807.htm, Accessed on December 2, 2021.
[136] http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2007/decreto/d6044.htm, accessed on December 2, 2021.
[137] http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/lei/L13964.htm, accessed on December 1, 2021.

10,153/2019,[138] which included further provisions on how the reports of wrongdoing are to be handled within the Federal Administration.

Despite the importance of such legislative measures, many obstacles continue to hinder the effective protection of whistleblowers.[139] First, many of these provisions are characterized by excessively vague language. The exceptions to the confidentiality of the whistleblowers' identity, for example, are described very broadly, and no detail is provided as to what might constitute a "relevant public interest". Although Decree No. 10,153/2019 creates some additional measures to protect the identity of the whistleblower, the rule is only valid within the Federal Executive branch. Likewise, there is no indication of how the financial rewards are to be implemented, a topic on which also the decree failed to expand.

A second problem is that the rules seem to be carved out with the public administration in mind, so that it is uncertain whether and how those rules are to be applied in the private sector. Although the prohibition of retaliation could also be extended to private organizations, a more comprehensive set of rules directed to the private sector would be of crucial importance, since often the reports of wrongdoings will originate from employees of private firms.

Most importantly, however, the measures create mostly *negative* duties for the administration, that is, duties to refrain from engaging in certain actions - disclosing the identity of the whistleblower, for example. However, many contexts require a pro-active role of the administration in ensuring the protection of whistleblowers' physical and mental integrity. This is illustrated by the situation of many environmental and land activists in Brazil, who constantly face threats for reporting environmental and land abuses,[140] which are frequently coupled with corruption and asset laundering practices. Brazil is consistently ranked among the most dangerous places for land and environmental defenders.[141]

Beyond safe and confidential channels to report wrongdoings, environmental and land defenders need effective access to justice. Even though the Brazilian system offers institutional arrangements to formally guarantee this access, experience shows that the Judiciary struggles to deliver a timely resolution to conflicts and to effectively protect land and environmental defenders.[142] The protection of these activists also depends on the integrity and anti-corruption

[138] http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decreto/D10153.htm, accessed on December 2, 2021.
[139] In 2018, Transparency International - Brazil developed, with the collaboration of more than 200 experts, a package of 70 legislative proposals for administrative and institutional anti-corruption reforms, called New Measures Against Corruption. Based on the best national and international anti-corruption practices, the measures seek to promote public debate and propose long-term solutions to the problem of corruption. Among such proposals, Measure No. 8 advances a system to encourage whistleblowing and grant protection to whistleblowers in both public and private sectors, https://web.unidoscontraacorrupcao.org.br/novas-medidas/protecao-do-reportante-de-suspeita-de-irregularidades-whistleblower/, accessed on December 2, 2021.
[140] G1 (2019). "Ativistas ambientais são vítimas de ameaças pelo Brasil; Fantástico mostra histórias", https://g1.globo.com/fantastico/noticia/2019/04/28/ativistas-ambientais-sao-vitimas-de-ameacas-pelo-brasil-fantastico-mostra-historias.ghtml, accessed on December 2, 2021.
[141] Global Witness (2019). Enemies of the State? Available at https://www.globalwitness.org/en/campaigns/environmental-activists/enemies-state/,; Global Witness (2020). Defending Tomorrow, https://www.globalwitness.org/en/campaigns/environmental-activists/defending-tomorrow/; Human Rights Watch (2019). Máfias do Ipê: Como a Violência e a Impunidade Impulsionam o Desmatamento na Amazônia Brasileira, https://www.hrw.org/pt/report/2019/09/17/333519, all accessed on December 2, 2021.
[142] In this regard, the Escazú Agreement signed but not ratified by Brazil provides sound guidelines to protect environmental and land defenders and could support the development of stronger institutions. For more

measures within law enforcement forces. Various cases have shown that police officers can be corrupted by criminal organizations involved in the plunder of natural resources and directly contribute to the violence and acts of intimidation against land and environmental defenders.[143]

It should be noted that in September 2018 Brazil signed the *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*, which, among other things, creates protections to environmental activists. The Escazú Agreement, as it is better known, entered into force in April 2021, but Brazil is yet to ratify it, since President Bolsonaro has still not submitted the agreement to Congress's approval.[144]

Good practices:

- Passing of Law No. 13,964/2019, creating minimum standards for protecting whistleblowers.

Deficiencies:

- Lack of data on reporting hotlines at the state level.
- Ambiguity as to the application of whistleblower protection in the private sector.
- Insufficient protection of whistleblowers, particularly of land and environmental activists.
- Lack of a robust national program to encourage whistleblowing and grant protection to whistleblowers in the public sector and private sectors.
- Non-ratification of the Escazú Agreement.

4.1.7 Article 9.1 – Public Procurement

General framework

Brazil has a fairly complex system of rules governing public procurement and public contracts. According to Constitutional provisions, the Union has the power to set "general rules for all types of bidding and contracting" for governmental bodies, which are then to be complemented by more specific rules issued by States and Municipalities (article 22, XXVII). Under the guise of setting the general framework for public procurement, however, the Union has issued detailed regulations on the topic, leaving little room for subnational entities to innovate in their procurement procedures. As a consequence, procurement regulation is fairly concentrated.

information, see Morgado, R., Dominguez, M. and Reis, V. (2020). Acordo de Escazú: uma oportunidade de avanços na democracia ambiental e no combate à corrupção no Brasil. Transparência Internacional - Brasil, Policy Paper, https://comunidade.transparenciainternacional.org.br/asset/111:acordo-de-escazu?stream=1, accessed on December 2, 2021 .

[143] For example, MPF (2019). "Operação Karipuna: Força-Tarefa Amazônia denuncia nove pessoas por invasão e loteamento da terra indígena Karipuna", https://mpf.jusbrasil.com.br/noticias/743955593/forca-tarefa-amazonia-denuncia-nove-pessoas-por-invasao-e-loteamento-da-terra-indigena-karipuna, accessed on February 10, 2022. PGR (2019). "PGR cria força-tarefa no Amapá para investigar esquema de corrupção vinculado a políticos, empresários e servidores", http://www.mpf.mp.br/pgr/noticias-pgr/pgr-cria-forca-tarefa-no-amapa-para-investigar-esquema-de-corrupcao-vinculado-a-politicos-empresarios-e-servidores, accessed on February 10, 2022.

[144] El País Brasil (2021). Teresa de Miguel, "Acordo de Escazú entra em vigor para frear mortes de ambientalistas na América Latina, sem participação do Brasil". Available at https://brasil.elpais.com/internacional/2021-04-23/acordo-de-escazu-entra-em-vigor-para-frear-assassinatos-de-ambientalistas-na-america-latina-sem-a-participacao-do-brasil.html, accessed on December 2, 2021.

Until recently, the most comprehensive piece of legislation on public procurement was Law No. 8,666/1993,[145] which was approved in 1993 and has since then been amended multiple times. Next to it, other important pieces of legislation include:

- Law No. 8,987/1995,[146] which regulates the concession of public services;
- Law No. 10,520/2002,[147] which provides for a particular form of procurement - the Reverse Auction ("pregão");
- Law No. 11,079/2004,[148] which establishes rules for public-private partnerships;
- Law No. 12,232/2010,[149] which establishes rules for the procurement of advertisement services;
- Law No. 12,462/2011,[150] which creates the "Differentiated Procurement Regime", mostly applicable to procurement of infrastructure projects;
- Law No. 12,598/2012,[151] which establishes special rules for the procurement of defense-related goods and services;
- Law No. 13,303/2016,[152] which establishes special rules for procurements in state-owned enterprises;
- Laws that authorize particular governmental agencies to elaborate their own procurement procedures.[153]

The new Public Procurement Law

In 2021, Congress passed Law No. 14,133/2021,[154] a broad piece of legislation that is meant to replace Law No. 8,666/1993 and modernize public procurement regulation. Although the new law is already in force, lawmakers opted for establishing a transition period, so that most of the existing legislation will remain in effect until April 2023.[155]

The recently approved legislation consolidates previous practices while also bringing noteworthy innovations, which might have a positive impact in reducing corruption risks in procurements. Among the measures introduced by the law, it is important to highlight:

- The creation of a National Platform of Public Procurement, which will centralize and disclose data on public procurement from all levels of government (article 174). This measure is expected to bring greater transparency to governmental contracts and to improve the quality of information on public expenditure;[156]

[145] http://www.planalto.gov.br/ccivil_03/leis/l8666cons.htm, accessed on December 2, 2021.
[146] http://www.planalto.gov.br/ccivil_03/leis/l8987cons.htm, accessed on December 2, 2021.
[147] http://www.planalto.gov.br/ccivil_03/leis/2002/l10520.htm, accessed on December 2, 2021.
[148] http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2004/lei/l11079.htm, accessed on December 2, 2021.
[149] http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2010/lei/l12232.htm, accessed on December 2, 2021.
[150] http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/l12462.htm, accessed on December 2, 2021.
[151] http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/l12598.htm, accessed on December 2, 2021.
[152] http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/lei/l13303.htm, accessed on December 2, 2021.
[153] For example, Law 9472/1997, Law 9478/1997 and Law 9961/2000, which provide for procurements within the National Communications Agency (Agência Nacional de Telecomunicações - ANATEL), National Oil Agency (Agência Nacional de Petróleo - ANP) and the National Supplementary Health Agency (Agência Nacional de Saúde Suplementar - ANS), respectively.
[154] http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2021/Lei/L14133.htm#art193, accessed on December 2, 2021.
[155] The new law fully revokes Law 8666/1993, Law 10520/2002 and Law 12462/2011, but applies to other regulations in a number of different ways.
[156] Measure No. 3 of the New Measures Against Corruption proposed the creation of a website to concentrate national and subnational public procurement data, https://web.unidoscontraacorrupcao.org.br/, accessed on December 2, 2021.

- The creation of a new function within the administration, the "procurement officer" ("agente de contratação"), who will be responsible for conducting the procurement procedures. This measure is expected to improve the quality of decision-making, by allowing greater specialization within the administration, as well as to reduce conflicts of interests, by separating procurement authorities from other activities of the administration that might result in greater vulnerability of the public official to private interests;
- The requirement that companies that are awarded contracts in excess of R$200 millions (ca. 35.5 million USD) must have in place a compliance and integrity program (article 25, §4);
- The introduction of performance bonds of up to 30% of the contract value in large-scale projects (articles 97 to 102). This insurance mechanism, which in previous legislation had very limited applicability, is expected to contribute to mitigate problems in the execution of contracts, thus reducing opportunistic behavior by contracting parties;[157]
- The increase in the criminal penalties for crimes related to procurement procedures (article 178).[158]

The system of public procurement

The enactment of Law No. 14,133/2021 consolidates a fairly robust procurement system in Brazil, which extensively regulates all stages of bidding and contracting procedures, from the preparatory phase until the execution of the contract. There are clear and reasonable thresholds as to when a contract is expected to be awarded by competitive procedures. The procedures are mostly public and there are substantial guarantees as to the accessibility of information concerning bidding and contracting. Participants in the bidding process are warranted significant rights to review and appeal against unfavorable decisions. Importantly, the procurement procedure is usually under a potential two-level supervision, since both the award of the contract and its execution can be inspected by internal control agencies (for instance, the Office of the Comptroller General, at the Federal Administration) and external control bodies (most notably, the courts of accounts).

In spite of these positive features, the very breadth and level of detail that account for the robustness of the Brazilian procurement system also give rise to concerns. As critics have pointed out, the rules in place are excessively centralized and assign disproportionate weight to the experience of the Federal administration, without taking into consideration the heterogeneity that characterizes governmental action at subnational levels and across different sectors.[159] Furthermore, the intricate regulation, spread across multiple pieces of legislation, results in a highly complex procurement system that cannot be easily navigated, thus creating a number of challenges for both the public and the private sector.[160]

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[157] Measure No. 12 of the New Measures Against Corruption encompassed the obligation of contracting performance bonds, although in distinct proportions to Law No. 14, 133/2021, https://web.unidoscontraacorrupcao.org.br/, accessed on December 2, 2021.

[158] Measure No. 59 of the New Measures Against Corruption also proposed an increase in criminal penalties to better reflect the gravity of violations to Brazil's public procurement legislation, https://web.unidoscontraacorrupcao.org.br/, accessed on December 2, 2021.

[159] See, for example, Azevedo Marques, F. (2019), Do Contrato Administrativo à Administração Contratual, in Revista do Advogado, No. 107, p. 74-82, in which the author refers to the "curse of the unitary regime". See also Rosilho, A. J. (2012). As licitações segundo a Lei nº 8.666 - Um jogo de dados viciados. Revista de Contratos Públicos, v. 2, p. 9-38.

[160] In 2004, a World Bank report on Brazil's procurement system acknowledged the need for a "normative entity" with specific mandate to oversee, standardize and regulate procurement-related documents and

For governmental agencies, it is often difficult to comply with all the minutiae of the procurement system. This is particularly true for governmental bodies with limited access to technical resources, as is the case of many municipalities and even states. The intricacy of the procurement rules can lead to increased litigiousness around the procedures, as well as to a significant number of involuntarily irregularities, both of which run counter to anti-corruption efforts, insofar as they make it harder to differentiate good-faith inconsistencies from bad-faith decision-making. While often portrayed as a means to reduce the discretionary power of public officials, highly intricate rules can often serve the opposite purpose, providing skillful decision-makers with ways to direct the contracting procedure in the direction of the desired outcome. Moreover, because the system is so complex, agencies are often prevented from introducing innovations in the procurement procedures that could potentially increase their overall efficiency. Even when they are given legal permission to depart from the more detailed regulation of Law No. 8,666/1993, agencies often prefer to reproduce the standard procedures established in the current framework, arguably out of fear that attempts to innovate will meet with excessive resistance from both internal and external control bodies.[161]

The intricacy of the procurement system also has detrimental effects on the private sector. Its high level of complexity and the uncertainty that often accompanies it drives away potential bidders. This leads to a higher degree of market concentration, and competition is often restricted to firms specialized in obtaining public contracts. This leads not only to inefficiency, but also to increased corruption risks, due to the fact that public officials end up interacting repeatedly with the same set of firms.

Law No. 14,133/2021 was expected to address this problem, modernizing the legislation in order to reduce unnecessary complexity, increase the competitiveness on biddings, and facilitate international participation in government procurements.[162] However, the approved legislation seems to fall short of the expectations and mostly consolidates the system already in place. As discussed above, the law does introduce a few innovations, but many of them have limited applicability. Performance bonds, for example, are merely optional and, even so, can only be used in contracts in excess of R$200 millions. That same threshold applies to the contracted firm's obligation to have a compliance system in place. In short, while Brazil has developed a robust procurement system, questions remain regarding specific rules and practices.

Good practices:

- Approval of Law No. 14,133/2021, a new and improved piece of legislation, to consolidate Brazil's public procurement system and advance in anti-corruption measures.
- Transparency of public procurement, with good levels of access to information.

Deficiencies:

procedures throughout the country, https://openknowledge.worldbank.org/handle/10986/14590, accessed on December 2, 2021.

[161] In a study of state-owned enterprises, which are given broader leeway in designing their own procurement procedures, Pedro Ivo Peixoto da Silva found "a low degree of innovation implemented by the state companies in their bidding regulations, and considerable variations in the degrees of repetition", https://bibliotecadigital.fgv.br/dspace/handle/10438/27262, accessed on November 30, 2021.

[162] On 18 May 2020, Brazil applied to join the World Trade Organization's Global Procurement Agreement, being the first Latin American country to submit an application. Brazil pledged to reform and modernize its procurement rules and procedures to that end, https://www.wto.org/english/news_e/news20_e/gpro_19may20_e.htm, accessed on November 30, 2021.

- Lack of efforts to advance in open data for public procurement.
- Excessively centralized procurement rules, biased toward the reality of the federal administration.
- Complex procurement procedures that work as an entry barrier and limit competition.
- Difficulty in adopting innovations in public procurement.
- Excessively limited adoption of performance bonds.

4.1.8 Article 9.2 – Management of Public Finances

Under Article 9 of the Convention, States Parties must take measures to promote transparency and accountability in the management of public finances.

Since the advent of the Constitution of 1988, Brazil has progressively developed a robust system for the management of public finances. The Constitution organizes public finance around three main documents: (i) the pluriannual plan; (ii) the law of budgetary directives; and (iii) the annual budget law. Each of these is initiated by the Federal Executive and must be approved by Congress.

A landmark in the management of public finance was achieved with the passing of the Fiscal Responsibility Act (Supplementary Law No. 101/2000),[163] which created stringent rules and parameters for the elaboration and execution of budgets of any public entities in Brazil, with severe sanctions for violation of those standards. Another important step toward greater budget transparency was achieved by the passing of Supplementary Law No. 131/2009,[164] which created an obligation for the Union, States and Municipalities to make available online all relevant budgetary information. Non-compliance with transparency requirements subjects the entity, whether municipality, state or even the Union, to the sanctions prescribed by article 23, §3, of the Fiscal Responsibility Act, which include prohibition of receiving transfers from other federal units or engaging in credit transactions. This led to the creation of the so-called *Transparency Portals*,[165] which allow citizens to follow public expenditure close to real time.

