



**THE SUM OF ITS PARTS:
COORDINATING BRAZIL'S FIGHT AGAINST CORRUPTION, 2003 – 2016**

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SYNOPSIS

In 2003, reform-minded civil servants saw an opening to combat pervasive corruption within the government of Brazil. A new president who had promised to end political graft had just come into office. The question was how to secure the right legal instruments, overcome lack of capacity, and create the coordination needed to detect, prosecute, and sanction wrongdoers. The reformers organized an informal, whole-government network to combat money laundering and corruption. They identified shared priorities, coordinated interagency policy making, and tracked progress. Leaders in the judiciary, executive, and prosecutor's service drafted enabling legislation, strengthened monitoring, improved information sharing, and built institutional capacity and specialization. Gradually, those efforts bore fruit, and by 2016, authorities were prosecuting the biggest corruption case in the country's history and had disrupted an entrenched political culture.



INTRODUCTION

In March 2014, Brazil's Federal Police arrested a former director of the state-owned oil firm Petrobras for his ties to a notorious money launderer. Aided by the ex-director's plea-bargain testimony, federal prosecutors and investigators unraveled a sprawling bribery and kickback scheme, revealing that Petrobras had colluded with a cartel of construction companies to inflate the prices of public contracts and then pay off politicians. Nicknamed Operation Car Wash (Operação Lava Jato) because the defendants used a currency exchange at a gas station in the capital city to move money, the resulting convictions upended Brazil's political system.¹

By November 2016, Car Wash was the biggest corruption case in Brazil's history. It had produced 175 arrests, criminal charges against 245, and efforts to recover US\$11 billion. Nearly 50 current and former lawmakers were under investigation. The operation shattered the sense of impunity embraced by the wealthy and powerful. And it provided the pretext for lawmakers to impeach President Dilma Rousseff in September 2016.

The groundwork for Car Wash and other operations was laid a decade earlier, when reform-minded corruption fighters in various parts of Brazil's government were beginning to grow more capable and better connected. In the early 2000s, increased media scrutiny was generating mounting public pressure on authorities to become more effective at tackling complex financial crimes. Key civil servants heeded the call.

The scale of Brazil's corruption problem was massive. For instance, fraud, graft, and bribery were pervasive in public contracting, with some reports suggesting that corruption consumed as much as 5% of gross domestic product.² Transparency International calculated that corruption, not drug money, accounted for 70% of money laundering.³

A 1998 anti-money laundering law had targeted the practices, but a 2001 study found that in the first three years after that law took effect, only 260 investigations had taken place and none had turned into criminal cases.⁴ Lacking the expertise to handle money-laundering and complex financial cases, judges put them on the shelf.

Although President Fernando Henrique Cardoso had backed the 1998 law, a string of scandals during his second term (1999–2002) raised widespread concern about lack of integrity in public administration. Responding to pressure, during its last years in office, Cardoso's government signed the United Nations Convention against Transnational Organized Crime (UNTOC) and the Organisation for Economic Co-operation and Development's (OECD's) antibribery convention. In 2000, Brazil became a full member of the Financial Action Task Force (FATF), an intergovernmental network that worked against money laundering and, later, terrorism financing. In 2002, Brazil ratified the Organization of American States (OAS) Inter-American Convention Against Corruption, and in 2003, it joined the United Nations Convention against Corruption (UNCAC). As a

signatory to those agreements, the country had to develop and implement policies to promote clean government.

Stanching high-level political corruption became a top priority when Luiz Inácio Lula da Silva assumed the presidency in 2003. A former steelworker of humble origin, Lula and his left-wing Workers' Party pledged to take concrete steps to fight elite graft and improve transparency in public administration.

The new president quickly provided top-level support for a loosely connected group of reformers in the executive branch and judiciary, some of whom were already working on ways to fight money laundering and grand corruption. These leaders ramped up efforts to frame and execute anticorruption agendas.

THE CHALLENGE

Whatever form the strategies took, their implementation would pose tough challenges. There were ample opportunities for graft at the time. Altogether, about 7.2 million civil servants worked in Brazil's federal government, 26 states, and municipalities. About 727,500 held positions at the national level.⁵ In 2003, the federal public employees handled expenditures totaling US\$172.4 billion, which was nearly one-third of the country's gross domestic product.⁶ The control of money laundering and financial crime would require increases in institutional capacity, sophisticated preventive laws and measures, specialized investigative teams, courts whose judges understood the sometimes arcane details of market transactions and, above all, effective coordination.

When Lula took office, however, Brazil had no single agency for detecting, investigating, prosecuting, and sanctioning corruption at the federal level; responsibilities spanned a web of institutions.⁷ The primary players were in three levels of federal courts (trial, appeals, and Supreme), the Ministério Público Federal (Federal Public Ministry) prosecution service, the Comptroller General of the Union (CGU), the Federal Accounting Tribunal, the Federal Police, and the Federal Revenue Service.

The Comptroller General of the Union that Cardoso had set up in 2001 as the government's anticorruption ministry had yet to effectively implement its mandates to audit federal spending and to sanction executive branch civil servants for wrongdoing. In 2003, when Lula came to office, the CGU "existed only on paper," recalled CGU deputy minister Jorge Hage. Although the office conducted audits, the audits served no purpose. "They just went straight into a drawer, and nothing would happen."

The CGU had few relationships with counterparts in other accountability agencies that could have used the audit information. If it received a complaint about wrongdoing in a ministry, it would bring the complaint to that ministry's attention. If the case was minor and involved a low-level employee, the ministry might open a proceeding and sanction the

employee. But, if the offense was major and involved higher-ranking civil servants, nothing was done.⁸

The Ministério Público Federal, too, failed to use the powers it had. Its mandate was to protect the collective rights and interests of society, such as in the areas of environmental defense, indigenous rights, and consumer protection. It could act in the public interest to prosecute political corruption cases in all branches of government. And the Constitution of 1988 gave the prosecutors high levels of autonomy and power, making them essentially a fourth branch of government, unaccountable to Congress, the president, or the judiciary—an arrangement common in Latin American countries.⁹ But before Lula's presidency, the prosecutor general, an appointee loyal to Cardoso, chose not to bring criminal cases against officials in the government.

Loopholes and omissions in Brazil's anticorruption legal framework posed another major challenge. For example, the 1998 anti-money-laundering law stipulated only eight criminal offenses that could trigger money-laundering charges, such as drug trafficking, terrorism, or kidnapping. Laundering of the illicit proceeds of other criminal activities, such as fraud or public graft, was not an offense under the law. And there were no laws regarding access to information, protection for whistle-blowers, criminalization of illegal enrichment, definitions of criminal organizations, or establishment of corporate liability.

But the biggest challenge was that the various components of Brazil's accountability system rarely cooperated on operations or policy making. Institutions needed one another to build and prosecute cases, yet agencies seldom worked together on task forces, nor did they share audits, asset declarations, or other evidentiary information. Further, there were few efforts to coordinate priorities, develop policies jointly, or create a whole-of-government strategy to fight corruption.