The monitoring of public finance is largely carried out by the Courts of Accounts, which provide assistance to parliament at both national and state level in examining the expenditures of the Executive.[166] In the last decades, the Courts of Accounts played an increasingly important role in exercising external control over government agencies' expenditures, partly due to the professionalization and expansion of these bodies.[167] In spite of their important contribution to the monitoring of public expenditures, Courts of Accounts are particularly vulnerable to political influence, due to the opaque and highly political procedures for nominating its members, many of which are former lawmakers.[168] The proximity between councilors and politicians often raises

[163] Available at http://www.planalto.gov.br/ccivil_03/leis/lcp/lcp101.htm, accessed on December 2, 2021.
[164] Available at http://www.planalto.gov.br/ccivil_03/leis/lcp/lcp131.htm, accessed on December 2, 2021.
[165] The federal Transparency Portal is available at https://www.portaltransparencia.gov.br/, accessed on November 30, 2021.
[166] Brazil has 36 Courts of Accounts: The Court of Account of the Union (Tribunal de Contas da União - TCU), 27 Courts of Accounts for the states and the federal district, and eight Court of Accounts for municipalities, including one for the city of São Paulo and one for the city of Rio de Janeiro.
[167] For an overview of the profile of the Courts of Accounts, see ATRICON, Diagnóstico dos Tribunais de Contas do Brasil: Avaliação da Qualidade e Agilidade do Controle Externo, https://www.atricon.org.br/wp-content/uploads/2013/07/ATRICON-_-Diagnostico-Digital.pdf, accessed on November 30, 2021.
[168] For example, see Machado, A. J. P. (2017). "Tribunais de Contas Estaduais: indicações, perfil dos conselheiros e autonomia das instituições",

questions as to their impartiality. In November 2021, for example, Councilor Raimundo Carreiro was appointed by President Bolsonaro to be the Brazilian ambassador to Portugal; until his confirmation by the Senate, however, Mr. Carreiro maintains his position as councilor, including as Rapporteur in an investigation of public expenditures by the Presidency, a situation that critics have characterized as a conflict of interests.[169]

The reputation of Courts of Accounts has also been negatively affected by corruption scandals. In 2017, for instance, five out of seven councilors of the Court of Accounts of the State of Rio de Janeiro were arrested following anti-corruption investigations by the Federal Police and the Federal Prosecution Service.[170] In the Court of Accounts of the State of São Paulo, a counselor and former chair remains suspended since 2014 as a consequence of anti-corruption investigations.[171]

In recent years, many proposals have been made to try to reinforce the autonomy of Courts of Accounts, granting them more independence from political actors. The civil society-led "New Measures Against Corruption", for example, include a proposal to reform the appointment procedure of councilors.[172]

A still critical element of the management of public finance concerns the "parliamentarian amendments". Both at federal and local level, lawmakers are entitled to make a limited number of amendments to the annual budget proposed by the Executive, in order to advance the interests of their local political bases. Although supporters of parliamentarian amendments argue that they democratize the public budget, allowing lawmakers to better address the needs of their constituents, this mechanism has a long history of public scandals. The 1993 "Anões do Orçamento" scandal, for instance, one of the best-known corruption cases in Brazilian history, involved a group of parliamentarians that used their position in the Budget Committee to direct resources to shell corporations or non-profit organizations by manipulating amendments. The investigation led to the expulsion of six congressmen.[173] Since then, in spite of closer inspections by the Court of Accounts and the media, multiple reports have emerged of lawmakers at all levels of government levering their influence over the budget to collect bribes.[174] In October 2021, for example, media outlets revealed that three representatives and one senator were

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https://repositorio.ufpe.br/bitstream/123456789/24059/1/Disserta%c3%a7%c3%a3o%20Aud%c3%a1lio%20Machado.pdf, accessed on February 10, 2022.

[169] Poder 360 (2021). Bernardo Gonzaga and Gabriella Soares, "Ministro do TCU sinaliza que pode julgar cartão de Bolsonaro", https://www.poder360.com.br/economia/ministro-do-tcu-diz-que-nao-esta-impedido-de-julgar-cartao-de-bolsonaro/, accessed on December 2, 2021.

[170] G1 (2017). Bruno Albernaz, Daniel Silveira and Gabriel Barreira, "Presidente e 4 conselheiros do TCE do RJ são presos em operação", https://g1.globo.com/rio-de-janeiro/noticia/alvos-de-operacao-contra-fraude-no-tribunal-de-contas-do-rj-sao-presos.ghtml, accessed on December 2, 2021.

[171] SBT News (2021). Ricardo Chapola, "Conselheiro do TCE gera R$ 54,3 mi de prejuízo aos cofres de SP", https://www.sbtnews.com.br/noticia/justica/158585-conselheiro-do-tce-gera-r-543-mi-de-prejuizo-aos-cofres-de-sp, accessed on December 2, 2021.

[172] Proposal No. 28, https://web.unidoscontraacorrupcao.org.br/novas-medidas/criterios-de-selecao-dos-ministros-e-conselheiros-dos-tribunais-de-contas/, accessed on December 2, 2021.

[173] Terra (2013). Daniel Favero, "Lembre do escândalo dos Anões do Orçamento que completa 20 anos", https://www.terra.com.br/noticias/brasil/politica/lembre-do-escandalo-dos-anoes-do-orcamento-que-completa-20-anos,3f1376212bd42410VgnVCM3000009af154d0RCRD.html, accessed on December 2, 2021.

[174] See, for example: G1 (2013). Mariana Oliveira, "PGR denuncia deputado João Magalhães por fraude em licitações", http://g1.globo.com/minas-gerais/noticia/2013/03/pgr-denuncia-joao-magalhaes-pela-operacao-joao-de-barro.html, accessed on December 2, 2021; Istoe (2011). Alan Rodrigues and Pedro Marcondes de Moura, "Balcão de negócios", https://istoe.com.br/164368_BALCAO+DE+NEGOCIOS/, accessed on December 2, 2021.

under investigation from the Federal Police for charging a "commission" for directing their amendments to particular projects.[175]

Parliamentarian amendments have also been criticized for encouraging a clientelistic relationship between lawmakers and the Executive. Although lawmakers are entitled to include expenditures in the budget proposal, the execution of these projects largely depends on efforts of the administration. This was often used by the government as a bargaining chip in negotiating support for government-sponsored bills. In 2015 and 2019, Congress amended the Constitution implementing compulsory parliamentary budget amendments, thus reducing its negotiation power.[176] Nonetheless, because the government still controls the speed at which resources are made available, the mechanism remains a key aspect of negotiations, particularly given the amount of resources available. In 2019, for example, parliamentary amendments added up to 12.9 billion reais (ca. $2.3 billion USD).[177]

In early 2021, investigative journalists revealed that the government and allies in Congress had found a way to circumvent the limitations imposed by the constitutional amendments of 2015 and 2019. To do so, they made use of the "rapporteur amendments", that is, budget amendments proposed by Congress's general budget rapporteur.[178] Unlike individual parliamentary amendments, the rapporteur's do not have to be executed in an equitable manner across political parties and are not compulsory, which widens the government's discretion. Moreover, because they are submitted by the rapporteur, they are not easily traceable to a particular lawmaker.[179] The rapporteur, in other words, works as a liaison between government and allies in Congress, which get preferential treatment in the budget execution in exchange for political support. Due to the lack of information regarding how the money will be spent by municipalities and which representatives were responsible for the allocation of such amendments, the mechanism was soon labeled in the media as the "secret budget".[180]

According to media investigations, in 2021 alone, the Bolsonaro government has channeled at least R$ 9 billion (ca. $1,7 billion USD)[181] to its political base through this mechanism. Much of this parallel budget was destined to the purchase of tractors and agricultural equipment at prices

[175] Estadão (2021). Breno Pires, "PF investiga 4 parlamentares por venda de emenda", https://politica.estadao.com.br/noticias/geral,pf-investiga-parlamentares-emenda,70003863195, accessed on December 2, 2021.
[176] Constitutional Amendment No. 86/2015, http://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc86.htm, accessed on December 2, 2021. Constitutional Amendment No. 100/2019, http://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc100.htm, accessed on December 2, 2021.
[177] Based on the exchange rate of November 30, 2021.
[178] Estadão (2021). Breno Pires, "Orçamento secreto de Bolsonaro: entenda o passo a passo do esquema", https://politica.estadao.com.br/noticias/geral,orcamento-secreto-de-bolsonaro-entenda-o-passo-a-passo-do-esquema,70003708734, accessed on December 2, 2021.
[179] Poder 360 (2021). "Conheça os argumentos a favor e contra as emendas de relator ao Orçamento", https://www.poder360.com.br/congresso/conheca-os-argumentos-a-favor-e-contra-as-emendas-de-relator-ao-orcamento/, accessed on December 2, 2021.
[180] Estadão (2021). Breno Pires, "Orçamento secreto de Bolsonaro: entenda o passo a passo do esquema", https://politica.estadao.com.br/noticias/geral,orcamento-secreto-de-bolsonaro-entenda-o-passo-a-passo-do-esquema,70003708734, accessed on December 2, 2021.
[181] Poder 360 (2021). "Conheça os argumentos a favor e contra as emendas de relator ao Orçamento", https://www.poder360.com.br/congresso/conheca-os-argumentos-a-favor-e-contra-as-emendas-de-relator-ao-orcamento/, accessed on December 2, 2021.

of up to 259% above the reference values set by the government.[182] In November 2021, after several episodes of funds distribution through the "secret budget", Justice Rosa Weber of the Supreme Court issued an injunction to suspend the practice[183], a decision later endorsed by the Supreme Court's plenary[184]. In her opinion, the "secret budget" lacked objective and transparent criteria. Justice Weber also determined the release of documents that substantiated the allocation of funds from the "secret budget". Subsequently, the Senate and Chamber of Deputies petitioned the Supreme Court to revert this decision, alleging risks to the continuous provision of public services. Justice Weber once again issued an injunction to grant this request, while the case is analyzed by the plenary.[185]

Good practices:

- The passing of the Fiscal Responsibility Act (Supplementary Law No. 101/2000).
- Implementation of Transparency Portals that are accessible to the public.

Deficiencies:

- Lack of transparency and control over parliamentarian amendments to the budget, aggravated by the so-called "secret budget".
- Insufficient rules for the nomination of members to the Courts of Accounts and lack of rules against conflict of interest.

4.1.9 Articles 10 and 13.1 – Access to Information and Participation of Society

In order to increase public accountability, a crucial element in the fight against corruption, the United Nations Convention Against Corruption includes provisions that aim to increase transparency (article 10) and participation of society (article 13). This section analyzes both dimensions.

Transparency

The Brazilian Constitution of 1988 provides that all persons have a right to information:

> *"Article 5. ...*
>
> *XXXIII – all persons have the right to receive, from the public agencies, information of private interest to such persons, or of collective or general interest, which shall be provided within the period established by law, subject to liability, except for the information whose secrecy is essential to the security of society and of the State".*

[182] Estadão (2021). Breno Pires, "Orçamento secreto bilionário de Bolsonaro banca trator superfaturado em troca de apoio no Congresso", https://politica.estadao.com.br/noticias/geral,bolsonaro-cria-orcamento-secreto-em-troca-de-apoio-do-congresso,70003708713, accessed on December 2, 2021.
[183] Agência Brasil (2021). "STF: Rosa Weber suspende execução de emendas do relator", https://agenciabrasil.ebc.com.br/justica/noticia/2021-11/stf-rosa-weber-suspende-execucao-de-emendas-do-relator, accessed on December 2, 2021.
[184] Congresso em Foco (2021). Guilherme Mendes and Rudolfo Lago, "Por oito votos a dois, STF conclui julgamento que barrou orçamento secreto", https://congressoemfoco.uol.com.br/area/justica/8-a-2-stf-suspende-orcamento-secreto-em-2021/, accessed on December 2, 2021.
[185] G1 (2021). Rosanne D'Agostino, "Supremo começa a julgar se mantém liberação de emendas do 'orçamento secreto'", https://g1.globo.com/politica/noticia/2021/12/14/supremo-comeca-a-julgar-se-mantem-liberacao-de-emendas-do-orcamento-secreto.ghtml, accessed on December 16, 2021.

However, it was only in 2011 that lawmakers approved a legal framework for the exercise of that right - Law 12527/2011, the Access to Information Act.[186] The law represented an important achievement for civil society, establishing broad transparency obligations for public entities. The law is applicable to all branches of government (Executive, Legislative and Judiciary) and to all three levels of government (Union, states and municipalities). It can also be used to request information from government-controlled organizations, such as state-owned enterprises or foundations, as well as from non-profit organizations that benefit from public grants. The law establishes procedures for information requests, including timetables for the disclosure of information and appeal mechanisms in case access to information is denied. Petitioners who are not satisfied can appeal against the decision on four different levels: the officer immediately superior to the one who responded to a request, the body or entity's highest-ranking officer, the Office of the Comptroller General and the Mixed Commission for Information Reassessment (CMRI). The law also attempts to limit the circumstances that can justify the refusal to disclose information, specifying the procedures necessary for information to be classified as secret. Documents classified as secret can only be withheld from the public for a maximum of twenty-five years. Furthermore, the law creates obligations of proactive disclosure of information, particularly information regarding public expenditure and contracts.

Overall, the Access to Information Act is considered to be fairly strong. In the Global Right to Information Rating,[187] the Brazilian law is ranked in the 29th position out of 129 countries, with a score of 108 points out of a maximum of 150. The main strength of the statute lies in its breadth, in terms of both the entities that are bound by it and the kind of information that must be disclosed. On the other hand, two important weaknesses have been pointed out: the lack of independence from the oversight agency and the lack of appropriate regulation about the legitimate exceptions to publicity.

The implementation of the Access to Information Act is overseen by the Office of the Comptroller General (Controladoria Geral da União - CGU), which also acts as an appellate body. Petitioners can also appeal against decisions from the CGU, in which scenario the case is brought before the Commission for Reassessment of Information, a collegiate body composed of public officials selected across multiple ministries. Neither the decision-makers from the CGU nor the members of the Commission are insulated from political interference, which raises concerns about the agencies' ability to decide independently.

The other cause of concern is the legal laxity on the exceptions to the freedom of information requirements. The law itself regulates only two hypotheses for legitimately refusing to disclose information, namely (i) information, the disclosure of which would represent a threat to public safety; and (ii) privacy-related information. The law provides a fairly detailed regulation of the first hypothesis; however, the law is much vaguer when it comes to privacy-related information, which according to the law can be withheld for up to one hundred years. Furthermore, the statute can be overridden by other secrecy provisions, such as banking, commercial or judicial secrecy, the regulation of which remains beyond the scope of the law.

Whereas the legal framework is considered by and large adequate, the implementation of the statute has proven to be uneven and often problematic. Studies have shown that the level of compliance with the law at the subnational level (states and municipalities) remains highly

[186] http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/l12527.htm, accessed on December 2, 2021.
[187] Centre for Law and Democracy. Global RTI Rating, https://www.law-democracy.org/live/rti-rating/global/, accessed on December 2, 2021.

deficient.[188] Even at the federal level, petitioners face a number of challenges, most notably when it comes to obtaining a timely response from agencies. One of the most severe limitations in the implementation of the law has been the almost absolute inexistence of sanctions for lack of compliance with the statute.

The laxity of secrecy regulations combined with the absence of credible sanction for violation of the statute appears to contribute to an increasing tendency of public authorities to refuse to disclose information on highly controversial grounds, particularly under the current administration of President Jair Bolsonaro. In 2019, the government attempted to expand the number of officials with authority to classify information, but backpedaled after a strong reaction from Congress.[189] In 2020, the government restricted access to legal opinions issued by public attorneys, as well as to public expenditures from the President's office.[190] In the context of the Covid-19 Pandemic, the President issued a Provisional Presidential Decree[191] suspending all timetables for freedom of information requests, which was later ruled unconstitutional by the Supreme Court.[192] In 2021, it also restricted information on administrative and personnel decisions within the Federal Police.[193] Likewise, the government refused to disclose records on the access of politicians to public buildings.[194]

Setbacks in transparency also widely affect socio-environmental data: according to a study conducted by Imaflora, Article 19 and ISA, out of 10 relevant agencies for environmental data, only 3 had an updated open data policy in 2020. The study also assessed that barely 15,5% of the responses to freedom of information requests could be considered "satisfactory" as many responses were incomplete and restrictions lacked a relevant legal basis.[195]

In addition, it is worth mentioning long-standing gaps in the disclosure of the data necessary to detect, monitor and fight environmental crimes, particularly the lack of traceability of critical

[188] Michener, G.; Contreras, E. and Niskier, I. (2018) From opacity to transparency? Evaluating access to information in Brazil five years later. Revista de Administração Pública, v. 52, n. 4, p. 610-629, https://doi.org/10.1590/0034-761220170289, accessed on November 30, 2021.
[189] Terra (2019). "Bolsonaro revoga decreto sobre sigilo de dados oficiais", https://www.terra.com.br/noticias/brasil/bolsonaro-revoga-decreto-sobre-sigilo-de-dados-oficiais,c0cbfa39b47ff7b481535877c8a1e922kivove9g.html, accessed on December 2, 2021.
[190] G1 (2020). "Governo amplia sigilo de documentos solicitados via Lei de Acesso à Informação", https://g1.globo.com/politica/noticia/2020/06/08/governo-amplia-sigilo-de-documentos-solicitados-via-lei-de-acesso-a-informacao.ghtml, accessed on December 2, 2021.
Estadão (2020). Thiago Faria, "Governo coloca em sigilo até taxa aeroportuária paga por cartão corporativo de Bolsonaro", https://politica.estadao.com.br/noticias/geral,governo-coloca-em-sigilo-ate-taxa-aeroportuaria-paga-por-cartao-corporativo-de-bolsonaro,70003305771, accessed on December 2, 2021.
[191] Article 62 of the Constitution states that the Provisional Presidential Decree is a normative act with status of law that can only be issued by the President of the Republic, producing immediate effects thereon. A Provisional Presidential Decree may be edited in exceptional situations that, due to their relevance and urgency, indicate the need for immediate action by the Executive branch. In any case, it should be immediately submitted to the National Congress for scrutiny and final approval or rejection.
[192] Direct Unconstitutionality Actions No. 6347, 6351 and 6353, STF.
[193] O Globo. Malu Gaspar, "Polícia Federal fecha acesso público a seus documentos", https://blogs.oglobo.globo.com/malu-gaspar/post/policia-federal-fecha-acesso-publico-seus-documentos.html, accessed on December 2, 2021.
[194] Jornal do Brasil (2021). "Governo Bolsonaro ignora Controladoria e dificulta acesso a dados sobre visitas ao Planalto", https://www.jb.com.br/pais/justica/2021/09/1032631-governo-bolsonaro-ignora-controladoria-e-dificulta-acesso-a-dados-sobre-visitas-ao-planalto.html, accessed on December 2, 2021.
[195] Artigo 19, Imaflora and Instituto Socioambiental (2021). Mapeamento dos retrocessos e transparência e participação social na política ambiental brasileira – 2019 e 2020, https://www.imaflora.org/public/media/biblioteca/mapeamento_dos_retrocessos_de_transparencia_e_participacao_social_na_politica_ambiental_.pdf, accessed on December 2, 2021.

supply chains (e.g., timber[196], gold[197] and cattle[198]). All these commodities are deeply associated with environmental crimes and supply chain transparency is essential to make sure civil society, downstream private companies but also public institutions can scrutinize the origin and the process of these goods. Similarly, there are still loopholes for land tenure and ownership transparency that hinders social accountability and opens the way for land grabbing and associated environmental crimes such as deforestation and illegal logging.[199]

Public participation

Article 13 of the UNCAC addresses the need to promote public participation of society as a way to fight corruption. The Brazilian Constitution contains important provisions for allowing the participation of citizens in decision-making processes at all levels of government.[200] In the decades since its promulgation, Brazil saw a progressive development of public participation, through a number of mechanisms, such as public hearings, open consultation on regulation drafts, participatory budget, and participation of civil society representatives in collegiate bodies. This last strategy proved to be particularly successful, in that it opened up fora for the direct participation of civil society activists and organizations in the decision-making process of the administration. In 2014, the government attempted to create a National Policy of Public Participation (Decree No. 8,243/2014[201]), but met with significant resistance from Congress, which barred the initiative.