Improving interagency coordination faced significant hurdles. First, the Brazilian bureaucracy stifled cooperation. Formal rules hampered efforts to form high-level interagency working groups. Participants had to be of the same rank: for instance, a minister from one agency could not sit on a working group with a deputy minister from another. Further, under the constitution, both the federal judges and the federal prosecutors were independent from the executive branch, yet their help was essential to creating and implementing anticorruption policies. Antenor Madruga, a federal lawyer who headed the Justice Ministry's Department of Assets Recovery and International Legal Cooperation (DRCI) from 2003 to 2007, said, "You need them to implement an [anticorruption] strategy, but you can't impose it on them or compel them to join."

On the positive side, the civil servants at Brazil's accountability institutions were well compensated and got hired via highly competitive public examinations. The average yearly salary of public prosecutors in 2005

was \$92,748—not adjusted for inflation. Lured by high salaries and good benefits, a new generation of well-educated, activist judges, prosecutors, and auditors had entered public service.

FRAMING A RESPONSE

The seed of a solution to the interagency coordination problem emerged before Lula took office. In 2002, a small group of judges, prosecutors, and other law enforcement authorities developed a proposal to create specialized courts focused exclusively on financial crimes like money laundering. Federal judge Gilson Dipp presided over the group.

On assuming office the next year, Lula appointed a new justice minister, Márcio Thomaz Bastos, a successful and respected criminal defense attorney with connections across government. Having defended politicians and businesspeople, Bastos understood how the rich and powerful illicitly extracted and laundered public money.

Bastos saw Dipp's work as a model and began to set up what became the National Strategy for Combating Money Laundering and Corruption, known by the Brazilian acronym ENCCLA (initially ENCLA, pronounced *EN-CLUH*), an interagency forum launched in 2003 to foster coordination and joint policy making among public agencies in the fight against money laundering and, later, corruption.

In addition to backing that interagency effort, Lula appointed talented leaders who would lead anticorruption reforms in their agencies. At the fledgling Comptroller General of the Union, Deputy Minister Hage, a respected former mayor and federal judge, took on the job of building up the agency and setting a reform agenda. (Hage served as minister from 2006 to 2014).

The CGU had two divisions that existed in isolation from each other: the Federal Secretariat for Internal Control, which handled audits, and the Office of the Inspector General, which oversaw disciplinary proceedings against federal employees. Hage sought to connect the two so that the disciplinary boards could use audits in proceedings against civil servants. He added two more units as well: a Secretariat for Corruption Prevention and Strategic Information—which focused on prevention programs, transparency, and education—and the Office of the Ombudsman, which received complaints from whistle-blowers and the public.

The new structure enabled Hage and his team to pursue their main goals, including winning passage of a freedom-of-information act, carrying out more disciplinary proceedings and audits, and building an online transparency portal to encourage citizen monitoring of federal expenditures. (Textbox 1). President Lula fully supported the changes. He gave the CGU free rein to implement its vision, and he increased its budget to pay for more auditors and staff to fill the new units. “Lula supported every new measure we proposed,” Hage recalled.

For the important role of prosecutor general of the Ministério Público Federal, Lula broke with Cardoso's policy of appointing a loyalist. Instead, he allowed the prosecutors themselves to elect their candidate, thus creating an apolitical position that would let prosecutors pursue cases against government officials.

Also in 2003, Bastos created the Department of Assets Recovery and International Legal Cooperation within the Justice Ministry. The department would be the government's mutual legal assistance authority and would design and implement ENCCLA. Based on his experience in defending people accused of financial crimes, Bastos believed targeting money laundering and seeking asset recovery were the keys to fighting corruption. The UN Convention against Corruption also had those priorities.

To lead the DRCI, Bastos hired federal attorney Antenor Madruga, who as head of the international division in the Office of the Solicitor General had worked on Brazil's first successful case to recover assets from abroad. Madruga staffed the DRCI with about 50 career public servants and academics, and Bastos promised to use his considerable influence with Lula and Congress to protect the DRCI from political interference.

Textbox 1. Transparency Portal

In 2004, Brazil's Comptroller General of the Union (CGU) launched the Transparency Portal, an online platform that enabled anyone to view all federal expenditures. "At the time, no one had anything like it—not just in Brazil but worldwide," said one CGU director. The level of detail grew over the years to include social programs, the salaries of civil servants, and public contracts.

Early on, the portal published primarily information about federal transfers to the states and municipalities. The CGU lacked the staff and resources necessary to monitor *all* federal spending across the large, sprawling, and socioeconomically diverse country. CGU Deputy Minister Jorge Hage and his team realized they had to enroll the public as watchdogs, which meant giving people access to budgetary information. The portal was "a prerequisite for citizen control and participation," Hage said. Often, the mayors of small towns could embezzle federal funds because citizens didn't know the money was there. With the portal, citizens could see what their town had received and for what purpose.

The portal encouraged civil servant accountability. In 2007, public account statements published on the Transparency Portal showed that a minister had used an official government travel expense credit card to buy a sandwich in Brasília. The case caused a public uproar that appeared to have a measurable impact. In 2007, total travel expense credit card spending was 76 million reais (about US\$42 million at the time) and had been rising steadily each year; in subsequent years, such spending fell to an average R\$62 million (about US\$31 million).¹

The portal also helped engage the public in decision making. In the lead-up to the World Cup in 2014, the CGU published on the portal all spending related to the soccer tournament. The numbers provoked protests and a public discussion about whether the money would be better spent on schools and hospitals rather than soccer stadia.

Visits to the Transparency Portal rose steadily every year. In 2016, the portal had 9 million unique visitors.² The most effective use of the portal was by journalists. Several stories were published yearly about graft, fraud, and incompetence by using data from the portal.

¹ Otavio Castro Neves, CGU, interview.

² Otavio Castro Neves, CGU, interview.

Madruga worked with a small team to develop a strategic plan and design for ENCCCLA. The main priority was to foster interagency cooperation. Madruga and his team wanted to create a network that brought together certain authorities to set shared priorities, create policy ideas, and advance an agenda through the government. The problem was that the DRCI could not force the necessary actors to come together. The judiciary and federal prosecutors were independent of the government, and in keeping with bureaucratic rules, formal interagency government working groups could include only participants of uniform rank. “We needed the right people, not the right positions,” Madruga said.

Madruga and his team decided to borrow the so-called soft-law approach used by the multilateral Financial Action Task Force. The FATF relied on peer pressure and naming and shaming to prod member countries to adopt anti-money-laundering systems. That approach might work within a country, too, Madruga reasoned.

The team’s proposal called for ENCCCLA to convene an annual three- or four-day gathering of representatives from various organizations. The first one would take place at a hotel in Pirenópolis, a small city 150 kilometers from the capital. The meeting would be akin to a retreat where like-minded officials would share ideas and develop policies in an informal setting. They would eat meals together, have drinks at the bar at night, and build both personal and working relationships.

In the working sessions, delegates from the different institutions would come up with ideas and set priorities based on challenges they faced. They would then translate those ideas into concrete goals such as drafting a clean-companies law or standardizing bank account information, and they would assign agencies to implement them by year’s end. One or two agencies would agree to coordinate the work on implementation. And the final plenary, attended by high-level representatives from the various agencies, would then approve the goals.

Madruga and his team also proposed that ENCCCLA adopt decisions by consensus instead of by majority vote. The working-group meetings would be confidential so as to enable free discourse about sometimes sensitive subjects—like pending criminal cases. But the approved goals would be public. No one forced an agency to take on a goal, but if it did, it would be expected to fulfill that goal or face naming and shaming from the press and pressure from peers in ENCCCLA.

Madruga took the proposal to Bastos. He told the justice minister that the plan would work with the involvement of high-level agency representatives who had the authority to commit their institutions to goals. Bastos, who had connections and a reputation that gave him government-wide influence, had the job of persuading the right people to attend.

Political parties in Congress, which could have objected, put up scant resistance. Bastos’s backing was key to winning their support. As a criminal

defense attorney, Bastos had strong relationships in Congress—in part because several of the lawmakers were former clients. But more important, the sense of impunity within the political class was so absolute that many lawmakers believed ENCCLA would prove a paper tiger. The parties failed to grasp the threat of the government’s growing movement to address money laundering and corruption, of which ENCCLA was just one part. “They didn’t realize what was going on,” said Pedro Abramovay, special assistant to Bastos in the Justice Ministry. Coalitions of dedicated public servants were coalescing, connecting, and experimenting. For Brazil’s politicians, the consequences of that cooperation would eventually prove enormous.

GETTING DOWN TO WORK

Action to put the strategies into practice took off fast. As Bastos and Madrugá took steps to strengthen coordination, the Comptroller General of the Union, the federal courts, and other institutions built capacity, strengthened preexisting programs important to their aims—such as asset declaration and monitoring—and laid the groundwork for legislative reform.

Coordinating reform and tracking progress

Once they had designed ENCCLA, the organizers’ primary job was to get the right people on board. Madrugá, who had spent five years in the Solicitor General’s Office, knew who was in a good position to contribute. The challenge was to persuade those fellow public servants to attend the annual retreat and become part of the network. Madrugá and his colleagues used social pressure and network incentives to persuade resistant agencies to sign on. They portrayed ENCCLA as an elite club, intimating that agencies would lose influence if they failed to participate. Madrugá and his team further raised the level of involvement by inviting judges, prosecutors, and members of the Federal Police to join Brazil’s delegation to the UNTOC Palermo Convention implementation conferences in Vienna.

Bastos’s leadership was perhaps the major factor in the success of the approach. “He was the father of ENCCLA,” recalled Carolina Yumi, a federal lawyer and criminal justice scholar whom Madrugá had hired in 2003 and who later became deputy director of the DRCI, the assets recovery and international legal cooperation department. “Without him, we wouldn’t have ENCCLA,” she said.

At the same time that he was creating ENCCLA, Bastos was promoting ambitious reform of the judiciary and the Federal Police. (Textbox 2) His efforts convinced other agencies, especially judges and prosecutors, that he was serious about tackling corruption and that attending the ENCCLA gathering would be worth their time.

Textbox 2. Reforming the Federal Police

Before 2003, Brazil's Federal Police had a reputation for corruption and ineptitude. Justice minister Márcio Thomaz Bastos, a successful and respected criminal defense attorney, made reforming the institution a priority. During the first few weeks of his tenure, he asked President Luiz Inácio Lula da Silva to sign off on adding 5,000 officers and a budget increase to fund state-of-the-art equipment and higher salaries. Lula agreed. Shortly thereafter, the police launched its first big case, Operation Anaconda, which targeted corruption in the judiciary and within the Federal Police itself. That reform made an impression on prosecutors, judges, and other law enforcement agencies. The Federal Police launched subsequent operations—52 of them in a 12-month period beginning in 2003—with similarly splashy names, such as Sentinel (fraud among security companies that provided services for government), Vampire (fraud at the health ministry—specifically, in purchases of blood products), Ctrl+Alt+Del (cybercriminals), Freud (fraud in granting psychological disability pensions), Fiscal Adjustment (pension plan fraud), and Pinocchio (environment ministry employees who failed to act against illegal logging).

Source: See *OECD Integrity Review of Brazil: Managing Risks for a Cleaner Public Service*, OECD Public Governance Reviews, OECD Publishing, 2012, p. 65, and Mario Osava, "Brazil: The War on Corruption," Inter Press Service, December 13, 2004.

Furthermore, Bastos agreed to attend the entire four days of the first ENCCCLA gathering. That a minister as powerful as Bastos would participate sent a strong signal. The prosecutor general of the Ministério Público Federal and Dipp, the influential federal judge whose efforts had provided a model for the ENCCCLA network, also agreed to attend. "I don't think without the support of these three people that ENCCCLA would have been successful," Madruga said.

The first gathering took place in December 2003. More than 60 people attended, drawn from 28 agencies, the judiciary, the Ministério Público Federal, and the executive branch, including the Central Bank, the office of the president, the financial intelligence unit, and the CGU. It was the first time officials from all of those agencies had ever sat together at the same table to discuss the problem of money laundering and corruption.

Major priorities were to (1) create procedures and mechanisms for international and interagency coordination—especially in the areas of information sharing, communications, and information technology systems; (2) identify gaps in the legal framework; and (3) develop a training program under ENCCCLA's auspices.

The final plenary approved 32 goals for the year. The first was to develop a tracking system for monitoring progress toward the goals. The participants agreed to create the Integrated Management Office for the Prevention of and Fight against Money Laundering, a strategic-level body for tracking of implementation. Although the DRCI was the unofficial coordinator of the management office, several agencies were involved in it. Madruga knew that the prosecutors and judges would never submit themselves to oversight by an executive branch agency.

The agencies tasked with implementation of each goal decided among themselves how many times to meet and how to distribute the work. Every

two or three months, the agency coordinating work on the goal had to meet with the management office to report on progress. At the beginning of the next year's plenary, the group would point out which goals they had met.

Coordination of the fight against corruption and financial crimes required sharing data, especially bank account and tax information. At the first ENCCLA gathering, the Central Bank resisted calls to implement a standardized bank account information template and create a central database of account information investigative authorities could access if confidentiality was waived. The public prosecutors later pressured the bank into approving that proposal as an ENCCLA goal. The standard was already implicit in FATF, the international Financial Action Task Force, of which Brazil was a member. After the next year's plenary reported the goal had not been met, there were embarrassing headlines in the press about the bank's intransigence. By the succeeding ENCCLA meeting, the bank had created the database.

The first ENCCLA meeting also created the National Capacity-Building and Training Program to Combat Corruption and Money Laundering—in essence, a high-level continuing education program for participants. The DRCI, the unit responsible for asset recovery and international cooperation, recruited practitioners with experience or expertise to teach courses in case management, money laundering, investigative techniques, IT systems, international cooperation, and in other topics relevant to building corruption and financial crimes cases. A primary purpose of the program was to create a shared specialization, especially among public prosecutors, judges, and police working together in the same city. Another goal was to get key individuals involved in ENCCLA by recruiting them to teach courses.