In the anti-corruption arena, public participation is still limited. ENCCLA, the collegiate responsible for coordinating anti-corruption efforts, does not include civil society representatives among its accredited members, although it periodically opens consultations for proposals from activists and organizations and some of the meetings can be observed by guests.[202] The Office of the Comptroller General has in its structure a Transparency Board, composed of seven public officials and seven civil society representatives; however, the board has a purely advisory role. The Commission for Reassessment of Information, the highest instance in regards to access to public information, also is fully occupied by public officials.

It is worth highlighting, however, that public participation can contribute to the fight against corruption more generally, by subjecting the decision-making processes to the watchful eyes of multiple stakeholders and preventing them from being captured by particular interests. In this sense, all forms of public participation can have an impact, albeit indirect, in reducing corruption risks. For this reason, the recent effort by the Bolsonaro administration to significantly curtail

[196] Morgado, Renato (2020). "The Use of Open Data to Tackle Illegal Logging in Brazil", https://forestgovernance.chathamhouse.org/publications/open-data-in-brazil-the-challenges-and-opportunities-for-tackling-illegal-logging, accessed on December 2, 2021.
[197] Observatório da Mineração (2021). Maurício Angelo, "Rastrear a cadeia do ouro: tarefa urgente que não comporta soluções simples", https://observatoriodamineracao.com.br/rastrear-a-cadeia-do-ouro-tarefa-urgente-que-nao-comporta-solucoes-simples/, accessed on December 2, 2021.
[198] WWF - Brasil (2020). "Uma visão sobre a rastreabilidade da cadeia da carne bovina no Brasil", https://wwfbr.awsassets.panda.org/downloads/sumario_portugues_final_versao_web.pdf, accessed on December 2, 2021.
[199] TI Brasil (2021). "Governança fundiária frágil, fraude e corrupção: um terreno fértil para a grilagem de terras". Available at https://comunidade.transparenciainternacional.org.br/grilagem-de-terra, accessed on December 8, 2021.
[200] For example, art. 14, art. 37, §3º, and art. 104, II, of the Constitution.
[201] http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/decreto/d8243.htm, accessed on December 2, 2021.
[202] ENCCLA. Estrutura, http://enccla.camara.leg.br/quem-somos/gestao, accessed on December 2, 2021.

public participation is cause for concern. Through a series of decrees,[203] the government extinguished numerous collegiate bodies and severely reduced public participation in others. The impact was mitigated by a decision of the Supreme Court that limited the applicability of the decrees to collegiate bodies that had no statutory footing. Nonetheless, the government's initiative severely hindered public participation.

Collegiate bodies related to socio-environmental policies were particularly affected by the reduction of social participation. Out of 22 relevant bodies, four were extinguished and 9 were restructured to reduce civil society representation or to make their participation in decision-making processes more difficult.[204] A noteworthy example of the concerning effects of such measures is provided by the National Council for the Environment (Conselho Nacional do Meio-Ambiente - CONAMA), an important collegiate body with the authority to issue regulations related to the protection of the environment. Along with a reduction of the number of civil society representatives, the selection procedure was also altered: instead of being elected for a two-year term (with the possibility of reelection for two more years), representatives are now chosen by a draw for a one-year (non-extendable) term. This new selection system prevents civil society from choosing freely how it is represented and does not provide the necessary time and capacities to the representatives to contribute with the required depth to the decision-making process.[205] The reform paved the way for a series of controversial measures issued by the council, such as the repeal of numerous regulations on environmental protection.

The Deliberative Council of the National Fund on Climate Change is another example where civil society participation was extinguished[206] although it is fundamental for the control of the allocation of public resources as it is the main financial instrument of the National Policy on Climate Change. Finally, the Amazon Fund, which channeled international resources to support projects that fight deforestation and contribute to the preservation of the environment in the Amazon rainforest, saw its participatory technical and oversight committees responsible for the allocation of the resources disbanded by the Minister of the Environment in 2019.[207] Consequently, the Fund is now paralyzed and almost R$ 3 billion (ca. US$ 570 million) of donations that could be mobilized to fight the environmental and climate crisis remain unused.[208]

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[203] Decree No. 9,759/2019, http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decreto/D9759.htm; Decree No. 9,784/2019, http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decreto/D9784.htm; Decree No. 9,806/2019, http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decreto/D9806.htm, all accessed on December 2, 2021.

[204] Artigo 19, Imaflora and Instituto Socioambiental (2021). Mapeamento dos retrocessos e transparência e participação social na política ambiental brasileira – 2019 e 2020, https://www.imaflora.org/public/media/biblioteca/mapeamento_dos_retrocessos_de_transparencia_e_participacao_social_na_politica_ambiental_.pdf, accessed on December 2, 2021.

[205] Artigo 19, Imaflora and Instituto Socioambiental (2021). Mapeamento dos retrocessos e transparência e participação social na política ambiental brasileira – 2019 e 2020, https://www.imaflora.org/public/media/biblioteca/mapeamento_dos_retrocessos_de_transparencia_e_participacao_social_na_politica_ambiental_.pdf, accessed on December 2, 2021.

[206] O Eco (2020). Daniele Bragança, "Bolsonaro retira sociedade civil do Fundo Nacional do Meio Ambiente", https://www.oeco.org.br/noticias/bolsonaro-retira-sociedade-civil-do-fundo-nacional-do-meio-ambiente/, accessed on December 2, 2021.

[207] Folha de São Paulo (2021). Phillippe Watanabe, "Gestão Salles teve desmate e queimada recordes, fim do Fundo Amazônia e ataques a ONGs", https://www1.folha.uol.com.br/ambiente/2021/06/gestao-salles-teve-desmate-e-queimada-recordes-fim-do-fundo-amazonia-e-ataques-a-ongs.shtml, accessed on February 10, 2022.

[208] Instituto Socioambiental (2020). Dinheiro paralisado por governo Bolsonaro no Fundo Amazônia chega a quase R$ 3 bilhões, https://www.socioambiental.org/pt-br/noticias-socioambientais/dinheiro-paralisado-por-governo-bolsonaro-no-fundo-amazonia-chega-a-quase-r-3-bilhoes, accessed on December 10, 2021.

In short, while the decades since the advent of the Constitution of 1988 saw a noteworthy development of mechanisms for public participation in public policy, recent trends promoted by the current administration raise significant concerns and jeopardize advances obtained by previous administrations.

Good practices:

- The quality of Brazil's Access to Information Act, with satisfactory level of compliance.
- Extension of the Freedom of Information Act to state-owned enterprises, as well as to non-profit organizations that benefit from public grants.
- The country's capacity to create some important spaces for social participation, despite recent setbacks.

Deficiencies:

- Lack of sanctioning mechanisms for the refusal to provide information requested under the Access to Information Act.
- Efforts by the current administration to extinguish councils and curtail civil society participation from public collegiate bodies, especially in the environmental area.
- Lack of anti-corruption bodies with the participation of civil society organizations.

4.1.10 Article 11 – Judiciary and Prosecution Services

Article 11 of the Convention obligates States Parties to take measures to "strengthen integrity and to prevent opportunities for corruption among members of the judiciary" (paragraph 1), as well as among members of the prosecution service where these do not form part of the judiciary (paragraph 2).

In Brazil, the Prosecution Service is an independent institution, with functional and administrative autonomy to perform its constitutional duties (article 127 of the Constitution). The Prosecution Service comprises, at the Federal Level, the Prosecution Service of the Union,[209] as well as the 26 state Prosecution Services (art. 128). Likewise, the judiciary is composed of both Federal and State Courts. Under the constitutional framework, both the Judiciary and the Prosecution Service have wide autonomy and broad attributions. Article 5, XXXV, assigns a broad mandate for the Judiciary to review all actions of the Executive and the Legislative.

In spite of the constitutional provisions, the independence of such institutions in practice has often been subject to significant concerns. A key point of contention, for instance, is the appointment procedure for higher positions in the Judiciary and in the Prosecution Service. Although the Constitution establishes a set of limitations for most of the Superior Courts, nominations for the Supreme Court are characterized by broad discretionary power, since the president is free to nominate anyone over 35 years of age, "of notable juridical learning and spotless reputation". Although the nomination must be confirmed by the Senate, concerns have been raised as to the independence of justices who, prior to their nomination, served as ministers in the cabinet of the nominating president. As of November 2021, for example, three out of the ten justices (one seat is currently vacant) were serving as ministers at the time of their appointment to the Supreme Court – Justice Gilmar Mendes, Justice Dias Toffoli, and Justice

[209] The Public Prosecution of the Union is divided further into Federal Public Prosecution, Labour Public Prosecution, Military Public Prosecution and the Public Prosecution of the Federal District and the Territories.

Alexandre de Moraes. Recently, President Bolsonaro appointed Mr. André Mendonça, who held the offices of Minister of Justice and of General Attorney in his administration.[210]

The proximity between Justices and politicians have been at the center of a number of controversial incidents. In 2017, for instance, Federal Police disclosed recordings of conversations between Senator Aécio Neves, then under investigation for corruption, and Supreme Court Justice Gilmar Mendes. In their conversation, Mr. Neves and Mr. Mendes coordinated on lobbying for a controversial bill on abuse of authority, which was regarded by many as an attempt to curb anti-corruption investigations.[211] Mr. Neves had run for President in 2014 as candidate of the Social Democratic Party of Brazil, the same party of President Cardozo, who appointed Mr. Mendes for the Supreme Court in 2002. The current Chief Justice Luiz Fux has also been involved in allegations of inappropriate conduct. He was appointed to the Supreme Court in 2011 by President Rousseff, from the Labor Party, in a moment at which the court was preparing itself for the widely publicized trial of Criminal Case No. 470, which involved corruption allegations against a number of high-profile members of the Labor Party. In 2013, after the trial, reports emerged that Mr. Fux, when negotiating his appointment to the court, had promised to acquit defendants.[212] Although Mr. Fux's opinions on the trial ultimately did not reflect the alleged promises, the claims have tarnished the reputation of the court.

In order to address these concerns, multiple proposals have been made, particularly noteworthy among them are rules against conflicts of interest by imposing cooling-off periods, restricting the nominations of individuals who have served in the administration in the years prior to the nomination, as well as the appointment for public office of former Justices of the Supreme Court.[213]

With regards to the Office of the Prosecutor General, the president has the power to appoint the head of the institution for a two-year term with the consent of the Senate. Under the Constitution, the choice of who to appoint must be made between the career prosecutors over thirty-five years of age. As explained above, since 2003, presidents have been selecting their nominee from a list of three prosecutors resulting from an internal election, a procedure that mirrors a Constitutional requirement for the State Prosecutor's Offices (article 128, §3). Recently, however, the tradition was broken by sitting President Bolsonaro, who has ignored the list twice already, raising concerns about the autonomy of the institution.

Despite these grounded concerns, the fairly broad autonomy of these institutions, ensured by the Constitution of 1988, have made them a key actor in the external control of illegal actions in the Executive and in the Legislative. At the same time, however, anti-corruption specialists have

[210] G1 (2021). "Por 47 votos a 32, plenário do Senado aprova indicação de André Mendonça para ministro do STF", https://g1.globo.com/politica/noticia/2021/12/01/por-47-votos-a-32-plenario-do-senado-aprova-indicacao-de-andre-mendonca-para-ministro-do-stf.ghtml, accessed on December 2, 2021.
[211] G1 (2017). "Em transcrição de áudio da PF, Aécio pede ajuda a Gilmar Mendes sobre lei de abuso de autoridade", https://g1.globo.com/politica/operacao-lava-jato/noticia/em-transcricao-de-audio-da-pf-aecio-pede-ajuda-a-gilmar-mendes-sobre-lei-de-abuso-de-autoridade.ghtml, accessed on December 16, 2021.
[212] UOL (2013). Fábio Brandt, ""Fux disse que ia me absolver", diz Dirceu", https://noticias.uol.com.br/politica/ultimas-noticias/2013/04/10/fux-disse-que-ia-me-absolver-diz-dirceu.htm https://josiasdesouza.blogosfera.uol.com.br/2013/04/11/fux-em-reuniao-com-joao-paulo-mato-no-peito/, accessed on December 16, 2021.
[213] Proposal No. 29 of the New Measures Against Corruption creates a mandatory five-name list to fill open seats at the Supreme Federal Court and imposes rules against conflict of interest for the nomination of Justices - forbidding, for example, that recent Attorney Generals, Prosecutor Generals and Ministers are appointed by the President, https://web.unidoscontraacorrupcao.org.br/novas-medidas/transparencia-na-selecao-de-ministros-do-stf/, accessed on December 2, 2021.

pointed to the severe limitations to public accountability of members of both the Judiciary and Public Prosecutor's Offices, which creates opportunities for the misuse of power entrusted to them. In order to address this, Congress passed in 2004 Constitutional Amendment No. 45/2004,[214] which created the National Council of Justice (Conselho Nacional de Justiça - CNJ) and the National Council of the Public Prosecutor's Offices (Conselho Nacional do Ministério Público - CNMP) – both collegiate bodies with oversight functions over the Judiciary and Public Prosecution, respectively.

After over 16 years of activities, these agencies have achieved little progress in establishing an effective internal control system to prevent the misuse of power by members of the Judiciary and of the Public Prosecution. Both institutions still lack a robust integrity program, reliable reporting mechanisms and effective investigation and punishment of members involved in wrongdoings. Data from 2017 reveals that, until then, CNMP had applied sanctions to prosecutors only 189 times, only 19 of which resulted in dismissal, whereas the total number of prosecutors lies at around 13 000.[215] Likewise, as of 2020 CNJ had only applied sanctions to 104 judges, out of a total of over 18 000 judges. The most common sanction applied to judges is "compulsory retirement", a form of sanction that has been widely criticized as disproportionately mild for the seriousness of the offenses committed.[216] For instance, the ongoing operation Faroeste launched in 2019, a rare probe into magistrate misconduct, shed light on the dramatic impacts of bribery in the Judiciary and illustrated how ill-intentioned judges can be key actors in criminal organizations. The operation dismantled a far-reaching corruption scheme in the Court of Justice involving dozens of judges and lawyers who allegedly received millions of dollars in bribes to issue baseless rulings facilitating a land grab of more than 360 000 hectares.[217]

It is also worth stressing that, as mentioned above, whereas all public officials, including judges and prosecutors, have to provide an annual declaration of their assets, no agency is responsible for continuously monitoring the evolution of these asset declarations. Likewise, there is no active control of situations that might characterize conflicts of interest.

Only recently did CNJ and CNMP signal an intention to develop a cohesive integrity system. Since 2020, both bodies have created working groups to elaborate a compliance program to be implemented within the Judiciary and the Public Prosecution.[218] Following the recommendations

[214] http://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc45.htm, accessed on December 2, 2021.
[215] CNMP. Sanções Aplicadas pelo CNMP, https://www.cnmp.mp.br/portal/images/San%C3%A7%C3%B5es_Aplicadas_pelo_CNMP_Vers%C3%A3o_Simplificada_e_Padronizada.pdf, accessed on December 2, 2021.
CNMP (2021). MP um Retrato, https://www.cnmp.mp.br/portal/relatoriosbi/mp-um-retrato-2021, accessed on December 2, 2021.
[216] Folha de São Paulo (2020). Matheus Teixeira, "Investigações de juízes e procuradores travam em órgãos de controle; CNJ pune menos de 1% dos casos", https://www1.folha.uol.com.br/poder/2020/07/investigacoes-de-juizes-e-procuradores-travam-em-orgaos-de-controle-cnj-pune-menos-de-1-dos-casos.shtml, accessed on December 2, 2021.
[217] Folha de São Paulo (2021). José Marques, "Dezenas de magistrados, advogados e empresários estão em delação inédita de desembargadora", https://www1.folha.uol.com.br/poder/2021/07/dezenas-de-magistrados-advogados-e-empresarios-estao-em-delacao-inedita-de-desembargadora.shtml, accessed on December 16, 2021.
[218] CNJ (2021). "Grupo de trabalho debate princípios gerais de compliance que devem nortear Judiciário", https://www.cnj.jus.br/grupo-de-trabalho-debate-principios-gerais-de-compliance-que-devem-nortear-judiciario/, accessed on December 2, 2021.

of its working group, CNJ issued Resolution No. 410/2021,[219] which establishes general guidelines for integrity systems within the Judiciary. CNJ has also issued new guidelines on internal audits, with heightened standards to be observed by both Federal and State Courts. The guidelines, however, are exceedingly generic and do not seem to indicate a substantial change within the practices of the Judiciary.