Although domestic rather than international pressure drove the creation of ENCCLA, international conventions related to money laundering and corruption shaped the goals. “The influence of international commitments on building the agenda was enormous,” recalled Abramovay, special assistant to Bastos.

ENCCLA meetings produced high levels of understanding and mutual trust among the participants. Abramovay recalled that the four days at the hotel were “a bonding experience” and had created a real community by the end of the first year. The participants were like-minded and had been selected for their work and interest, not their official positions.

“Some meetings in Brazil are just pro forma,” recalled federal judge Fausto De Sanctis, an anti-money-laundering expert and regular ENCCLA participant. “ENCCLA had idealistic people who were trying to change the country because they were tired of corruption.” Although arguments sometimes broke out, Madruga remembered the dialogue as healthy and constructive. “There would be strong disagreements at meetings,” he said. “But then we would go have dinner together.”

The community created peer pressure, as Madrugá had hoped it would. If at the bimonthly check-in meetings with the management office it was determined that a group hadn't made any progress, the group would face questions and have to explain why. The expectation was that if a group said it would adopt a goal, it would deliver. And the stronger the relationships grew among the participants, the less one would want to disappoint peers.

Moreover, the public servants who attended the international meetings also felt accountable to their international peers. "I felt this," said Abramovay. "The power of the pressure that came from the bureaucracy—not from the ministers but from the bureaucrats who go on the international trips and stay one week with counterparts from other countries. It generated this personal mission to deliver."

ENCCLA quickly gained popularity as word of its efforts circulated through government. After the first gathering, several agencies asked the DRCI for invitations to the next one. The federal public prosecutors (the staff of the *Ministério Público*)—potentially the strongest source of resistance—instead became champions largely because they wanted a voice in shaping the policies the anticorruption network was developing.

Introducing specialization

In 2003, at the same time ENCCLA was being developed, Dipp brought the proposal for specialized financial crimes courts to the Council on Federal Justice, the federal judiciary's administrative and budgetary oversight body. But his novel idea ran into immediate skepticism. No other government in the world had specialized courts specifically for financial crimes.

The federal judiciary already faced a backlog and resource constraints. It would have to divert judges to run such special courts, meaning that others would have to pick up the load of nonfinancial crimes. But Dipp, who had practiced law for 20 years before becoming a judge, was persuasive. He sold the council on the merits of specialization, explaining that it was the best way to build the expertise and cooperation necessary to prosecute money-laundering and financial crimes cases. Over time, deepening familiarity with the issues could result in reducing the burden. He also argued that the courts had enormous potential to increase the judiciary's political capital and bolster its public image by handling big, high-profile national cases.

Setting up the courts was an administrative matter that required no enabling legislation. Within two days, the first three courts had been created in Curitiba, Porto Alegre, and Florianópolis, the capital cities of Brazil's three southernmost states. Slowly, the council persuaded criminal court judges in other cities to adopt this innovation as well.

The creation of the special courts sent a clear signal that other law enforcement agencies should build their own capacities for handling financial crimes. "Judges would specialize, which also obliged prosecutors to specialize, which made the Federal Police specialize," recalled Dipp.

“Everyone had to specialize, and so you didn’t have amateurs improvising anymore.” The Ministério Público Federal and the Federal Police assigned personnel to each court to work exclusively on financial crimes. The capacity-building and training program also focused on topics important for understanding complex financial crimes and combating money laundering.

Gradually, prosecutors, the Federal Police, and specialists from the law enforcement arms of other agencies such as the Federal Revenue Service worked with federal judges in the specialized courts to assemble major cases. Because all of them were assigned to the same court and had similar work to do, they could cooperate more effectively and refine their practices.

Prosecutors filed the biggest cases in Judge De Sanctis’s special court in São Paulo and in Judge Sérgio Moro’s Curitiba court, which would eventually handle the Petrobras kickback cases under Operation Car Wash. Both judges developed workarounds to overcome an inadequate legal framework. The most consequential of those ad hoc methods was the plea bargain, which Moro first used in 2003. (Textbox 3)

Monitoring spending

Throughout the 2000s, Brazil’s two main audit institutions—the CGU, which conducted internal executive branch review, and the Federal Accounting Tribunal, the supreme audit agency that enabled Congress to exercise external oversight—became more effective, more technically capable,

Textbox 3. Plea Bargains

In Brazil, the plea bargain had scant precedent and no basis in statute when federal judge Sérgio Moro first used it in a 2003 money-laundering case. A plea bargain enabled a defendant to plead to a lesser offense or be charged with fewer counts of an indictment or get a reduction in penalties in exchange for information that would help break a code of silence and enable prosecutors to investigate other crimes.

The judges and some of their colleagues saw the process as a potential breakthrough. They studied how counterparts had used it in the massive Clean Hands corruption case in Italy. They also visited the US Department of Justice to learn more.

Though agreements were entered into voluntarily, the possibility of pretrial detention for flight risks or those suspected of destroying or concealing evidence gave defendants an incentive to turn state’s evidence. Plea bargain testimony was not sufficient to establish guilt and secure a conviction as it would be in a US court. It could, however, identify other suspects and open the door to protected evidence, such as bank accounts and phone intercepts.

Until 2013, judges turned to the inherent powers of the court to adopt collaboration agreements between prosecutors and defendants, but passage of the law on criminal organizations codified the practice. Most defense attorneys opposed the use of plea bargains, arguing that—especially when coupled with pretrial detention—plea bargains were coercive and foreign to Brazilian law. But many came around when they saw that collaboration lessened their clients’ sentences.

Plea bargaining was a game changer in corruption cases. It enabled prosecutors to advance up the chain in a criminal organization, and it helped move cases more quickly through court. As of December 2016, 71 suspects involved in the Petrobras bid-rigging and kickback case had signed plea bargains with federal prosecutors.

and more influential. As with ENCCLA and the special financial courts, strong, credible leadership mattered—though less so at the Federal Accounting Tribunal, which was led by a council of ministers. For both, new avenues of formal and informal cooperation were instrumental for reporting and sanctioning malfeasance.

Hage had shepherded the reorganization of the CGU into four units. The primary and largest unit was the Secretariat of Internal Control, or audit division. It was operational when Hage arrived at the CGU in 2003, but his goal was to see that the audits it produced were put to use. The key to success was cooperation—both internal and external. Hage integrated the CGU’s monitoring and sanctioning activities so that audits went to the Inspector General’s disciplinary boards for use in administrative proceedings against public agents. Hage also started building outside partnerships with the federal prosecutors, the Federal Police, and others involved in corruption investigations, such that those agencies would depend on the CGU and its audits.

Initiating the partnerships was not always easy. No law forbade information sharing, but agencies feared that doing so would reduce their own power and influence. Hage said he and his team spent a lot of time trying to persuade agencies that partnerships were in everyone’s interest. “There was no other way to face the enemy,” he recalled telling them. “If we go on with individual efforts, we will always lose the battles. We have to stick together.” That argument generally worked. It also mattered that it was coming from Hage, who commanded respect and credibility across the government. Hage’s reputation and leadership helped convince agencies outside the executive branch that the CGU was serious about fighting corruption.