Good practices:

- Constitutional autonomy granted to Public Prosecution and the Judiciary.
- Nomination of the state prosecution services through a list composed of career servants.
- Creation of the CNJ and the CNMP, specific oversight bodies for the Judiciary and the Public Prosecution, respectively.

Deficiencies:

- Arbitrary appointment of the Prosecutor General by President Bolsonaro against established procedure.
- Lack of a cooling-off period against conflict of interest as part of the appointment procedure for the Office of the Prosecutor General and for the Supreme Court.
- Insufficient accountability mechanisms for judges and prosecutors, including those implemented by the CNJ and the CNMP.
- Lack of oversight of asset declarations in the Judiciary and Public Prosecution.

4.1.11 Article 12 – Private Sector

Article 12 of the United Nations Convention Against Corruption requires States Parties to take measures to prevent corruption involving the private sector. In recent years, Brazil has seen important developments in this area, although much progress remains to be made.

In 2013, Congress passed Law No. 12,846/2013,[220] also known as the Clean Company Act, which made corporations strictly liable for corrupt acts practiced on their behalf, either by employees or by third parties. The new statute provides that companies can be administratively fined in a value of up to 20% of their gross revenue. The law also enables authorities to negotiate leniency agreements with companies that cooperate with investigations, which can lead to a reduction of up to two thirds of the fine. As of August 2021, the CGU has announced the formalization of 15 agreements, involving a total value of over R$ 15 billion (ca. 2.7 billion USD).

Although the Clean Company Act was celebrated as an important step in the construction of a strong anti-corruption legal framework, many questions still remain as to the ability of enforcement agencies to implement the law successfully. One of the main challenges concerns the uncertainty regarding the extent of the powers attributed to each agency in enforcing the law. While the statute suggests that the CGU is the competent authority to negotiate settlements, practitioners quickly realized that such settlements would be mostly innocuous without the involvement of MPF and, in some cases, of the Court of Accounts. If those agencies did not agree with the settlement, the company would still be vulnerable to prosecution by them, thus undermining the effectiveness of the administrative agreement. This raised significant

[219] Available at https://atos.cnj.jus.br/atos/detalhar/4073, accessed on December 16, 2021.
[220] Available at http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/l12846.htm, accessed on December 2, 2021.

coordination challenges, with a significant degree of competition between the agencies for protagonism in the enforcement of the novel legislation.[221] In June 2020, the agencies finally formalized a cooperation agreement aiming to establish a common framework for handling settlement negotiations. It is still early, however, to say whether these cooperation efforts will be enough to overcome the hesitancy from the private sector to collaborate in investigations.

Another significant challenge to the successful implementation of the Clean Company Act is the lack of appropriate regulation and enforcement at state and municipal level. The law authorizes states and municipalities to sanction companies for corrupt practices. Most subnational entities, however, struggle to effectively implement the law. As of 2019 - i.e., six years after the advent of the legislation - 8 states and 17 state capitals had not issued regulations detailing how the law was to be applied in their respective jurisdictions.[222] Even when they issue regulations, subnational entities often lack the appropriate resources to investigate corporations and to conduct settlement negotiations.

In spite of these limitations, the Clean Company Act, coupled with the Car Wash investigations, is credited with having spurred the growth of a compliance industry in Brazil, with an increasing number of firms implementing ethics and compliance programs within their organizations.[223] The CGU has also dedicated efforts to disseminating compliance practices throughout the private sector. An important initiative toward that goal was the creation in 2010 of the *Pró-Ética* program,[224] in a partnership with the Ethos Institute of Business and Social Responsibility, a civil society organization. The program creates a public record of companies that voluntarily adopt a set of "best practices" in ethics. The effectiveness of such ethics programs, however, remains to be tested, and critics have suggested that many, if not most, integrity programs are little more than window dressing.

Brazil has also witnessed significant developments in corporate transparency. The Federal Revenue Service makes available online information from the National Registry of Legal Entities (Cadastro Nacional da Pessoa Jurídica - CNPJ), including information on ownership and administration. Recently, the data has been made available in open format.[225] In 2016, the Federal Revenue Service introduced regulations establishing country-by-country reporting, based on model legislation proposed by the OECD within the framework on Base Erosion and Profit Shifting (BEPS).

Another important measure of more transparency in the private sector was the introduction of a regulation on the disclosure of beneficial owners. According to Normative Instruction No. 1,863,[226] companies that operate in Brazil are required to disclose their beneficial owners to the

[221] Pimenta, R. M. (2019). Reformas anticorrupção e arranjos institucionais: o caso dos acordos de leniência. Doctoral Thesis, Faculdade de Direito, University of São Paulo, São Paulo. DOI: 10.11606/T.2.2019.tde-31072020-140346.
[222] Conjur (2019). "8 estados e 17 capitais ainda não regulamentaram Lei Anticorrupção", https://www.conjur.com.br/2019-ago-29/estados-17-capitais-nao-regulamentaram-lei-anticorrupcao, accessed on December 2, 2021.
[223] Deloitte (2020). Integridade corporativa no Brasil, https://www2.deloitte.com/br/pt/pages/risk/articles/integridade-corporativa-evolucao-do-compliance.html, accessed on December 2, 2021.
[224] CGU. Empresa Pró-Ética, https://www.gov.br/cgu/pt-br/assuntos/etica-e-integridade/empresa-pro-etica, accessed on December 2, 2021.
[225] Receita Federal. Dados Públicos CNPJ, https://www.gov.br/receitafederal/pt-br/assuntos/orientacao-tributaria/cadastros/consultas/dados-publicos-cnpj, accessed on December 2, 2021.
[226] Available at http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&idAto=97729, accessed on December 2, 2021.

Federal Revenue Service, understood as the natural person or persons that ultimately control or exercise significant influence over the organization. Under the regulation, 'significant influence' is characterized as the individual holding 25% or more of the company's shares, directly or indirectly, or alternatively when they exercise preponderant power over the company's decisions, despite not controlling the entity.

The creation of a registry of beneficial owners is an important achievement, but many obstacles remain. First, it is still unclear which controls are being exercised on the quality of the registry, that is, whether the information provided by registrants is reliable. Without implementing mechanisms aimed at validating the data provided, anti-corruption efforts remain severely limited. Indeed, the difficulty in effectively identifying beneficial owners was identified in the National Risk-Assessment of Money Laundering, discussed below, as a key challenge to anti-money-laundering policies.[227] The Federal Administration's Anti-Corruption Plan includes among the measures to be taken by the Federal Revenue Service the "revision of the normative instruction about the disclosure of information on beneficial ownership in order to intensify validation and consolidation of that information" (Action RFB No. 10). The proposed deadline for this measure to be implemented is December of 2023.

Second, although the threshold adopted by Brazil in its definition of beneficial owner (25% or more of the shares) seems to be aligned with recommendations from international organizations[228] and legislation in other countries[229], a few critics have pushed for a lower threshold. The civil society-led "New Measures Against Corruption" include a proposal to set that value on 15% or more of the shares or of the votes.[230]

Finally, access to the registry remains significantly restricted. Anti-corruption activists have pushed for the openness of databases on beneficial ownership. TI - Brazil's proposal mentioned above, for example, also includes transparency requirements. However, the Federal Revenue Service has not indicated whether it plans to make the registry available to the public. It is not even clear to what extent and how other agencies might obtain access to the information. The Federal Anti-Corruption Plan includes a proposal to "define rules about the transparency of beneficial ownership of companies that receive public resources" (Action CGU No. 5). The proposed deadline for this measure, however, is December of 2023.

Good practices:

- Approval and enforcement of the Clean Company Act, with important anti-corruption measures.

Deficiencies:

- Lack of transparency on beneficial ownership data.

[227] See discussion of Article 14 below.
[228] OECD and IDB (2019). A Beneficial Ownership Implementation Toolkit, https://www.oecd.org/tax/transparency/beneficial-ownership-toolkit.pdf, accessed on December 2, 2021.
[229] See, for example, beneficial ownership requirements in the United States, https://www.law.cornell.edu/cfr/text/31/1010.230, accessed on December 2, 2021.
[230] Proposal No. 13, https://web.unidoscontraacorrupcao.org.br/novas-medidas/transparencia-do-beneficiario-final/, accessed on December 2, 2021.

4.1.12 Article 14 – Measures to Prevent Money-Laundering

The topic of money-laundering is present both in Chapter II and Chapter V of the UNCAC. In Chapter II, Article 14 of the Convention obligates States Parties to take preventive measures against money-laundering, requiring that countries "institute a comprehensive domestic regulatory and supervisory regime". In Chapter V, Article 52 sets minimum standards for anti-money-laundering (hereafter, AML) regulations in financial regulations, while Article 58 addresses the creation of "a financial intelligence unit to be responsible for receiving, analyzing and disseminating to the competent authorities reports of suspicious financial transactions". In the present section, we limit ourselves to presenting an outline of the Brazilian AML legal framework and institutional design.

AML Legislation

In Brazil, the key piece of legislation on money-laundering is Law No. 9,613/1998 (Anti-Money Laundering Act),[231] which created a comprehensive legal anti-money-laundering framework and created Brazil's Financial Intelligence Unit, the Council for the Control of Financial Activities (Conselho de Controle de Atividades Financeiras - COAF), initially located within the Ministry of Finance. In 2010, Brazil underwent a joint evaluation of its anti-money laundering framework by the Financial Action Task Force (FATF-GAFI) and by the Financial Action Task Force on Money Laundering in South America (GAFISUD), which pointed to a number of deficiencies in Brazilian law and enforcement practices.[232] Partly in response to this, the Anti-Money Laundering Act was extensively amended in 2012 (Law No. 12,863/2012) in order to, among other things, (i) expand the scope of predicate crimes, (ii) promote efficiency of anti-money laundering criminal procedures, (iii) broaden the scope of AML obligations to new entities, (iv) create new AML obligations for financial and non-financial institutions.[233]

In 2016, FATF-GAFI issued a statement expressing its concern about Brazil's "continued failure to remedy the serious deficiencies identified in its third mutual evaluation report" related to the financing of terrorist activities.[234] In the same year, Brazil passed Law No. 13,260/2016 (Anti-terrorism Act),[235] which finally addressed the topic. Three years later, the President issued Decree No. 9,825/2019,[236] which regulated the implementation of financial sanctions imposed by the UN Security Council. Following these two measures, FATF-GAFI issued a new statement, according to which "overall, the FATF is satisfied that Brazil has made substantial progress and addressed most of its targeted financial sanctions deficiencies".[237]

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[231] Available at http://www.planalto.gov.br/ccivil_03/leis/l9613.htm, accessed on December 2, 2021.
[232] FATF/GAFI (2010). Mutual Evaluation Report. Anti-Money Laundering and Combating the Financing of Terrorism. Federative Republic of Brazil, https://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Brazil%20full.pdf, accessed on November 22, 2021.
[233] Available at http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2012/Lei/L12683.htm#art2, accessed on December 2, 2021.
[234] FATF/GAFI (2016). Outcomes of the Plenary meeting of the FATF, Paris, 17-19 February 2016, https://www.fatf-gafi.org/countries/a-c/brazil/documents/outcomes-plenary-february-2016.html, accessed on December 2, 2021.
[235] http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/lei/l13260.htm, accessed on December 2, 2021.
[236] http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decreto/D9825.htm, accessed on December 2, 2021.
[237] FATF/GAFI (2019). Outcomes FATF Plenary, 16-18 October 2019, https://www.fatf-gafi.org/countries/a-c/brazil/documents/outcomes-plenary-october-2019.html, accessed on December 2, 2021.

In its current form, the Anti-Money Laundering Act, as modified by the 2012 reform, contains three main groups of legal provisions. The first, which is mostly limited to Article 1, defines the scope of money-laundering criminal offenses. The second concerns procedural rules for criminal prosecution. The third creates an institutional framework designed to prevent and detect money-laundering activity. Each group will be analyzed separately, with special attention being given to the first and third categories.

Money-laundering offenses

Article 1 of the Anti-Money-Laundering Act defines the crime of money-laundering as "concealing or disguising the nature, origin, location, disposition, movement or ownership of goods, rights or values accruing, directly or indirectly, from a criminal offense". This broad definition was introduced by the 2012 reform, a clear expansion from the previous definition, which was limited to eight predicate offenses. In its 2010 evaluation report, FATF had considered the range of predicate offenses in the Anti-Money Laundering Act to be "insufficient".[238]

The adoption of a generic definition of predicate offenses, a strategy adopted by multiple jurisdictions, is the center of much controversy.[239] Supporters of the reform argue that attempts to provide an exhaustive list of the predicate crimes are impractical, due to the emergence of new forms of criminality, examples being cybercrimes and environmental crimes. The broad definition, therefore, was celebrated by many for supposedly facilitating the prosecution of money laundering activities.[240] Critics of the legislation, on the other hand, claim that, whereas an expansion of predicate offenses was needed, the current definition is too loose and raises a number of concerns.[241] One example of much contention has been whether bribery transactions concealed under legitimate exchanges characterize two distinct violations (i.e. bribery and money-laundering) or, instead, a single infraction.[242] Likewise, there are controversies as to whether off-the-books campaign contributions (which are not criminalized as such) can be characterized as predicate offenses for money laundering prosecution.

In 2020, the House of Representatives installed a specialists committee, composed mostly of criminal attorneys, to prepare a draft proposal of a reform to the AML Act. In an attempt to deal with the controversies in the application of the statute, members of the group proposed stipulating an exhaustive list of the predicate crimes, a suggestion that was met with great

[238] FATF/GAFI (2010). Mutual Evaluation Report. Anti-Money Laundering and Combating the Financing of Terrorism. Federative Republic of Brazil, https://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Brazil%20full.pdf, accessed on November 22, 2021.
[239] "Many States already have laws on money-laundering, but there are many variations in the definition of predicate offenses. Some States limit the predicate offenses to drug trafficking, or to drug trafficking and a few other crimes. Other States have an exhaustive list of predicate offenses set forth in their legislation. Still other States define predicate offenses generically as including all crimes, or all serious crimes, or all crimes subject to a defined penalty threshold", https://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_3-5.pdf, accessed on December 2, 2021.
[240] For example: Saadi, Ricardo (2012). O combate à lavagem de dinheiro. Boletim IBCCRIM No. 237, https://arquivo.ibccrim.org.br/boletim_artigo/4672-O-combate-a-lavagem-de-dinheiro, accessed on December 2, 2021. MPPR (2012). Informativo Criminal nº 212 - Lavagem de Dinheiro - Alteração Legislativa, https://criminal.mppr.mp.br/pagina-1137.html, accessed on December 2, 2021.
[241] Tebet, Diogo (2012). Lei de lavagem de dinheiro e a extinção do rol dos crimes antecedentes. Boletim IBCCRIM No. 237, http://tebet.adv.br/wp-content/uploads/Lei-de-lavagem-de-dinheiro-e-a-extin%C3%A7%C3%A3o-do-rol-dos-crimes-antecedentes-_-IBCCRIM-INSTITUTO-BRASILEIRO-DE-CI%C3%8ANCIAS-CRIMINAIS.pdf, accessed on December 2, 2021.
[242] Conjur (2020). Henrique Hoffman and Francisco Sannini, "Sobre lavagem de dinheiro simultânea ou concomitante", https://www.conjur.com.br/2020-ago-11/academia-policia-lavagem-dinheiro-simultanea-ou-concomitante, accessed on December 2, 2021.

resistance. Law enforcement agents, in particular,[243] expressed fear that the introduction of a list of predicate offenses would jeopardize the status of money-laundering as an "autonomous" offense.[244] Said autonomy involves a *substantive* as well as a *procedural* dimension. The former refers to the fact that the attempt to conceal the origins of illegally acquired assets is a criminal offense of itself. The "procedural" autonomy of money-laundering, on the other hand, means that the prosecution of money laundering offenses does not depend on the successful prosecution of the predicate crime (i.e., they can take place simultaneously). Procedural autonomy is ensured by article 2, §1 of the AML Act. While some critics of the current legislation have proposed the end of procedural autonomy in money-laundering cases,[245] the National Association of Federal Prosecutors, in its contribution to the reform proposal, went in the opposite direction, recommending a new formulation that would soften the evidentiary standards with relation to the predicate crime.[246]

Although there are plausible arguments for the introduction of a list of predicate offenses, any reform proposals must proceed with caution, lest the autonomy of money-laundering offenses be undermined, an outcome which would be contrary to the provisions of the UNCAC. As stated in an interpretative note on Article 23 of the Convention, 'money-laundering offenses established in accordance with this article are understood to be independent and autonomous offenses and that a prior conviction for the predicate offense is not necessary to establish the illicit nature or origin of the assets laundered.'[247]

In May of 2021, the House decided to discontinue the committee. Although talks of reform seem to have been indefinitely postponed, it should be noted that the ambiguities in the legislation remain and might have to be addressed by judicial precedent.

Procedural rules

Chapter II of the Anti-Money-Laundering Act (articles 2 through 6) creates special procedural rules for the prosecution of money-laundering offenses. The most important provisions are those related to the administration of proceeds of crime. Article 4 allows judges to take measures to protect or seize assets held by the defendant or by an intermediary. The 2012 reform also introduced the possibility of disposing of the assets in order to secure their value whenever there is a significant risk of depreciation.