The CGU cemented some of the partnerships by way of exchange agreements. Soon it was sharing every corruption-pertinent report from the audit division and disciplinary boards with the federal prosecutors and the Federal Police, so that they could determine whether a criminal or civil offense had occurred. Then those agencies began coming to the CGU to request audit reports or to report suspected wrongdoing in executive branch agencies.

The CGU also worked with the Federal Accounting Tribunal, which audited public accounts, including those of the ministries and the president. The 1988 Constitution required the executive branch to submit its audit reports to Congress. The audits could spot problems that might signal corruption risk. (Textbox 4)

At the beginning of every year, the two institutions worked together to prioritize which executive branch agencies and programs to audit. That collaboration eliminated redundancies, although the CGU took on additional tasks once the agenda had been set. The Federal Accounting Tribunal also

Textbox 4. Audits

Brazil's Federal Accounting Tribunal started to routinely review public works spending in the late 1990s, after media had assailed the tribunal for failing to notice the disappearance of US\$100 million earmarked for the construction of a courthouse in São Paulo. In response, the audit courts began selecting 200 to 300 public works projects for annual audits. The Federal Accounting Tribunal classified irregularities by degree; in egregious cases, it could order a halt to spending on a project (though such orders were subject to presidential review). As the reform movement took off, Congress approved a budget increase for the audit courts, which in 2003 started adding 100 auditors a year for five years. And as of 2016, the audit courts had approximately 3,000 staff, 2,000 of whom were auditors.

The tribunal built capacity throughout the 2000s by adding personnel and specializing its workforce. It chose staff through public selection and paid employees well. Only the nine tribunal decision makers, called ministers, were selected differently. Three were appointed by the Senate, three by the lower house, one by the federal prosecutors, and two by the president (though only one at his sole discretion; the other came from a list compiled by career auditors at the Federal Accounting Tribunal). The ministers served for life or until age 75 years. Decisions were by majority vote.

began to more frequently share information requested by the Federal Police and the federal prosecutors.

Pushed by a group of senior career auditors, the ministers signed off on a plan to specialize and to recruit new personnel from the private sector. The tribunal hired engineers who could assess the quality of road-building materials, identify line items in the construction of a stadium, and recognize when a renovation project was over budget. From experience, many of those people knew the typical ways construction companies cut corners and cheated. In addition, the tribunal poached people from tech companies so it could build expert knowledge in both IT systems and governance.

As its expertise began to grow, the tribunal helped ministries improve contract drafting standards and skills in public administration.

Stumbling over asset declarations

Brazil's Administrative Improbability Law of 1992 required all public officials—ranging from civil servants to employees of state-owned enterprises—to submit an asset declaration to their respective agencies every year and to update declarations upon leaving a job or taking a new position. But compliance was poor, there was little effective oversight, and there was an expectation within the civil service that only senior government officials had to submit the declarations.

In 2005, acting on a recommendation from ENCCLA, Lula ordered all federal executive branch workers to submit to their agencies an annual declaration of all real estate holdings, durable goods, cash, securities, and any other assets held in Brazil or abroad, as well as those belonging to a spouse, companion, child, or dependent. The decree authorized the CGU to scrutinize the declarations.

Public workers already included asset and income information in their annual tax forms submitted electronically to the Federal Revenue Service. The 2005 decree said they could print the asset and income declaration sections of their tax forms and submit them to their agencies, from which the CGU could then obtain the information required. However, that system was burdensome for the CGU, which didn't have the staff to manually process declaration forms from the approximately 500,000 employees in the federal executive branch.

Fortunately, the decree also allowed workers to sign waivers authorizing their agencies and the CGU to access their annual tax forms from the Federal Revenue Service. Nearly every civil servant chose to sign a waiver.

But there was an additional hurdle. In principle, the CGU could access and analyze the asset declarations electronically. But the Federal Revenue Service's data system was incompatible with the CGU's because the two had developed their systems by using different programming languages. Many agencies had the same Babel problem; at ENCCLA, tasks that involved integrating IT and databases had the lowest rates of implementation.¹⁰

The CGU asked the Federal Revenue Service to grant access to its database. But there was no way to restrict that access to just government workers, so the Federal Revenue Service refused, saying such access would violate the privacy rights of ordinary Brazilian citizens. Stalemated, the CGU continued to receive paper declarations that went unprocessed due to weak staffing.

In 2013, Mario Spinelli, former secretary of corruption prevention at the CGU who was seconded to become comptroller general for the city of São Paulo, pioneered an electronic asset declaration system separate from that of the Federal Revenue Service. City officials could upload pdfs of their tax forms into the system. And the mayor decreed that civil servants who didn't submit declarations would lose their next month's pay. Under that system, Spinelli uncovered a 1-billion real (US\$489-million at the time) tax fraud—bribery scheme operated by city Revenue Service auditors. At the next year's ENCCLA meeting, Spinelli and a CGU colleague proposed adopting the São Paulo system at the national level. The participants adopted the proposal in 2014, but as of 2016, it remained at the planning stage.

The Federal Accounting Tribunal had concurrent authority to review asset declarations. It received annual declarations directly from the president, vice president, ministers, cabinet members, and members of Congress. Like the CGU, it, too, had a mandate to analyze the asset declarations of lower-level civil servants, which it received as paper copies of annual tax forms.

Though the tribunal had more staffing available to check the declarations than did the CGU, it usually did not do so unless there was reason to suspect a problem. If auditors noticed a discrepancy, they could ask the Federal Revenue Service to investigate. The service had sophisticated means of cross-checking information in the tax filings of one individual or

one company against those of others. However, the service was interested primarily in tax evasion and assisted only if engaged on a task force or asked by prosecutors, the Federal Police, or the Federal Accounting Tribunal to investigate a specific criminal case.

Publicizing and enforcing standards

Although the Constitution of 1988 set stringent limits on civil servant behavior and stipulated harsh penalties for violations, the rules were not publicized among civil servants and were rarely obeyed or enforced. In 1994, President Itamar Franco had issued a code of conduct for all civil servants. But like the provisions in the Constitution, the code went unenforced. The code also lacked adequate conflict-of-interest provisions.

In 1999, Cardoso created a seven-member Public Ethics Commission to enforce the code throughout the civil service's upper echelons. The commission had no authority to sanction or dismiss civil servants, but it did set specific standards and helped make civil servants more accountable to the public. Commission members met with government agency heads to encourage them to set up their own internal control mechanisms, codes of conduct, and ethics review panels. By 2003, an estimated 86% of public sector organizations had enacted their own codes of conduct.

But Lula made the commission a low priority. It operated for nearly three years—from 2006 to 2008—with only three members and with just two members for part of 2008. Rousseff, who served as president from 2011 to 2016, restored the commission to seven members, and the group continued to advise senior public servants and private companies on conflicts of interest and potential code violations. The ethics commission could provide useful guidance on code-of-conduct compliance but had no power to sanction public agents for corruption.