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[243] G1 (2020). Elisa Clavery, "Coaf e Banco Central defendem recomendações internacionais para lei sobre lavagem de dinheiro", https://g1.globo.com/politica/noticia/2020/11/06/coaf-e-banco-central-pedem-que-mudancas-na-lei-sobre-lavagem-de-dinheiro-sigam-recomendacoes-internacionais.ghtml, accessed on December 2, 2021.
Estadão (2020). Breno Pires, "Advogados propõem mudanças que esvaziam lei de lavagem de dinheiro", https://politica.estadao.com.br/noticias/geral,advogados-propoem-mudancas-que-esvaziam-lei-contra-lavagem-de-dinheiro,70003491201, accessed on December 2, 2021.

[244] Conjur (2020). Gamil Föppel El Hireche, "Aspectos processuais da relação entre lavagem de dinheiro e crime antecedente", https://www.conjur.com.br/2020-nov-18/gamil-foppel-lavagem-dinheiro-crime-antecedente, accessed on December 2, 2021.

[245] Conjur (2020). Gamil Föppel El Hireche, "Aspectos processuais da relação entre lavagem de dinheiro e crime antecedente", https://www.conjur.com.br/2020-nov-18/gamil-foppel-lavagem-dinheiro-crime-antecedente, accessed on December 2, 2021.

[246] ANPR (2020). Ofício ANPR nº 252/2020-FG, http://anpr.org.br/images/2020/11/OficioANPR252_2020.pdf, accessed on December 2, 2021.

[247] UNGA (2003). Report of the Ad Hoc Committee for the Negotiation of a Convention against Corruption on the work of its first to seventh sessions (A/58/422/Add.1), https://www.unodc.org/pdf/crime/convention_corruption/session_7/422add1.pdf, accessed on December 2, 2021.

Institutional framework

The Anti-Money-Laundering Act sets up an institutional framework geared toward prevention and detection of money-laundering activities, involving three groups of entities:

1. First, the statute lists, on Article 9, the entities that are under legal obligation to adopt AML measures - mostly private organizations that operate in markets particularly vulnerable to money-laundering practices. The range of entities under AML obligations was greatly expanded in the 2012 reform and includes, among others, any organization that engages in the provision of financial services (e.g., banks, insurance companies, currency exchanges), in the commercialization of valuable goods (e.g., precious stones and metals, rural goods and animals, art, luxury goods), in real estate transactions. AML obligations include record-keeping, customer due diligence, and suspicious transaction reports.

2. The second group of entities is composed of the regulatory and supervisory bodies responsible for the markets in which the first group of entities operate. These include, among others, the Central Bank of Brazil (BACEN), the Securities and Exchange Commission (CVM), the Superintendence of Private Insurance (SUSEP), the Federal Council of Real Estate Brokers (COFECI), the Federal Council of Accounting (CFC), the National Council of Justice (CNJ). These organizations issue specific AML regulations that complement the general obligations established in the statute and supervise their implementation. In markets for which there are no regulatory bodies, the regulatory and supervisory functions are exercised by the Council for Financial Activities Control (COAF).

3. COAF is also the final component of the AML institutional framework, working as the Financial Intelligence Unit (FIU). Its key intelligence activity is receiving, analyzing and disseminating the Suspicious Transaction Reports filed by the first group of entities. It also has an important role in engaging in international cooperation with other FIUs.

Assessment of current legal and institutional AML framework

The legal and institutional framework created to prevent and detect money-laundering activities has grown increasingly robust throughout the years, but deficiencies remain, as acknowledged by the first National Risk Assessment on Money Laundering and Terrorism Financing, conducted by a working group instituted in March 2020.[248] The report was concluded in July 2021 and is supposed to subsidize the next mutual evaluation process of FATF-GAFI, which is to take place in 2022.[249] In October 2021, the executive summary of the assessment was made available to the public.

The report highlighted corruption as the “most pernicious” predicate offence associated with money-laundering, alongside drug trafficking. In the assessment of the vulnerability of particular market sectors, the report assigned scores according to the table below.

[248] Available at http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/decreto/D10270.htm, accessed on December 2, 2021.
[249] Decree No. 10,270/2020, https://www.gov.br/coaf/pt-br/assuntos/noticias/ultimas-noticias/avaliacao-nacional-de-riscos-e-instrumento-vital-para-4a-rodada-de-avaliacao-mutua-do-gafi-no-brasil-em-2022, accessed on November 24, 2021.

Sector	Vulnerability score
Banks and non-banks financial institutions	Medium
Securities and Exchange	Low
Insurance	Low
Virtual Asset Service Providers	High
Real Estate	High
Factoring	High
Precious Metals, Stones or Jewels	Medium
Transportation of Valuables	Medium

The vulnerabilities highlighted are in line with the weaknesses of the current legal and institutional framework pointed out by experts interviewed for the present report.[250]

First, while the scope of entities under AML obligations was greatly expanded by the 2012 reform, many still see it as insufficient. The "New Measures Against Corruption", a legislative anti-corruption reform agenda put together by Transparency International - Brazil, for example, includes a proposal to extend AML obligations to political parties.[251] The National Association of Federal Prosecutors has also made a similar proposal, besides suggesting the extension of AML obligations to virtual asset service providers, a market which, as described above, was considered highly vulnerable in the national risk assessment.[252]

According to several of the people interviewed for this report, however, the most remarkable absence in the list of entities subject to AML obligations are law firms. Currently, Article 9, XIV, of the Anti-Money-Laundering Act already includes any organization or natural person that provides technical assistance in legal operations such as the acquisition of equity interests and the establishment or administration of corporations or trusts. This could be construed as including law firms whenever they are performing advisory roles. Indeed, in 2020, the National Strategy Against Corruption and Money Laundering (ENCCLA) recommended that the Brazilian Bar Association (OAB) issue regulations aimed at ensuring law firms' compliance to AML obligations.[253] The OAB, however, has energetically denied the applicability of the Anti-Money-Laundering Act to law firms, largely relying on the need to preserve attorney-client privileges.[254]

[250] Information obtained through interviews with anti-corruption specialists who prefers to remain anonymous, September-November 2021
[251] Proposal No. 19,: https://web.unidoscontraacorrupcao.org.br/novas-medidas/estende-os-deveres-da-lei-de-lavagem-de-dinheiro-para-partidos-politicos/, accessed on November 23, 2021.
[252] ANPR. Ofício ANPR nº 252/2020-FG, http://anpr.org.br/images/2020/11/OficioANPR252_2020.pdf, accessed on November 23, 2021.
[253] ENCCLA. Recommendation n. 3/2020, http://enccla.camara.leg.br/acoes/acoes-de-2020, accessed on November 23, 2021. In its contribution to the discussions on the reform of the AML Act, the National Association of Federal Prosecutors suggested explicitly including the Brazilian Bar Association's attribution to ensure law firms' compliance with those obligations.
[254] Migalhas (2012). "Lei de lavagem de dinheiro não se aplica a advogados, diz OAB", https://www.migalhas.com.br/quentes/162268/lei-de-lavagem-de-dinheiro-nao-se-aplica-a-advogados--diz-oab; Migalhas (2021). "OAB decide que advocacia não se submete à lei de lavagem", https://www.migalhas.com.br/quentes/343603/oab-decide-que-advocacia-nao-se-submete-a-lei-de-lavagem, both accessed on December 2, 2021.

It is not only in Brazil that lawyers object to AML regulations based on confidentiality concerns;[255] nonetheless, the role of legal professionals in enabling money-laundering activities has long been known and recently been made salient by famous leaks of financial documents, such as the Panama Papers, the Paradise Papers, and the Pandora Papers. It is important, therefore, that efforts be made to specify lawyers' obligations when it comes to preventing and detecting suspicious transactions.

The mere inclusion of a group of entities among the subjects of AML obligations, however, is not enough. The effectiveness of the preventive and detection measures depends largely on the existence of a well-defined oversight body with a clear AML mandate and power to enforce it. In the case of financial services, such agencies exist and are well-structured, but that is not true of many other sectors, such as factoring, precious metals and jewels, extractive industry, rural goods and animals, transportation of valuables, virtual asset service providers, among others. In the absence of a defined regulatory agency, COAF has statutory power to issue sector-specific regulations, according to §1 of Article 14 of the AML Act, and it has done so throughout the years, as exemplified by the following resolutions:

- Resolution No. 21/2012: establishes AML obligations for factoring companies;[256]
- Resolution No. 23/2012: establishes AML obligations for agents of athletes or artists;[257]
- Resolution No. 30/2018: establishes AML obligations for dealers of precious metals, stones or jewels;[258]
- Resolution No. 25/2013: establishes AML obligations for dealers of luxury goods;[259]
- Resolution No. 36/2021: establishes complementary AML obligations for all organizations and individuals subject to COAF supervision;[260]
- Resolution No. 40/2021: regulates the identification and communication of transactions involving politically exposed people for all organizations and individuals subject to COAF supervision.[261]

These numerous regulations, however, face a number of challenges. One reason is that it is not always clear who is actually bound by them. Since the markets it addresses are not regulated, firms often need no specific licenses to operate. In addition, COAF rarely possesses the expertise on how these markets operate, which significantly hinders the design of effective

[255] Global Anticorruption Blog (2021). Mayze Teitler, "Enablers in the Legal Profession: Balancing Client Confidentiality Against Preventing Money Laundering" https://globalanticorruptionblog.com/2021/11/15/enablers-in-the-legal-profession-balancing-client-confidentiality-against-preventing-money-laundering/, accessed on December 2, 2021.
Global Anticorruption Blog (2018). Hilary Hurd, "Applying Anti-Money Laundering Reporting Obligations on Lawyers: The UK Experience", https://globalanticorruptionblog.com/2018/06/08/applying-anti-money-laundering-reporting-obligations-on-lawyers-the-uk-experience/, accessed on December 2, 2021.
[256] https://www.gov.br/coaf/pt-br/acesso-a-informacao/Institucional/a-atividade-de-supervisao/regulacao/supervisao/normas-1/resolucao-no-21-de-20-de-dezembro-de-2012-texto-vigente, accessed on December 2, 2021.
[257] https://www.gov.br/coaf/pt-br/acesso-a-informacao/Institucional/a-atividade-de-supervisao/regulacao/supervisao/normas-1/resolucao-no-23-de-20-de-dezembro-de-2012, accessed on December 2, 2021.
[258] https://www.gov.br/coaf/pt-br/acesso-a-informacao/Institucional/a-atividade-de-supervisao/regulacao/supervisao/normas-1/resolucao-no-30-de-4-de-maio-de-2018, accessed on December 2, 2021.
[259] https://www.gov.br/coaf/pt-br/acesso-a-informacao/Institucional/a-atividade-de-supervisao/regulacao/supervisao/normas-1/resolucao-no-25-de-16-de-janeiro-de-2013-1, accessed on December 2, 2021.
[260] https://www.gov.br/coaf/pt-br/acesso-a-informacao/Institucional/a-atividade-de-supervisao/regulacao/supervisao/normas-1/resolucao-coaf-no-36-de-10-de-marco-de-2021, accessed on December 2, 2021.
[261] https://www.gov.br/coaf/pt-br/acesso-a-informacao/Institucional/a-atividade-de-supervisao/regulacao/supervisao/normas-1/resolucao-coaf-no-40-de-22-de-novembro-de-2021, accessed on December 2, 2021.

market-specific norms. Moreover, the highly decentralized nature of these markets makes it extremely difficult for COAF to exercise its supervisory functions.

It should be noted that even markets that have some degree of regulation still struggle to establish effective supervisory practices. Article 12 of the AML Act empowers supervisory entities to sanction individuals or organizations that fail to comply with AML obligations, the penalties ranging from mere warnings to fines or even the revocation of the authorization needed to operate in the market. At the same time, however, the statute does not specify how the oversight bodies are to perform their supervisory functions nor what procedures are involved in applying those sanctions. Since these provisions are to be implemented by a broad range of entities, this dearth of guidelines leaves room for significant heterogeneity in terms of level and strictness of enforcement.

An example of this challenge is provided by the real estate market, evaluated by the national risk-assessment report as highly vulnerable to money-laundering activities. The market is partially regulated by the Federal Council of Real Estate Brokers (COFECI), which has issued an AML guideline.[262] More recently, the National Council of Justice also approved an AML policy for notaries and registries, which play a huge role in real estate transactions. Nonetheless, as pointed out by the risk-assessment report, the sector expresses "a lack of acquaintance with its AML obligations"[263], which accounts for its high vulnerability. In short, the heterogeneity in the performance of supervisory roles is a noticeable weakness in the current AML institutional framework.[264]

Although the national risk assessment is largely consistent with the findings of the present report, there is one remarkable gap, namely the vulnerabilities related to environmental crimes. In a recent report, FATF has drawn attention to the close connection between money laundering and environmental criminal offences,[265] a category that comprises a wide variety of conducts, such as illegal forestry, illegal mining, wildlife trafficking, waste trafficking, among others. According

[262] Resolution COFECI No. 1,336/2014, https://www.legisweb.com.br/legislacao/?id=276697, accessed on December 2, 2021.
[263] "A vulnerabilidade ponderada do setor imobiliário para LD/FT é alta. Se, por um lado, o mercado imobiliário movimenta uma grande parcela da economia brasileira e está exposto a diversos situações que aumentam sua exposição à LD/FT, como transações com clientes de mais alto risco ou utilização de interpostas pessoas ou estruturas jurídicas complexas para ocultação do real beneficiário da transação, por outro observa-se um baixo conhecimento do setor acerca de suas obrigações de PLD/FT." Available at https://www.gov.br/coaf/pt-br/centrais-de-conteudo/publicacoes/avaliacao-nacional-de-riscos/sumario_executivo-avaliacao-nacional-de-riscos.pdf, accessed on December 2, 2021.
[264] "Observou-se principalmente uma grande heterogeneidade nas respostas dos diversos setores das APNFD no que se refere à aplicação de medidas de PLD/FT. Enquanto alguns desses setores estão mais avançados no que tange à regulamentação e à supervisão, inclusive alguns com a aplicação da abordagem baseada no risco para a supervisão, outros sequer possuem normas específicas de PLD/FT, como os setores de mineração de ouro, pedras e metais preciosos; de serviços advocatícios;4 de promoção de direitos feiras, exposições ou eventos similares e de comércio de bens de alto valor de origem rural ou animal. Além disso, diversos supervisores enfrentam dificuldades para exercerem de modo adequado suas funções relacionadas com a prevenção à lavagem de dinheiro e ao financiamento do terrorismo, como a aplicação de uma supervisão baseada no risco e o fornecimento de orientações que auxiliem nas medidas de PLD/FT de seu setor supervisionado." Available at https://www.gov.br/coaf/pt-br/centrais-de-conteudo/publicacoes/avaliacao-nacional-de-riscos/sumario_executivo-avaliacao-nacional-de-riscos.pdf, accessed on December 2, 2021.
[265] FATF/GAFI (2021). Money Laundering from Environmental Crime, https://www.fatf-gafi.org/media/fatf/documents/reports/Money-Laundering-from-Environmental-Crime.pdf, accessed on December 2, 2021.

to INTERPOL and UNEP, environmental crimes involve around USD 110 to 281 billion annually, which makes it the third largest criminal sector worldwide.[266]

In Brazil, at least four kinds of environmental crimes raise significant concern: illegal logging, illegal land clearing, illegal mining and wildlife trafficking. The proceeds from all these illegal activities have to be introduced in the legal market somehow. Unlike what happens in most other crimes; however, the proceeds of environmental offences can be understood as both (i) the values generated by the commercialization of environmental goods and (ii) the environmental goods themselves. Because there is a substantial legal market for these goods, unlike for instance the case of illegal drugs, the introduction of the goods themselves in the market while concealing their illicit origin is itself a potential laundering crime. In the case of illegal logging, for example, it is not only the proceeds from the sale of the wood that are laundered, but the wood itself, whenever tactics are deployed to conceal its unlawful origins. Since these tactics often involve various forms of corruption - such as the falsification of origin certificates or bribing public officials - environmental crimes, money laundering and corruption are tightly interconnected in these criminal activities. Land grabbing, which is also often tightly related to environmental crimes such as illegal land clearing or illegal logging, can also involve a potential laundering crime when it includes frauds in real estate registers and forged land titles. In this case, the proceeds of crime are false real estate properties whose illicit nature is concealed through various frauds.[267]

Treating environmental goods and land grabbed properties themselves as the object of laundering activities is a promising approach that provides new opportunities to leverage anti-money laundering prevention, investigation and prosecution tools to combat illegal mining and logging, wildlife trafficking but also land grabbing and cattle breeding in deforested areas, among other crimes. However, so far, most AML and anti-corruption institutions, the Judiciary as well as private actors involved in these markets are still not very familiar with this approach and need to be mobilized to explore its full potential.

A significant challenge for the prevention of money laundering in environmental activities is the inexistence of apt regulatory bodies in many of the markets that are involved. As acknowledged by the national risk-assessment report, for example, the mining sector remains mostly unregulated in terms of money laundering prevention and detection, although the commercialization of precious metals and stones is under COAF regulation. Even this limited regulation, however, is poorly supervised, due to its highly decentralized nature, as discussed above. When it comes to other environmental goods, even though the Brazilian AML legislation designates “valuable rural goods and animals” as sectors under AML obligations, there are still no specific regulations that spell out those obligations, nor designated oversight bodies. Finally, concerning the fight against land grabbing, although the National Council of Justice and the Council of Real Estate Brokers have issued norms to specify AML obligations for notaries, registry officers and real estate agents, these regulations focus on money laundering risks related to land transactions but are not adapted to encompass false properties as the object of laundering activities.