The CGU also provided advice and guidance through one of its secretariats. But unlike the ethics commission, the CGU had disciplinary boards with enforcement powers. The boards meted out administrative penalties for wrongdoing and in the severest cases, dismissed civil servants and axed their pensions. In essence, the disciplinary boards fulfilled the same role as the agency ethics commissions. “Most unethical conduct is also an administrative offense,” said Luiz Navarro, deputy minister under Hage at the CGU and later a member of the Public Ethics Commission. In some cases, ministries or agencies would try to shield their own people from CGU disciplinary boards by sending cases to their own ethics panels or commissions instead.

Hage and his team transformed the civil service disciplinary system in 2005 by creating a National Disciplinary Board within the Inspector General Secretariat. Three boards were under the national board: infrastructure affairs, economic affairs, and social affairs. Beneath those three were inspectorates responsible for each relevant ministry or agency.

CGU disciplinary board staff reviewed administrative wrongdoing cases under way in the ministries and agencies. If an institution's own internal affairs unit was failing to prosecute a case effectively or if the case was complex or egregious, the CGU would take responsibility. The proceeding followed due process, and the accused had the right to an attorney. The board would rule on the case, and the minister of the CGU would either endorse or reject that ruling.

A disciplinary board also could start its own proceedings based on complaints that came to the CGU ombudsman or other accountability agencies, such as the Ministério Público Federal. Unlike civil and criminal cases, in which the courts could take years to issue final rulings, administrative proceedings moved relatively quickly, usually taking less than a year from start to finish. After each disciplinary proceeding concluded, the CGU sent a report to the federal prosecutors and the Federal Police, which would determine whether a civil or criminal case should also be brought.

Starting in 2007, the CGU began to sanction companies that contracted with the government. Though not an explicit part of the CGU's mandate, Hage said he and his aides determined they had to monitor corruption on "both sides of the counter"—meaning, the agencies and ministries that issued public contracts and the companies that fulfilled them. State-owned enterprises and private companies posed greater corruption risks than the ministries did because they handled more money and were less stringently monitored. For instance, in 2013, state-owned enterprises alone held US\$756.8 billion in assets, representing nearly one-third of Brazil's gross domestic product.¹¹

Having no consistent legal framework to punish companies that engaged in corrupt practices, the CGU improvised by applying the federal procurement law to bar companies from receiving federal contracts. In 2006, for example, a Federal Police operation revealed a public fraud and bribery scheme operated by a large construction company. The CGU worked with the Federal Police and conducted audits to build a disciplinary proceeding case against the company. Although no legislation authorized the CGU to sanction companies for corruption, the procurement law permitted the government to bar from receiving future contracts any companies that failed to fulfill the terms of government contracts. In 2007, the CGU used the law to bar that large construction company from federal government contracts for two years—tantamount to a death sentence, given how highly dependent construction companies were on public tenders.

The CGU's Secretariat for Corruption Prevention also began working to get companies to adopt and comply with codes of conduct and anticorruption standards. In 2009, the CGU distributed OECD antibribery convention standards to Brazil's leading export companies.¹² In 2011, the secretariat formed a partnership with nongovernmental organization Ethos to certify companies that adopted compliance systems. The CGU

disseminated a list of guidelines and gave a seal of approval to companies that implemented the standards.

Filling gaps in the law

Starting in 2003, several accountability institutions conceived, drafted, and advanced laws to empower the fight against corruption. The laws emerged as institutions encountered situations that pointed out holes in the existing anticorruption legal framework, often providing a firmer foundation for temporary workarounds. International pressure to comply with treaty obligations also spurred the government to fill gaps.

At the first few gatherings of ENCCLA (ENCLA at the time) from 2003 to 2005, participants set a legislative agenda. At the top of that agenda was amendment of the 1998 anti-money-laundering law. As it stood, only eight serious crimes were in place as offenses that could trigger money-laundering charges. Led by the DRCI and the financial intelligence unit, the ENCCLA working group proposed changing the law so that any misdemeanor or felony could be a so-called predicate offense that could pave the way for money-laundering charges. The group also proposed changing asset recovery in money-laundering cases from a criminal to a civil proceeding, because civil proceedings had shorter appeals processes and moved much more quickly.

In 2008, ENCCLA sent the bill to Congress via the president's office. The next year it sent a bill on criminal organizations, formulated by various ENCCLA working groups that included prosecutors and judges. Most important, that draft bill defined plea bargains, which prosecutors and activist judges in certain special financial-crimes courts had been using without reference to a specific law authorizing the practice.

Negotiating a bill within ENCCLA before sending it to Congress helped iron out issues and neutralize special interests from within the government.

Textbox 5. Education and Awareness

In 2006, the Comptroller General of the Union's (CGU's) Secretariat for Corruption Prevention and Strategic Information launched education programs to teach children anticorruption norms. The CGU partnered with the publisher of *Turma da Mônica* (*Monica's Gang*), a comic book franchise popular with Brazilian children since the 1960s, to create a series of comics, board games, and workbooks that emphasized ethical, pro-civic behavior.

The CGU distributed the materials, along with guides for teachers, to schools across the country. The target audience consisted of children 8 to 11 years old. In 2015, the program reached 180,000 students—a small portion of Brazil's under-15 population of 47 million. To expand the program's reach, the CGU, with the Ministry of Education, planned to build a digital version of the series with games and videos.

The CGU also held annual drawing and essay competitions based on anticorruption themes. In 2015, 500,000 students submitted either drawings (for primary school students) or essays (for high school students) on the theme of petty corruption. The CGU judged the best submissions and awarded prizes—usually, portable media players, pocket computers, and other electronics that had been seized by the Federal Revenue Service in tax evasion cases.

And the ENCCLA imprimatur conveyed government-wide, bipartisan support. “If a bill arrived in Congress that had been well made at ENCCLA, it was pretty much guaranteed to pass,” said Abramovay, former special assistant to Bastos.

The CGU also needed more-nuanced laws to address wrongdoing by companies that did business with the government. Public contracts represented the lifeblood of many Brazilian companies—especially ones in construction and engineering—and cutting a company off was a potential death sentence. But by prosecuting and blacklisting companies that participated in graft and money laundering or other financial crimes, international obligations had steadily increased the pressure on Brazil’s government to levy that sentence. The OECD antibribery convention, the OAS Inter-American Convention Against Corruption, and UNCAC all required state members to impose penalties on companies that offended those standards. The CGU drafted a clean-companies law that would establish direct corporate liability, create the possibility of recovering assets, and specify a wider array of sanctions to levy against companies that engaged in bribery or fraud or that otherwise benefited from corrupt practices.

After surveying the opinions of legal experts, the CGU chose to make punishments administrative rather than judicial, given the slowness of the judiciary to implement criminal sanctions. The draft bill also stipulated leniency for companies that worked with the CGU to adopt a code of conduct and a compliance regime.