[266] UNEP INTERPOL (2016). The Rise of Environmental Crimes, https://www.cbd.int/financial/doc/unep-environmental-crimes.pdf, accessed on November 25, 2021.
[267] TI Brasil (2021). “Governança fundiária frágil, fraudes e corrupção: um terreno fértil para a grilagem de terras”, https://comunidade.transparenciainternacional.org.br/grilagem-de-terras, accessed on December 8, 2021.

It is crucial, therefore, that Brazil include environmental crimes and land grabbing among its priorities in its efforts to curb money laundering. The fact that land abuses and environmental criminal offenses were not given much attention in the risk assessment is concerning. Nonetheless, the topic has garnered increased attention among civil society.

Good practices:

- Increasingly robust anti-money laundering legislation, with a broad range of predicate offenses.
- Creation of special procedures for the persecution of money-laundering offenses, particularly those geared toward recovering the proceeds of crime and preserving their value.
- Increasingly robust institutional framework designed to prevent and detect money-laundering activities in a wide range of markets vulnerable to those practices.
- Elaboration of the first National Risk-Assessment on Money-Laundering, Financing of Terrorism and of Proliferation of Weapons of Mass Destruction.

Deficiencies:

- Uncertainty, due to its broad generality, as to the proper application of the money-laundering offense definition inscribed on Article 1 of the AML Act to specific scenarios.
- Non-application of AML obligations to legal professionals who might work as enablers of money-laundering activities.
- Excessive heterogeneity of supervisory practices across oversight agencies.
- Lack of attention paid to environmental crimes and frauds related to land grabbing as predicate offenses.

4.2 Chapter V

4.2.1 Articles 52 and 58 – Anti-Money Laundering

Chapter V of the United Nations Convention Against Corruption focuses on asset recovery measures. Articles 52 and 58, in interaction with the already analyzed article 14, provide guidelines to the creation of an anti-money-laundering framework, a key component of which is the development of routines and mechanisms that allow authorities to identify suspicious transactions. In that context, article 52 sets minimum requirements to be observed in financial sector regulations, while article 58 encourages the establishment of a financial intelligence unit for analyzing suspicious transaction reports (STRs). The implementation of these articles in Brazil are evaluated separately below.

Article 52 – Prevention and detection of transfers of proceeds of crime

In Brazil, three regulatory agencies play a central role in ensuring compliance with AML obligations in financial services:

- the Central Bank of Brazil (BACEN) supervises financial institutions and monitors the financial system;
- the Securities and Exchange Commission (CVM) supervises the securities and exchange market; and
- the Superintendence of Private Insurance (SUSEP) supervises the insurance, reinsurance, pension plans and capitalization markets.

All three bodies have recently updated their anti-money laundering regulations in order to better conform to international standards. In January 2020, BACEN issued the Circular Letter No. 3,978/2020,[268] which establishes for all institutions under its jurisdiction, among other things:

- The obligation to conduct risk analysis regarding money laundering and terrorism financing (Chapter IV);
- The obligation to conduct due diligence on clients (Chapter V), including the identification of beneficial owners (V.VI), as well as on employees and business partners (Chapter IX), as prescribed by paragraph 1 of Article 52 of the Convention;
- The procedures to be adopted with regard to Politically Exposed Persons (PEPs) (Chapter V.VII), as prescribed by paragraph 2 of Article 52;
- The rules on the records of transactions to be maintained by the institutions, for at least five years after their completion (Chapter VI), as prescribed by paragraph 3 of Article 52;
- The mandatory procedures for monitoring suspicious transactions (Chapter VII), as well as the procedures for communicating COAF (Chapter VIII).

In the same month, BACEN also issued Circular Letter No. 4,001/2020,[269] which provides a list of examples of transactions and situations that can be considered suspicious and might create an obligation to report to COAF. It should also be noted that, while Brazil does not explicitly forbid shell banks, the 2010 FATF-GAFI Mutual Evaluation Report concluded that “the licensing

[268] https://www.bcb.gov.br/estabilidadefinanceira/exibenormativo?tipo=Circular&numero=3978, accessed on November 29, 2021.
[269] https://www.bcb.gov.br/pre/normativos/busca/downloadNormativo.asp?arquivo=/Lists/Normativos/Attachments/50911/C_Circ_4001_v1_O.pdf, accessed on November 29, 2021.

process for banks makes it impossible for a shell bank to be licensed and operate" in the country.[270]

In December 2019, CVM issued Instruction No. 617/2019, which sets new AML regulations for the securities and exchange market.[271] Among the key aspects of the new rules are:[272]

- The introduction of a risk-based approach, including the obligation to perform regular internal assessments of risks (Chapter II);
- A clearer definition of the responsibilities of the board director responsible for compliance with AML regulations (Chapter III);
- More detailed and comprehensive rules on customer due diligence and "Know Your Customer" (Chapter IV), including expanded guidelines on the identification of politically exposed people (Annex 5.1);
- More detailed rules on the identification and reporting of suspicious transactions (Chapter V).

SUSEP also updated the AML regulations for the insurance market through Circular No. 612/2020.[273] Overall, the new rules follow the same trend as the ones issued by BACEN and CVM, with a greater emphasis on risk assessment (Chapter VI), customer due diligence, and monitoring, identification and reporting of suspicious transactions (Chapters IX and X). Furthermore, in October 2020, the National Council for Private Insurances approved a new guideline (Resolution CNSP No. 393/2020[274]) on the sanctions to be applied in the case of non-compliance with sectoral regulation, including violations of AML obligations (Section IX).

As these considerations seem to indicate, financial services in Brazil are under fairly robust AML regulation. Indeed, as mentioned above, the recently-conducted national risk-assessment concluded that the money-laundering risk was medium for the financial sector, and low for securities and exchange, as well as for insurances. In the first segment, currency exchange was evaluated as the highest risk.[275] It is also worth stressing that Virtual Asset Service Providers, which include services related to crypto-assets, remain unregulated and thus highly vulnerable at a moment when FATF has increasingly called attention to the need to understand and address the challenges created by this emerging market.[276]

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[270] FATF/GAFI (2021). Mutual Evaluation Report, p. 163. The report notes, however, that "Brazil should take legislation to prohibit FIs from entering into or continuing correspondent relationships with shell banks", https://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Brazil%20full.pdf, accessed on November 24, 2021). The Circular Letter No. 3,978 also partly addresses that by including among the due diligence for foreign correspondent banks the requirement that the bank has physical presence in the country where it is incorporated (Article 59, III).

[271] http://conteudo.cvm.gov.br/legislacao/instrucoes/inst617.html, accessed on November 29, 2021.

[272] CVM (2020). Explanatory Note to Instruction CVM No. 617/2020, http://conteudo.cvm.gov.br/legislacao/notas-explicativas/nota617.html, accessed on November 24, 2021.

[273] Available at http://www.susep.gov.br/setores-susep/cgfis/pld/circular-susep-n-612-de-18-de-agosto-de-2020.pdf, accessed on November 29, 2021.

[274] Available at https://www.in.gov.br/en/web/dou/-/resolucao-cnsp-n-393-de-30-de-outubro-de-2020-286083447, accessed on November 29, 2021.

[275] COAF (2021). Sumário Executivo - Avaliação Nacional de Riscos, https://www.gov.br/coaf/pt-br/centrais-de-conteudo/publicacoes/avaliacao-nacional-de-riscos/sumario_executivo-avaliacao-nacional-de-riscos.pdf/view, accessed on November 29, 2021.

[276] FATF/GAFI (2021). Updated Guidance for a Risk-Based Approach. Virtual Assets and Virtual Asset Service Providers, https://www.fatf-gafi.org/media/fatf/documents/recommendations/Updated-Guidance-VA-VASP.pdf, accessed on November 30, 2021.

It should be noted as well that, whereas regulation of the financial sector seems to meet the internationally agreed-upon standards, there is a dearth of data on the actual enforcement of these rules. Any evaluation of the Brazilian AML framework would greatly benefit from more transparency in relation to the supervisory functions exercised by regulatory agencies such as BACEN, CVM and SUSEP.

Article 58 – Financial Intelligence Unit

The Anti-Money Laundering Act created, in 1998, the Council for Financial Activities Control (COAF), which acts as Brazil's Financial Intelligence Unit. As outlined above, the agency, which functioned initially under the Ministry of Finance, combines supervisory, regulatory and intelligence attributions. As a supervisory and regulatory body, COAF is responsible both for providing guidelines to private entities that have AML obligations while not being subject to other regulators and for ensuring compliance to these rules. As an intelligence agency, COAF collects and analyzes information on suspicious transactions in order to subsidize anti-money laundering policies and actions, in accordance with paragraph 2 of Article 14 of the Convention.

Over the years, COAF grew both in importance and technical capacity, assuming a key position in anti-corruption and anti-money laundering actions. In order to successfully carry out its functions, COAF must be able to cooperate with both domestic and international agencies, as well as share information with them. As a member of the Egmont Group since 1999 and as an active member of ENCCLA since its creation in 2003, COAF gradually developed robust communication systems with other FIUs, at the international level, and with the Public Prosecution Office, the Federal Police and the Central Bank, at the domestic level.

Whereas the centrality of COAF to the Brazilian AML framework is undisputable, two significant challenges remain, according to specialists interviewed for this report. First, the resources available for COAF to perform its wide-ranging functions remain far from sufficient. The agency recently reported having increased the number of employees from 37, in 2018, to 85, in 2020.[277] It also announced, in 2019, the creation of a Supervision Department, a function that, as discussed above, faces significant challenges due to the highly decentralized nature of the markets over which COAF exercises regulatory and supervisory roles. In spite of these important changes, the agency's current structure is insufficient. In 2008, the agency received ca. 650 thousand STRs; twelve years later, that number has increased almost tenfold and remains at around 6,2 million reports yearly, as can be seen in the chart below.[278] In order to properly carry out its current attributions, specialists have suggested that at least a twofold increase in the staff of COAF would be required.

[277] COAF (2021). Relatório de Atividades 2020, https://www.gov.br/coaf/pt-br/centrais-de-conteudo/publicacoes/publicacoes-do-coaf-1/relatorio-de-atividades-2020-publicado-20210303.pdf, accessed on November 30, 2021.
[278] COAF. Serviço Data Discovery, https://siscoaf.discovery.coaf.gov.br/coaf/servlet/mstrWeb, accessed on November 30, 2021.

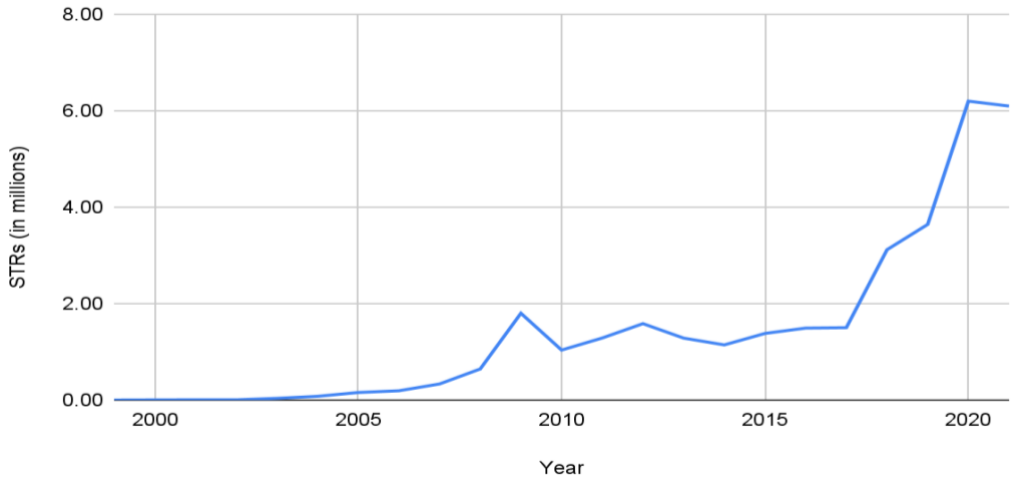

Figure 3 - Number of Suspicious Transaction Reports received by COAF per year (in millions)

A second challenge refers to the lack of information on the effectiveness of the AML efforts. Whereas COAF makes available significant statistics on STRs received and intelligence reports produced by the agency, much less is now available about the investigations and criminal prosecutions that are supposed to follow. The decentralization of data and the existence of multiple systems across different organizations make it nearly impossible to know the outcomes of the COAF's analyses. This represents a huge missing piece in the puzzle, undermining the government's ability to design and implement evidence-based policies. A better information system across enforcement bodies is, therefore, crucial.

Besides these structural challenges, it is important to highlight two recent setbacks experienced by COAF, both of which raise concerns as to its future work. First, the location of the agency within the structure of the Federal Administration became the center of great political controversy. After taking office in January 2019, sitting President Bolsonaro transferred the agency from the Ministry of Finance to the Ministry of Justice through Provisional Presidential Decree No. 870/2019.[279] Whereas Provisional Presidential Decrees produce effects immediately, they are discontinued if Congress does not approve them within 120 days. In May of 2019, Congress rejected the transfer of COAF, reinstating it once again within its former ministry.[280]

Following Congress's decision, President Bolsonaro issued Provisional Presidential Decree No. 893/2019,[281] which once again transferred the agency, this time to the structure of the Central Bank. The measure also changed the composition of the agency's board, raising concerns about its autonomy, which were intensified by the decision to fire the head of COAF, Mr. Roberto Leonel de Oliveira Lima. In December of 2019, Congress approved the Provisional Presidential Decree, passing it into Law No. 13,974/2020;[282] in doing so, however, it also reverted the

[279] Available at http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/Mpv/mpv870.htm, accessed on November 30, 2021.
[280] Valor Econômico (2019). Vandson Lima, Renan Truffi, Isadora Peron, Marcelo Ribeiro and Carla Araújo, "Senado atende apelo de Bolsonaro, rejeita Coaf com Moro e aprova MP", https://valor.globo.com/politica/noticia/2019/05/29/senado-atende-apelo-de-bolsonaro-rejeita-coaf-com-moro-e-aprova-mp.ghtml, accessed on November 29, 2021.
[281] http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/Mpv/mpv893.htm, accessed on November 29, 2021.
[282] http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/lei/l13974.htm, accessed on November 30, 2021.

decision on the board's composition. In 2021, Congress also passed Supplementary Law No. 179/2021,[283] which granted autonomy to the Central Bank.

Although the decision to locate the agency within the structure of the Central Bank does not run counter to international practice,[284] the politicization of the process is cause for concern. Media reports suggest that the changes resulted in significant productivity losses during 2019 and 2020.[285]

A second and more serious setback took place in July of 2019, when the Chair of the Supreme Court, Justice Dias Toffoli, granted an injunction to suspend all information sharing between COAF and law enforcement agencies, as well as all ongoing investigations based on such information, unless they had been judicially authorized.[286] The injunction had been requested by Mr. Flávio Bolsonaro, a senator and eldest son of the sitting president who was under investigation for collecting part of his employee's salaries (practice known as "rachadinha"), partly based on reports of unusual financial transactions.[287]

The decision was met with stark criticism, both domestically and internationally, due to its incompatibility with international standards. The FATF issued a statement expressing "its serious concerns regarding Brazil's ability to comply with international standards and combat money laundering and terrorist financing that result from the limitation placed by a recent provisional injunction issued by one judge of the Brazilian Supreme Court on the use of financial intelligence in criminal investigations".[288] The OECD Working Group on Bribery also expressed its "concerns that, following injunctions of the Supreme Court, limitations on the use of reports by Financial Intelligence Unit, Federal Revenue Services and other administrative agencies in criminal investigations might seriously hamper Brazil's ability to detect and effectively fight corruption".[289]

The case was submitted to the Supreme Court panel in December 2019, which revoked the injunction and ruled that the sharing of information by COAF with law enforcement agencies is constitutional and does not require previous judicial authorization.[290] Although the Supreme Court's final decision seems to have established a stronger constitutional footing for COAF's

[283] http://www.planalto.gov.br/ccivil_03/leis/lcp/Lcp179.htm, accessed on November 30, 2021.
[284] A study from Transparency International of international practices in FIUs institutional design concludes that "common placements [for FIUs] are within a finance ministry, central bank or other regulatory body". Marcus, Abigail J. Financial intelligence units (FIUs): Effective institutional design, mandate and powers, https://knowledgehub.transparency.org/helpdesk/financial-intelligence-units-fius-effective-institutional-design-mandate-and-powers, accessed on November 30, 2021.
[285] Folha de São Paulo (2020). Larissa Garcia, "Coaf reduz atividades e aplicação de multas após vaivém entre Justiça, Economia e BC", https://www1.folha.uol.com.br/mercado/2020/05/coaf-reduz-atividades-e-aplicacao-de-multas-apos-vaivem-entre-justica-economia-e-bc.shtml?utm_source=twitter&utm_medium=social&utm_campaign=twfolha, accessed on November 29, 2021.
[286] Folha de São Paulo (2019). Reynaldo Turollo Jr., Fábio Fabrini and Italo Nogueira, "Brazil's Supreme Court President Suspends Investigations into Bolsonaro's Son Flávio", https://www1.folha.uol.com.br/internacional/en/brazil/2019/07/brazils-supreme-court-president-suspends-investigations-into-bolsonaros-son-flavio.shtml, accessed on November 30, 2021.
[287] Reuters (2019). "Brazil probe finds suspect deposits in Bolsonaro son's account: report", https://www.reuters.com/article/us-brazil-corruption-idUSKCN1PD02P, accessed on November 30, 2021.
[288] FATF/GAFI (2019). Outcomes FATF Plenary, 16-18 October 2019, https://www.fatf-gafi.org/countries/a-c/brazil/documents/outcomes-plenary-october-2019.html, accessed on November 29, 2021.
[289] OECD (2019). "Brazil must immediately end threats to independence and capacity of law enforcement to fight corruption", https://www.oecd.org/newsroom/brazil-must-immediately-end-threats-to-independence-and-capacity-of-law-enforcement-to-fight-corruption.htm, accessed on November 29, 2021.
[290] Federal Supreme Court. Extraordinary Appeal (RE) No. 1055941/SP, https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=754018828, accessed on November 30, 2021.

procedures, the suspension of all investigations for four months between Justice Toffoli's injunction and the Court's final ruling affected almost one thousand investigations and provided additional uncertainty as to the agency operations.[291]

Good practices:

- Adoption of internationally recognized anti-money-laundering practices and standards by the Central Bank of Brazil, the Securities and Exchange Commission and the Superintendence of Private Insurances.