With the help of civil society organizations, the CGU also drafted a freedom-of-information law that tried to improve on a similar provision in the country’s 1988 constitution. Director of Transparency Brazil Claudio Abramo and CGU deputy minister Luiz Navarro worked together on the language and encouraged the president’s office to include the bill as one of Lula’s 2006 reelection campaign promises. The bill faced resistance from within the government—particularly from the Ministry of Defense and the Ministry of Foreign Affairs, which argued that the disclosure of classified documents would damage national security and harm Brazil’s reputation. The law that passed allowed denials—with justification—and permitted redaction of sensitive information.¹³

Those four pieces of legislation—the changes to the anti-money-laundering law, the clean-companies act, the access-to-information law, and the law on criminal organizations—all passed Congress during 2011 to 2014, the first years of Rousseff’s presidency.

Public pressure played a role in enabling the passage of anticorruption laws. In 2013, a modest increase in bus fares sparked protests that exploded into the largest mass demonstrations against the government in 20 years. In part to mollify the protesters, Rousseff’s government pushed through both the clean-companies act and the law on criminal organizations within a span of six months.

OVERCOMING OBSTACLES

Although strong leadership and effective coordination led to more criminal-corruption prosecutions starting in the mid 2000s, the rich and powerful were still able to elude jail. Slow decision making by the Supreme Court, changes of leadership, political crisis, and a backlash from politicians vulnerable to the anticorruption movement frustrated progress.

The Supreme Court

One obstacle was the 11-member Supreme Court, which in 2009 *The Economist* called “the most overburdened court in the world.”¹⁴ The court moved extremely slowly, and one of the consequences was that the statute of limitations sometimes ran out before the Supreme Court ruled in a case. In Brazil, the time the statute of limitations covered ran from date of arrest through final appeal instead of to first trial court judgment.

The 1988 Constitution provided that only the Supreme Court could hear cases against members of Congress, cabinet members, the president, and other high officials (though not governors or mayors). It also constitutionalized many types of offenses. Combined with Brazil’s generous appeals process, the provisions meant that at least on paper, the court received an exceptional number of cases (more than 100,000 in 2008), though many of them were writs of habeas corpus or procedural motions—common in civil law systems—that did not require protracted amounts of time. Each judge also had auxiliary judges in chambers to help ease workloads.

The court was also awkwardly situated to handle major corruption cases that involved high officials because it was fundamentally an appeals court, not a trial court. Many of its judges had limited experience at the trial level.

In response to growing pressure from the public and the media, the court gradually took several actions to reduce the problems. Beginning in 2004, it adopted the practice of discretionary review; that is, it could choose to hear only appeals that had national significance. It also reduced the number of judges required to hear a case and created a rule that if 8 of 11 judges on the court said a precedent was binding, then the parties to a case could not continually appeal unless there were real reasons to believe the precedent was wrong or did not apply. In 2016, the court issued a ruling that those convicted of crimes had to start serving their sentences after the first appeal—before any decision by the Supreme Court.

Although many of those changes were possible under the court’s existing authority, ENCCLA stepped in to assist with others. An ENCCLA goal in 2005, for instance, was to draft a bill lengthening statutes of limitations. The proposal was still under discussion in Congress in 2016.

Waning leadership

When Bastos left government in 2007, ENCCLA was a respected, credible assembly. But during the next few years, its importance began to fade, partly because it had accomplished its primary goal and built an informal network that could operate on its own.

With Bastos gone, the Justice Ministry was less committed to maintain ENCCLA as a high-level policy-making space. Senior representatives stopped attending ENCCLA meetings, and lower-level officials, who lacked decision-making authority, had to take the goals back to their respective agencies, where the proposals often languished.

As a feeling of stagnation set in, the DRCI, the office that handled asset recovery and international cooperation, began developing a reform plan to revitalize and reenvision ENCCLA. In 2015, it proposed a new strategy that tightly linked annual action plans to eight overarching goals that spanned prevention, detection, and punishment.

To bring new energy, the DRCI invited civil society groups to participate in ENCCLA working meetings. It introduced new methodologies for tracking the implementation of goals and measuring *outcomes*, not just *outputs*. It also developed an ENCCLA scale to measure the level of transparency of each government agency based on how quickly the agency responded to freedom-of-information requests, what data it made publicly available online, and how well it complied with international transparency standards.

By the end of 2016, however, the plan was still stalled as a result of political turmoil. In what the Workers' Party decried as a constitutional coup, Congress impeached Rousseff for budget accounting malfeasance. The Senate removed her from office on September 1, 2016, and for the first time in 13 years, the Workers' Party was out of government. Dueling protests wracked a starkly divided country, and the intense political polarization affected the coalition of accountability institutions. "It badly damaged the spirit of the partnership," CGU minister Hage said in 2016.

Turf wars arising from the poorly defined terms of leniency agreements in the clean-companies law also contributed to disharmony—especially between the CGU and federal prosecutors. The law gave the CGU the authority to make leniency agreements with companies, but it said nothing about whether other agencies had to honor them. It meant that a company could sign an agreement with the CGU outlining administrative penalties, but then the prosecutors could pursue their own civil proceedings against the company.

Ideally, the prosecutors would make plea bargains with individuals, the CGU would make leniency agreements with companies, and the two agencies would work together to share information and honor each other's agreement. But the possibility for cooperation ended in 2014, when the prosecutors made a leniency agreement with a company involved in the Car Wash

investigation. After the fact, the prosecutors asked the CGU to honor the agreement and refrain from creating its own with the company. The CGU refused.

The prosecutors went to the media and accused the CGU of acting on behalf of the companies in an attempt to sink the Car Wash investigations. The prosecutors decided they would negotiate leniency agreements on their own, even though they lacked a firm grounding in law and could be challenged in court.

Political turbulence, too, hampered the CGU. Most of the staff were technocrats chosen by public selection, but the executive determined the budget and the chief minister served at the pleasure of the president—with no structural insulation from political pressure.

Hage had the credibility, reputation, and integrity to withstand political pressure and give the CGU an image of independence across government. But in 2014, he resigned, and the CGU lost its image of impartiality. From 2014 to 2016, the CGU had four different chief ministers, one of whom resigned after only two weeks as the result of a leaked recording on which he was heard giving a business executive advice on how to skirt a corruption investigation. The CGU almost lost its ministerial status.¹⁵

Throughout that period, the CGU and the Federal Accounting Tribunal struggled to win compliance from companies.

The biggest problem was also the biggest company: energy giant Petrobras. Part state-owned enterprise, part publicly held entity, the company was riddled with conflicts of interest. For instance, the president often appointed politicians to the board of directors. Although the directors had a fiduciary obligation to shareholders because Petrobras was listed on the New York Stock Exchange, the directors were also responsive to the president's political interests.

Petrobras resisted audits by the Federal Accounting Tribunal, claiming information about its technology and its contracts was commercially sensitive or otherwise protected under secrecy provisions. Because of its importance to the nation's economy, Petrobras received special treatment from the government. An exemption to the procurement law freed the company of the obligation to hold competitive public tenders and gave it total discretion in selecting suppliers. In 2008, Federal Accounting Tribunal auditors discovered irregularities in a US\$32-billion refinery project contracted by Petrobras. Although the nine tribunal ministers voted to suspend the contract, Lula vetoed the decision, and the project went ahead.

ASSESSING RESULTS

By 2013 there were 25 special financial-crimes courts in 15 of Brazil's 26 states. An FATF evaluation determined the courts had "significantly improved" Brazil's ability to prosecute money-laundering and financial crimes.¹⁶ Brazil had seized US\$3 billion in illicit assets overseas.¹⁷

Operation Car Wash, the investigation into the massive bid-fixing kickback scheme centered on Petrobras, demonstrated the success of Brazil's strengthened and coordinated anticorruption institutions. Prosecution of the case would not have been possible without the specialized financial crimes courts. During a decade of trial and error, the judge, prosecutors, and police had developed the expertise, working relationships, and case management skills to successfully run the investigation.

The establishment of ENCCLA and its staying power exceeded the expectations of its founders. "It surprised us—the acceptance that it had," recalled DRCI director Madruga. The soft-law mechanism was effective for developing and implementing reforms. One researcher found that of nearly 200 goals adopted by ENCCLA from 2007 to 2010, more than half had been implemented.¹⁸

More than 15,000 prosecutors, judges, police officers, and other accountability agents attended courses sponsored by the National Capacity-Building and Training Program to Combat Corruption and Money Laundering. Despite continuing incompatibilities, the databases and IT systems developed at ENCCLA helped agencies share information and apply analytic tools to parse financial data and evidence. And several pieces of ENCCLA legislation, sometimes drafted by the judges and prosecutors who would use them, became law, including important changes to anti-money-laundering laws and laws on criminal organizations. Other important legislative measures ENCCLA drafted reached Congress slightly later and were under discussion at the time the Petrobras scandal broke: measures such as whistle-blower protection, criminalization of illegal enrichment, and a provision to extend statutes of limitation are notable examples.

But the greatest result from ENCCLA was less measurable. "The main asset of ENCCLA is the informal network," said Yumi, deputy director of the DRCI. "It is very important for everything we do. You can't measure the impact of it." Prosecutors, judges, the Federal Police, auditors, and other accountability agents built relationships and learned how to work with one another.

Even though ENCCLA had diminished as a decision-making body by 2016, the organization remained useful as a place for discussion and debate among experts—a policy institute of sorts. "It's still important, but it's not as important as it was before, because now we have the instruments—real tools that work in a more stable way," said Judge De Sanctis.

The CGU's disciplinary boards were effective in sanctioning public servants who committed corrupt acts. The CGU also improved coordination with other agencies and created the mutual dependence Hage had envisioned. From 2005 to 2015, the CGU dismissed or, in the case of retirees, abolished the pensions of 5,659 public agents in the federal executive branch.¹⁹ According to the CGU, other agencies asked for its help 2,000 times in 2010 alone, a fivefold increase from 2004.²⁰

Monitoring capacity at accountability institutions rose steadily throughout the mid-to-late 2000s. The audit courts completed more than 8,000 control and oversight processes in 2010—up from 6,200 in 2006, when it began a program to add 100 auditors a year.²¹ Political scientists Matthew Taylor and Sérgio Praça reported that the number of personnel in accountability institutions more than doubled from 1989 to 2012.²²

REFLECTIONS

Much of the change in Brazil's anticorruption system was driven by the enterprising and committed efforts of well-paid, meritocratically selected public servants. Young federal judges, prosecutors, investigators, auditors, and ministry staffers strove to uphold the rule of law and improve their country's public administration.

Reformers built a successful forum for interagency coordination by making its structure informal and participation voluntary. Whenever possible, the institutions drew on authority they already had instead of seeking new laws or regulations. Key public servants, persuaded by credible leaders, simply chose to spend their free time coming together to advance the fight against corruption. After dedicated leadership got ENCCLA off the ground, a clever design and considered personnel selection made it sustainable.

Although some new legislation went to Congress for a vote, success at that level depended on the president's support. Despite his 2002 campaign pledge and support for reform-minded ministers, President Luiz Inácio Lula da Silva and his government introduced few pieces of accountability legislation. It was Dilma Rousseff's government, at times spurred on by public demonstrations, that drove passage of major transparency and accountability laws.

Despite the progress made by Brazil's accountability network, persistent graft in the political system raised questions about whether the strategy did anything to address the underlying causes of the malady. Though it built a coalition capable of detecting and punishing wrongdoing in the public administration, the government did little to reform the electoral system or tamp down a corrupt political culture pervaded by a sense of impunity.

Lula was emblematic of the problem. In 2005, his government became the target of the anticorruption drive he had sponsored. Investigations revealed a bribery and money-laundering scheme known as *mensalão*, or *big monthly payment*, a reference to the US\$12,000 monthly stipend Lula's government was paying lawmakers in exchange for legislative support. More than two dozen were convicted, among them Lula's powerful chief of staff. Though Lula remained popular and won reelection in 2006, the cases came to trial during his second term, casting a cloud over his administration. But for the anticorruption fight, *mensalão* was a breakthrough: In 2010, for the first time in the democratic era, a sitting politician went to jail.

In 2016, Lula was charged with corruption and ordered to stand trial for allegedly receiving kickbacks from Petrobras. “Lula’s problem was that in order to have access to power, given Brazil’s political system, he had to use the same means and strategy that everyone else had always used and that is still being used today, which means getting money from the companies,” Comptroller General of the Union Deputy Minister Jorge Hage said. “To build coalitions you need financial support, and that comes from companies. That’s exactly what everybody else does. But it was never investigated and labeled as a crime.”

But after first *mensalão* and then Operation Car Wash eroded that sense of impunity, lawmakers—who, out of either ignorance or arrogance, had paid little attention to the growing anticorruption movement and had passed the 2013 laws—began to fight back. In 2016, according to Pedro Abramovay, special assistant in the Justice Ministry, the success of Brazil’s anticorruption efforts came down to the answer to the question, “Will the institutions be able to defeat the system, or will the system throw cold water on the whole thing?”

EPILOGUE

At the end of 2016, Operation Car Wash was set to expand: federal prosecutors on the task force announced they had signed a leniency agreement and made plea bargains with nearly 80 executives from Latin America’s largest construction company, which allegedly had an entire division dedicated to disbursing and tracking bribes. The company agreed to pay more than US\$2 billion in fines, and plea bargain testimony was expected to implicate as many as 200 additional politicians, including Brazilian president Michel Temer.

The legislature moved to undercut the Car Wash case. Acting in the middle of the night as the nation grieved for a beloved soccer team that had perished in a plane crash, the lower house of Congress passed a dramatically revised version of a Ministério Público Federal–proposed anticorruption bill stipulating criminal liability for judges and prosecutors who committed “responsibility crimes” such as engaging in politics, commenting on a pending trial, or insulting a defendant. The prosecutors and the judiciary appealed to the public, arguing the bill would spell the end of Operation Car Wash. The Senate shelved the bill after protesters took to the streets and after the Supreme Court ruled the changes were unconstitutional.

Then, on January 19, 2017, the day before hearings were set to begin to reveal the construction company’s plea bargain testimony, the Supreme Court judge overseeing the Car Wash case died in a plane crash. No evidence of foul play immediately emerged. But with Temer set to nominate a replacement, the future of the case was uncertain.

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