Deficiencies:

- Lack of regulation of Virtual Assets Service Providers.
- High vulnerability of the currency exchange market.
- Insufficient resources for COAF to adequately perform its wide-ranging functions.
- Lack of information on AML investigations and criminal prosecutions, undermining evidence-based policy-making.

4.2.2 Art. 53 and 56 – Measures for Direct Recovery of Property

Whereas articles 52 and 58 of the Convention focus on the prevention and detection of transfers of proceeds of crime, articles 53 through 57 regulate different cooperation mechanisms aimed at enabling the recovery of assets. Articles 53 and 56 in particular attempt to ensure the existence of mechanisms for direct recovery of property by another State Party.

In Brazil, foreign states are permitted to initiate civil action in its courts. The Code of Civil Procedures (Law No. 13,105/2015[292]) establishes that all persons are apt to be represented in court (article 70), including foreign legal persons (article 75, X). Furthermore, Article 8 of the Anti-Money Laundering Act provides that the Judiciary will, whenever provoked by the competent foreign authority, take measures to protect assets associated with the proceeds of crimes committed in foreign territory, as long as there is an applicable treaty or the foreign government promises reciprocity.

In spite of these provisions, the authors of this report were unable to locate any precedents in which foreign governments were able to directly pursue the recovery of assets through the courts. This might be a consequence of the fact that in international cases of asset recovery, Brazil is more often on the requesting side than on the requested side. According to data provided by the Department of Asset Recovery and International Cooperation,[293] for example, between 2014 and 2020 Brazil received 32 requests to freeze assets in its territory, while formalizing 248 requests in other jurisdictions.

With regards to article 56, we were also unable to find any prohibitions for authorities to proactively share information with foreign states that might have an interest in the recovery of

[291] Exame (2019). "MPF diz que 935 investigações pararam após decisões de Toffoli sobre Coaf", https://exame.com/brasil/camaras-do-mpf-pedem-revogacao-de-decisoes-de-toffoli-sobre-coaf/, accessed on November 29, 2021.
[292] http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13105.htm, accessed on November 30, 2021.
[293] Freedom of Information Request No. 08198.027342/2021-51, answered on August 31, 2021.

proceeds of crime located in Brazil, nor were we made aware of any instance in which Brazilian authorities opted to do so.

For full compliance with articles 53 and 56 of the Convention, it would be valuable to set in place clearer legal provisions on the ability of foreign governments to claim ownership in civil courts over assets that proceed from criminal offenses committed abroad.

4.2.3 Art. 54, 55 and 57 – International Cooperation for the Purpose of Confiscation

Articles 54 and 55 obligate State Parties to create mechanisms for international cooperation for the purpose of confiscation of proceeds of crime. The present section analyzes the implementation of these provisions under two main headings: (i) the adequacy of the Brazilian legal system and (ii) the institutional framework for international cooperation.

Legal framework

In general, the Brazilian legal system meets the provision's general requirements. Article 2 of the Anti-Money Laundering Act (Law No. 9,613/1998) explicitly acknowledges the possibility of prosecution of money laundering offenses related to crimes committed abroad. In prosecuting those money-laundering offenses, law enforcers can request the judge to put in place measures to protect the assets, including their seizure, freezing or, ultimately, confiscation.

Recent legislation has expanded the scope of criminal confiscation of assets. Initially, confiscation was limited to the assets that actually derived from the criminal action. Law No. 12,694/2012[294] amended article 91, §2, of the Criminal Code to expand the initial provision, allowing the confiscation of other assets of equal value to the proceeds of crime. More recently, Law No. 13,964/2019[295] introduced the possibility of confiscating the difference between the defendants' total assets and the value that would be compatible with their legal income, a category that has been labeled as "expanded confiscation" ("confisco alargado").

Brazilian authorities are also permitted to give effect to confiscation or freezing orders issued by foreign courts. As already mentioned, article 8 of the Anti-Money-Laundering Act, as amended by the 2012 reform, compels judges to determine cautionary measures needed to allow the recovery of proceeds of crimes committed abroad. Two conditions, however, must be met: (i) the existence of an applicable international treaty or convention or, alternatively, a promise of reciprocity by the foreign government and (ii) a request by the relevant foreign authorities.

As will be discussed below, cooperation is mediated by the Department of Asset Recovery and International Cooperation, located in the Ministry of Justice. In the case of confiscation, the convicting court decision must be homologated by the Judiciary, but there are a number of precedents establishing the possibility of confiscation as a result of criminal conviction in a foreign court.[296]

[294] http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/l12694.htm, acessed on November 29, 2021.
[295] http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/lei/L13964.htm, accessed on November 29, 2021.
[296] See, for example, the following decisions by the Superior Court of Justice: SEC No. 10,250 (Court Opinion by Justice Luis Felipe Salomão); SEC 10.612/EX (Court Opinion by Laurita Vaz).

It should be noted that, according to article 9 of the Brazilian Criminal Code, reparation measures ordered by a foreign court can only be given effect if equivalent legal consequences are found in the Brazilian legal system. This seems to exclude the possibility of giving effect to non-conviction-based confiscation orders issued by foreign courts, since currently there is no such possibility within the Brazilian legal framework. In recent years, multiple proposals have been made to introduce the possibility of civil forfeiture of assets. The campaign "Ten Measures Against Corruption", for example, spearheaded by public prosecutors, included a bill to regulate non-conviction-based confiscations.[297] Likewise, Transparency International - Brazil's "New Measures Against Corruption" contained a similar suggestion.[298] Nonetheless, none of them gained traction in Congress and questions remain as to the constitutionality of such a measure.

Regarding the return of confiscated property to the requesting country, as prescribed by Article 57 of the Convention, Article 8, §2, of the Anti-Money-Laundering Act establishes that, in the absence of prior treaty or agreement, assets confiscated by request of foreign authorities ought to be divided among Brazil and the requesting State. If there is, however, a prior international agreement, the return of assets will be regulated by it. Indeed, the courts have authorized the restitution of assets to requesting States based on international agreements.[299]

Institutional framework

The central piece in Brazil's institutional framework for international cooperation is the Department for Asset Recovery and International Cooperation (DRCI), a division within the structure of the Ministry of Justice created in 2004 with the task of coordinating asset recovery efforts between Judiciary, Legislative, Executive and Public Prosecution, as well as centralizing international cooperation requests, both in civil and criminal matters.

Due to its location within the Ministry of Justice, which also oversees the Federal Police, DRCI staff has largely been drawn from the latter, particularly for leadership positions. According to interviews conducted for this report,[300] international cooperation saw great improvement under the leadership of DRCI, the relative stability of which across multiple governments enabled the development of know-how and the incorporation of best practices. This contributed to a positive reputation of Brazil in terms of international cooperation, a key example being the successful investigations carried out in Operation Car Wash.

Alongside those merits, however, experts have also pointed out deficiencies in the agency's operations, two of which stand out.[301] The first is the fact that the resources made available to DRCI are disproportionate to its wide-ranging attributions, which has in recent years impacted the ability of the body to provide quality assistance to Brazilian authorities in international

[297] MPF (2015). Proposal No. 10, https://dezmedidas.mpf.mp.br/, accessed on November 20, 2021.
[298] United Against Corruption (UCC) (2018). Proposal No. 66, https://web.unidoscontraacorrupcao.org.br/novas-medidas/acao-de-extincao-de-dominio/, accessed on November 29, 2021.
[299] See, for example, the decision of the Superior Court of Justice (STJ) in AgInt SEC 10.250: "Conclui-se, portanto, que eventual alienação dos imóveis de titularidade do assistido, com a remessa do produto da venda para a Suíça, em decorrência da homologação da presente sentença estrangeira, não implica ofensa à soberania nacional nem à ordem pública, tendo em vista que tal medida está amparada em convenção e tratado de cooperação jurídica, os quais, em última análise, autorizam a repatriação de divisas" (Unanimous decision, Court Opinion by Justice Luis Felipe Salomão, May 15, 2019).
[300] Information obtained through interviews with anti-corruption specialists who prefers to remain anonymous, September-November 2021.
[301] Ibid.

cooperation efforts. This challenge, however, is not exclusive to DRCI and must be understood within the budgetary limitations that characterize public expenditure.

A second and more important shortcoming in the current institutional framework is its lack of institutionalization. DRCI has no statutory footing and its structure and attributions are described in an executive decree (currently, Decree No. 9,662/2019).[302] Brazil, indeed, has no law of international cooperation, which remains a significant obstacle to the effectiveness of its actions in that realm. The Code of Civil Procedures (Law No. 13,105/2015) introduced some provision on international cooperation in civil matters and designated the Ministry of Justice as the central authority for international cooperation "in the absence of specific designations" (article 26, §4). The same has not yet happened in criminal matters, although a bill for a new Code of Criminal Procedures currently under Congress's appreciation includes similar provisions.[303]

In spite of these provisions, the institutional framework for international cooperation rests on uncertain legal ground. Part of the resistance in formalizing the current structure can be attributed to the difficulty in finding an agreement between the multiple governmental bodies affected by it, including the Prosecution Services, the Judiciary and the Executive.

Until recently, the lack of institutionalization, while posing a challenge, had not represented any significant threat to the activities of DRCI as a whole and to the relative independence of its activities. In November 2021, however, an incident involving the leadership of the agency and the National Secretary of Justice, a high-level official within the Ministry of Justice, raised concerns about DRCI's ability to carry out its functions free from political interference.

The incident involved the extradition process of Mr. Allan dos Santos, a media influencer allied to President Bolsonaro and currently living in the United States. Mr. dos Santos is under investigation in an inquiry conducted by the Supreme Court, and Justice Alexandre de Moraes demanded his extradition to Brazil for pretrial detention. This request was sent to the DRCI, and the then Director of the Agency, Ms. Silvia Amélia Fonseca forwarded the extradition requirement to the United States, as required by her institutional duties.[304] According to reports, Mr. Vicente Santini, the National Secretary of Justice and her hierarchical superior, attempted to change the until-then existing procedures by requiring that all extradition processes be approved by himself;[305] upon learning that the extradition of Mr. dos Santos had already been forwarded to foreign authorities, however, Mr. Santini fired Ms. Fonseca.[306]

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[302] http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decreto/D9662.htm, accessed on November 29, 2021.
[303] House of Representatives. Bill No. 8045/2010, https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=490263, accessed on November 28, 2021.
[304] CNN Brasil (2021). Luiz Vassallo, "Delegada da PF responsável por extradição de blogueiro Allan dos Santos é exonerada", https://www.cnnbrasil.com.br/politica/delegada-da-pf-responsavel-por-extradicao-de-blogueiro-e-exonerada/, accessed on November 30, 2021.
[305] O Globo (2021). Malu Gaspar, "Secretário de Justiça tentou retardar extradição de Allan dos Santos, mas delegada foi mais rápida", https://blogs.oglobo.globo.com/malu-gaspar/post/secretario-de-justica-tentou-interferir-no-processo-de-extradicao-do-blogueiro-allan-dos-santos.html, accessed on November 30, 2021.
[306] Metrópoles (2021). Lucas Marchesini, "Governo começa perseguição a quem pediu extradição de Allan dos Santos", https://www.metropoles.com/colunas/guilherme-amado/governo-comeca-perseguicao-a-quem-pediu-extradicao-de-allan-dos-santos, accessed on November 30, 2021.

Following the incident, the Federal Police started an investigation to clarify whether government officials attempted to hinder Justice Moraes' decision.[307] Whereas the details of the case remain under investigation, the incidents casts doubt on DRCI's autonomy, thus reinforcing the need for a stronger statutory footing for the agency.

Good practices:

- Legislative advances on confiscation tools of assets in recent years.
- Legal authorization to freeze, seize or confiscate proceeds of crimes upon requests by foreign authorities.
- Creation of a central authority to coordinate asset recovery efforts and international cooperation.

Deficiencies:

- Lack of statutory footing for the Department of Asset Recovery and International Cooperation.
- Political interference into DRCI's established procedures on extradition.
- Lack of a law of international cooperation.
- Insufficient resources for the Department of Asset Recovery and International Cooperation.

[307] Correio Braziliense (2021). Luana Patriolino, "PF apura suposta interferência do governo em extradição de Allan dos Santos", https://www.correiobraziliense.com.br/politica/2021/11/4964006-pf-apura-suposta-interferencia-do-governo-em-extradicao-de-allan-dos-santos.html, accessed on November 30, 2021.

V. Recent Developments

In recent years, Brazilian anti-corruption bodies and policies have been undergoing worrying setbacks, as President Jair Bolsonaro defies democracy and the rule of law. In October 2019 and October 2020, Transparency International - Brazil elaborated reports on the country's institutional and legislative anti-corruption setbacks,[308] which were presented to the Financial Action Task Force and to the OECD Working Group on Bribery. In 2021, the President continued to promote such setbacks on multiple levels and deepened his threats to democracy.[309]

Institutional interference

Multiple federal anti-corruption agencies have suffered interference from President Bolsonaro and other branches of government in recent years. The Office of the Prosecutor General represents one of the most worrying cases of conflict of interest and intervention, as Prosecutor General Augusto Aras, chosen by Bolsonaro despite not being on the list voted by senior prosecutors, has worked to shield the President and his sons[310], to weaken anti-corruption task forces within the Federal Prosecution Service[311] and to defend the government's interests on multiple occasions.[312] For instance, the Amazon Task Force, crucial to develop expertise and coordinate efforts to tackle environmental macro-criminality, was discontinued in 2021. During its two years of existence, it conducted 19 operations against different environmental crimes such as illegal logging, mining and deforestation, highlighting and prosecuting related corruption and laundering practices.[313] Therefore, its suppression is a blow against the fight against impunity for environmental crimes.

The Federal Police has also been targeted by the President, with two shifts in its highest office and other questionable appointments for regional offices, causing turmoil within the agency and in the Ministry of Justice and Public Security. President Bolsonaro is currently under

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[308] Transparency International - Brazil (2019). Brazil: Setbacks in the Legal and Institutional Anti-Corruption Frameworks, https://images.transparencycdn.org/images/2019_Report_BrazilSetbacksAntiCorruptionFrameworks_English_191121_135151.pdf, accessed on November 20, 2021.
Transparency International - Brazil (2020). Brazil: Setbacks in the Legal and Institutional Anti-Corruption Frameworks - 2020 Update, https://transparenciainternacional.org.br/retrocessos/, accessed on November 20, 2021.

[309] Human Rights Watch (2021). Brazil: Bolsonaro threatens democratic rule, https://www.hrw.org/news/2021/09/15/brazil-bolsonaro-threatens-democratic-rule, accessed on November 30, 2021.

[310] El País Brasil (2021). Afonso Benites, "Escudo de Bolsonaro, Augusto Aras enfrenta cada vez mais oposição para ser reconduzido à PGR", https://brasil.elpais.com/brasil/2021-08-19/escudo-de-bolsonaro-augusto-aras-enfrenta-cada-vez-mais-oposicao-para-ser-reconduzido-a-pgr.html, accessed on November 30, 2021.

[311] G1 (2020). Márcio Falcão and Fernanda Vivas, "Aras diz que é hora de 'corrigir rumos' para que 'lavajatismo não perdure'", https://g1.globo.com/politica/noticia/2020/07/28/aras-diz-que-e-hora-de-corrigir-rumos-para-que-lavajatismo-nao-perdure.ghtml, accessed on November 29, 2021.

[312] Folha de São Paulo (2020). André Shalders, "Procurador-geral Augusto Aras esteve com presidente mais que o dobro de vezes de antecessora", https://www1.folha.uol.com.br/poder/2020/06/procurador-geral-augusto-aras-esteve-com-presidente-mais-que-o-dobro-de-vezes-de-antecessora.shtml, accessed on November 29, 2021.

[313] Transparency International - Brazil et al. (2021). "Atuação do MPF no combate ao crime e à degradação ambiental na Amazônia", https://comunidade.transparenciainternacional.org.br/atuacao-do-mpf-no-combate-ao-crime-e-a-degradacao-ambiental-na-amazonia, accessed on November 30, 2021.

investigation for his attempt to interfere in the Federal Police by removing its director.[314] He has also tried to interfere in other bodies during his administration, including the Department for Asset Recovery and International Cooperation[315], the Federal Revenue Service,[316] the Administrative Council of Economic Defense[317] and the Council for Financial Activities Control.[318] These facts and other setbacks led the OECD Working Group on Bribery to issue warnings against Brazil,[319] conduct an on-site mission[320] and, in 2020, create a permanent monitoring group on Brazil.[321]

Also, the Bolsonaro administration has attempted to change the Access to Information Act during the pandemic, has imposed unjustifiable secrecy on data and documents for multiple situations and has promoted information "blackouts" on public websites. In addition, the President has drastically reduced the space for civil society participation in public collegiate bodies and has become noteworthy for openly threatening journalists, activists, civil society organizations and even international bodies.[322]

Corruption and the environment

One of the corruption allegations that most directly involved the Bolsonaro administration was the case of former Minister of the Environment Ricardo Salles that led to his resignation. The Minister has been investigated in two different corruption probes: on the one hand, Salles is accused of attempting to obstruct a Federal Police operation related to the largest seizure of

[314] Congresso em Foco (2021). Guilherme Mendes and Rudolfo Lago, "PF deve retomar investigação sobre interferência de Bolsonaro, determina Moraes", https://congressoemfoco.uol.com.br/justica/alexandre-de-moraes-manda-pf-retomar-investigacao-sobre-bolsonaro/, accessed on November 30, 2021.
[315] O Globo (2021). Malu Gaspar, "Secretário de Justiça tentou retardar extradição de Allan dos Santos, mas delegada foi mais rápida", https://blogs.oglobo.globo.com/malu-gaspar/post/secretario-de-justica-tentou-interferir-no-processo-de-extradicao-do-blogueiro-allan-dos-santos.html, accessed on November 30, 2021.
[316] G1 (2019). "Governo demite chefe da área de inteligência fiscal da Receita Federal", https://g1.globo.com/economia/noticia/2019/09/24/governo-demite-chefe-da-area-de-inteligencia-fiscal-da-receita-federal.ghtml; Estadão (2019). Daniel Weterman and Breno Pires, "Com cargo ameaçado, delegado da Receita relata em carta interferência de 'forças externas'", https://politica.estadao.com.br/noticias/geral,com-cargo-ameacado-delegado-da-receita-relata-em-carta-interferencia-de-forcas-externas,70002971995, both accessed on November 30, 2021.
[317] Estadão (2019). Lorenna Rodrigues, Breno Pires and Daniel Weterman, "Por aliados, Bolsonaro retira indicações ao Cade", https://politica.estadao.com.br/noticias/geral,por-aliados-bolsonaro-retira-indicacoes-ao-cade,70002951625, accessed on November 29, 2021.
[318] G1 (2019). Juliana Lima, Filipe Matoso and Guilherme Mazui, "Bolsonaro edita medida provisória e transfere Coaf do Ministério da Economia para o Banco Central", https://g1.globo.com/economia/noticia/2019/08/19/bolsonaro-edita-medida-provisoria-e-transfere-coaf-para-o-banco-central-informa-bc.ghtml, accessed on November 29, 2021.
[319] OECD (2019). "Brazil must immediately end threats to independence and capacity of law enforcement to fight corruption", https://www.oecd.org/newsroom/brazil-must-immediately-end-threats-to-independence-and-capacity-of-law-enforcement-to-fight-corruption.htm, accessed on November 29, 2021.
[320] Agência Brasil (2019). Heloisa Cristaldo, "OCDE conclui missão no Brasil sobre medidas de combate à corrupção", https://agenciabrasil.ebc.com.br/internacional/noticia/2019-11/ocde-conclui-missao-no-brasil-sobre-medidas-de-combate-corrupcao, accessed on November 29, 2021.
[321] BBC Brasil (2020). Mariana Sanches, "OCDE adota medida inédita contra o Brasil após sinais de retrocesso no combate à corrupção no país", https://www.bbc.com/portuguese/brasil-56406033, accessed on November 30, 2021.
[322] Transparency International - Brazil (2019). Brazil: Setbacks in the Legal and Institutional Anti-Corruption Frameworks, https://images.transparencycdn.org/images/2019_Report_BrazilSetbacksAntiCorruptionFrameworks_English_191121_135151.pdf; Transparency International - Brazil (2020). Brazil: Setbacks in the Legal and Institutional Anti-Corruption Frameworks - 2020 Update, https://transparenciainternacional.org.br/retrocessos/, both accessed on November 20, 2021.

illegal logs in Brazilian history.[323] On the other hand, the Federal Police is also looking into an alleged corruption scheme within the Federal Environmental Agency (IBAMA) involving the ex-Minister and the agency director. Mr. Salles allegedly colluded with timber companies to facilitate the issuance of required permits for the exportation of illicit timber.[324] The Federal Police, currently in charge of the investigation has reported that the activities of one of the companies, which benefited from laxer exportation rules and lobbied the Ministry of the Environment, show serious signs of "timber laundering".[325] In another sign of political interference within law enforcement agencies, the two senior police officers who led these inquiries were swiftly removed from their positions by the director of the Federal Police appointed by President Bolsonaro after the operations against the former Minister became public.

In addition, the Federal Environmental Agency (IBAMA) has also been the victim of political interference. Senior officers from the agency have been dismissed after leading important operations against environmental crimes and taking positions opposed to the official government discourse.[326] Internal policies were also adopted to limit the freedom of expression of the agents to speak out against their leadership while officers who helped police investigations within the agency have reportedly faced retaliation from their hierarchy.[327] Along with the previously reported replacement of qualified officers by inexperienced police officers, these moves have led to the dismantling and the ineffectiveness of the institution to act against environmental crimes.

Political interference in the fight against environmental crimes has also affected the transparency of the public data that reveals the failure of the government to tackle environmental crimes. President Bolsonaro and his government have repeatedly undermined and delegitimized the work of the National Institute for Spatial Research (INPE), a public institution praised for its data on the evolution of deforestation and fires in Brazil. Beyond the baseless claims from the government seeking to bring discredit to the INPE data[328], the institute has suffered from harsh

[323] Estadão (2021). Pepita Ortega, "PF faz buscas contra Salles e Ministério do Meio Ambiente por suspeita de corrupção na exportação de madeira", https://politica.estadao.com.br/blogs/fausto-macedo/pf-faz-buscas-contra-salles-e-ministerio-do-meio-ambiente/, accessed on November 29, 2021.
[324] Estadão (2021). Pepita Ortega, "Alexandre de Moraes aponta 'grave esquema de facilitação ao contrabando' de madeiras envolvendo Salles e servidores do Ibama", https://politica.estadao.com.br/blogs/fausto-macedo/alexandre-aponta-grave-esquema-de-facilitacao-ao-contrabando-de-madeiras-envolvendo-salles-e-servidores-do-ibama/, accessed on November 30, 2021.
[325] UOL (2021). Rafael Neves, "PF vê indícios de "lavagem" de madeira ilegal em inquérito contra Salles", https://politica.estadao.com.br/blogs/fausto-macedo/wp-content/uploads/sites/41/2021/07/peca-142-pet-8975_200720215005.pdf, accessed on November 29, 2021.
[326] Observatório do Clima (2021). "Pushing the whole lot through: The second year of environmental havoc under Brazil's Jair Bolsonaro", https://www.oc.eco.br/wp-content/uploads/2021/01/Passando-a-boiada-EN-1.pdf, accessed on November 30, 2021.
[327] Metropoles (2021). Tácio Lorran, "Presidente do Ibama esvaziou órgão e perseguiu servidores, aponta PF", https://www.metropoles.com/distrito-federal/meio-ambiente/presidente-do-ibama-esvaziou-orgao-e-perseguiu-servidores-aponta-pf, accessed on February 10, 2022.
[328] Folha de São Paulo (2019). Danielle Brant, "Bolsonaro critica diretor do Inpe por dados sobre desmatamento que 'prejudicam' nome do Brasil", https://www1.folha.uol.com.br/ambiente/2019/07/bolsonaro-critica-diretor-do-inpe-por-dados-sobre-desmatamento-que-prejudicam-nome-do-brasil.shtml, accessed on November 29, 2021.

budget cuts[329] and its director was eventually dismissed.[330] The final blow came in July 2021, when the government announced that the Institute would no longer be responsible for collecting and publishing those data.[331] However, the decision has not yet been implemented.

Threats to democracy

President Bolsonaro continuously threatens democratic institutions and the rule of law, contributing to the dissemination of misinformation and to a growing environment of electoral distrust.[332] The upcoming 2022 elections have been put at risk, as the country's social and political atmosphere is aggravated. Among recent cases, Mr. Bolsonaro affirmed that the 2014 and 2018 elections were rigged but was unable to present concrete evidence to support his allegations – national and international institutions, however, point to the contrary.[333] Mr. Bolsonaro has been campaigning for changes in the voting process, vociferating against the electronic voting system that allowed him to win a presidential election and four consecutive elections for federal deputy. The president himself, along with high-level officials, have claimed that election results would only be accepted if Brazil shifted its system to paper ballots or a mix of electronic and paper-based voting – which they usually call "printed vote".[334]

In this context, the President has elevated threats to the Superior Electoral Court (TSE) and to its president, Justice Luís Roberto Barroso, who has been reaffirming the reliability and safety of the current voting system.[335] The TSE, in turn, has been performing a paramount role to protect political rights, guarantee the rule of law and ensure free and fair elections, despite the country's inhospitable environment. This attempt to rig the electoral system represents a serious threat to democracy and to the fight against corruption, as President Bolsonaro has repeatedly demonstrated that limits imposed by institutions, by the rule of law and by the Brazilian Constitution are not a priority for his administration.[336]

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[329] Folha de São Paulo (2020). Salvador Nogueira, "Agência Espacial Brasileira zera orçamento do Inpe para pesquisa em 2021", https://www1.folha.uol.com.br/ciencia/2020/08/agencia-espacial-brasileira-zera-orcamento-do-inpe-para-pesquisa-em-2021.shtml, accessed on November 30, 2021.
[330] G1 (2019). "Exoneração de diretor do Inpe é publicada no 'Diário Oficial'", https://g1.globo.com/natureza/noticia/2019/08/07/exoneracao-de-diretor-do-inpe-e-publicada-no-diario-oficial.ghtml, accessed on November 30, 2021.
[331] Congresso em Foco (2021). Guilherme Mendes, "Ministérios da Ciência e da Defesa deixarão de mostrar dados de incêndios", https://congressoemfoco.uol.com.br/tema/meio-ambiente/mcti-e-defesa-nao-irao-apresentar-dados-sobre-incendios-no-pais/, accessed on November 29, 2021.
[332] Estado de Minas (2021). "Bolsonaro volta a dizer que eleições de 2022 terão 'manto da desconfiança'", https://www.em.com.br/app/noticia/politica/2021/08/12/interna_politica,1295131/bolsonaro-volta-a-dizer-que-eleicoes-de-2022-terao-manto-da-desconfianca.shtml, accessed on November 30, 2021.
[333] UOL (2021). Jamil Chade, "Ameaças sobre 2022 ampliarão isolamento político e econômico do Brasil", https://noticias.uol.com.br/colunas/jamil-chade/2021/07/25/ameacas-sobre-2022-ampliarao-isolamento-politico-e-economico-do-brasil.htm; Agência Lupa (2021). Bruno Nomura, Maurício Moraes and Nathália Afonso. "Bolsonaro mente ao apresentar 'provas de fraude' nas eleições de 2014 e 2018", https://piaui.folha.uol.com.br/lupa/2021/07/21/bolsonaro-fraude-eleicoes-urnas/, both accessed on November 30, 2021.
[334] Folha de São Paulo (2021). Daniel Carvalho, "Bolsonaro Challenges Barroso and Says that If Congress Approves, 'We Will Have a Paper Ballot and That's It'", https://www1.folha.uol.com.br/internacional/en/brazil/2021/06/bolsonaro-challenges-barroso-and-says-that-if-congress-approves-we-will-have-a-paper-ballot-and-thats-it.shtml, accessed on November 30, 2021.
[335] Poder 360 (2021). Alexandre Leoratti, "Barroso diz que voto impresso diminui a segurança das eleições", https://www.poder360.com.br/eleicoes/barroso-diz-que-voto-impresso-diminui-a-seguranca-das-eleicoes/, accessed on November 30, 2021.
[336] Transparency International - Brazil (2019). Brazil: Setbacks in the Legal and Institutional Anti-Corruption Frameworks, https://images.transparencycdn.org/images/2019_Report_BrazilSetbacksAntiCorruption Frameworks_English_191121_135151.pdf; Transparency International - Brazil (2020). Brazil: Setbacks in

VI. Recommendations

1. Strengthen institutional guarantees for anti-corruption bodies, such as ENCCLA, the Federal Police and the CGU, and protect them from external interference, ensuring legal footing, autonomy, financial stability and the staff needed to pursue their activities;
2. Leverage the capacities and the experience of anti-corruption and anti-money laundering institutions to tackle environmental crimes;
3. Develop oversight and accountability mechanisms on freely nominated individuals in the public service, both at the time of their nomination and while they are in office;
4. Approve stricter rules to curb forms of nepotism not covered by Binding Precedent No. 13, such as the nomination of relatives to so-called “political offices”;
5. Develop systematized efforts to better monitor the evolution of assets and to control conflicts of interests in all branches and levels of government;
6. Encourage states and municipalities to adopt subnational codes of conduct and measures against conflicts of interest;
7. Develop an integrated national program specifically dedicated to corruption reports and to the protection of whistleblowers, including land and environmental defenders, providing safe channels and publishing updated and transparent data on their efficiency;
8. Encourage the development of safe reporting channels and whistleblower protection measures in the private sector;
9. Submit the Escazú Agreement to Congress for its ratification;
10. Improve institutional capacity of the Electoral Justice to monitor and analyze campaign expenditures, preventing those whose reports were rejected to run for office;
11. Revoke the Special Fund for Campaign Financing or approve limitations to the amount of resources directed to it and to how parties and campaigns can deploy them;
12. Redistribute criminal attributions in cases connected with electoral crimes from the Electoral Justice to the Federal Justice, so that electoral courts, judges and prosecutors may focus on monitoring campaign and party accounts and organizing elections;
13. Improve transparency and auditing practices over the approval and execution of parliamentarian amendments to the budget;
14. Approve rules creating a cooling-off period for the nomination of individuals to public offices, such as the Supreme Federal Court, the Office of the Prosecutor General, the Federal Court of Accounts and other national and subnational institutions;
15. Develop stricter accountability mechanisms for judges and prosecutors, respectively, at the National Council of Justice and the National Council of the Public Prosecution;
16. Adopt measures to advance in open data for public procurement at all levels and branches of government and strengthen civil society oversight;
17. Ensure the disclosure of all data of public interest - including environmental - when possible, in open format, and respect deadlines and legal requirements for responses to freedom of information requests;
18. Revert measures undertaken by the current administration that extinguished councils and reduced civil society participation from public collegiate bodies;
19. Increase the space dedicated to civil society participation in anti-corruption bodies and on the development of anti-corruption policies;

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the Legal and Institutional Anti-Corruption Frameworks - 2020 Update, https://transparenciainternacional.org.br/retrocessos/, both accessed on November 20, 2021.

20. Enforce rules on the registration of beneficial ownership and grant the transparency of such data, to be presented in a publicly accessible, online database in open data and a timely manner;
21. Protect the anti-money laundering system against external interference and increase its integration with Brazil's multiple anti-corruption bodies;
22. Adopt and implement specific anti-money laundering regulations for environmental goods;
23. Improve institutional knowledge and practice on confiscation tools, international cooperation and other issues that can help develop Brazil's asset recovery system.

VII. Annex

7.1 Freedom of Information Requests

Identification #	Institution	Date of request	Date of answer	Information requested	Information provided
08198.027325/2021-14	Federal Police (PF)	19/08/2021	06/09/2021	Number of officers fully dedicated to investigating money laundering.	Unavailable. All police officers can operate in investigations against money laundering.
08225.000315/2021-67	Council for Financial Activities Control (COAF)	19/08/2021	03/09/2021	Number of officers at COAF every year, since 2012. Number of officers fully dedicated to investigating money laundering.	Data on the number of officers is available in the annual reports. All officers can potentially operate in investigations against money laundering.
08198.027342/2021-51	Ministry of Justice and Public Security (MJSP)	19/08/2021	31/08/2021	Number of international cooperation requests received for the freezing of assets and total asset value.	Request adequately answered to the limit of available resources.
08225.000316/2021-10	COAF	19/08/2021	27/08/2021	Number of financial intelligence reports sent to the Federal Police and the Federal Prosecution Service annually since 2012.	Information available in the COAF reports.
08225.000314/2021-12	COAF	19/08/2021	27/08/2021	COAF's legal competence to suspend suspicious transactions and the number of orders emitted since 2012.	COAF does not have the attribution to suspend suspicious transactions.
08198.027322/2021-81	PF	19/08/2021	24/08/2021	Annual number of inquiries started by the Federal Police to investigate money laundering – and how many were informed by	Request partially answered. Regarding the second question, the Federal Police does not have the capacity to identify the number of

				COAF's financial intelligence reports.	inquiries originated by COAF's reports.
312123	National Council of Justice (CNJ)	19/08/2021	25/08/2021	Number of courts specialized in money laundering and civil servants assigned to work in such courts.	Information partially available on the CNJ reports and website.
312127	CNJ	19/08/2021	26/08/2021	Number of individuals sentenced for money laundering annually.	Information unavailable.
312129	CNJ	19/08/2021	20/08/2021	Number of individuals serving a sentence for money laundering and the extent of their penalties.	Information unavailable.
312134	CNJ	19/08/2021	31/08/2021	Number of orders for asset confiscation and total value (article 91 of the Penal Code).	Information unavailable.
312135	CNJ	19/08/2021	08/09/2021	Total value confiscated (article 91 of the Penal Code).	Information unavailable.
2021007 0229	Federal Prosecutio n Service (MPF)	19/08/2021	06/09/2021	Annual number of inquiries started by the MPF to investigate money laundering – and how many were informed by COAF's financial intelligence reports.	Request fully answered.
2021007 0230	MPF	19/08/2021	06/09/2021	Number of prosecutors fully dedicated to investigating and prosecuting money laundering.	All prosecutors can potentially operate in investigations against money laundering.
2021007 0234	MPF	19/08/2021	06/09/2021	Number of money laundering lawsuits started by the MPF – and their respective outcome.	Request partially answered. Regarding the second question, the information was unavailable.
2021007 0237	MPF	19/08/2021	06/09/2021	Number of individuals	Information unavailable.

				sentenced for money laundering annually.	
20210070239	MPF	19/08/2021	06/09/2021	Number of individuals convicted for money laundering regarding xxx crimes committed abroad.	Information unavailable.
20210070246	MPF	19/08/2021	06/09/2021	Considering only procedures started after COAF's financial intelligence reports, how many individuals were convicted and what were their respective criminal charges.	Information unavailable.

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