



What can African countries learn from Brazil's inclusive growth and development?

Research briefing:

## **Brazil: Tackling Corruption through Institutional Multiplicity**

### **Summary**

- Brazil possesses an impressively comprehensive array of anti-corruption laws, but corruption continues to undermine economic growth and public trust in government institutions within the country.
- While the institutions responsible for monitoring and investigating corruption-related offenses in Brazil have taken increasingly active roles in the past decade, core structural and procedural deficiencies in the judiciary have frustrated attempts to punish those who have engaged in corrupt acts, thus undermining the entire system of accountability.
- The multiplicity of Brazil's monitoring and investigating institutions may explain the performance improvements observed in the last decade.
- Institutional multiplicity seems to have promoted competition, compensation, collaboration and complementarities in monitoring and in investigation, improving the overall performance of the system.
- Institutional malleability has enhanced the potential benefits of institutional multiplicity in Brazil.

### **Anti-Corruption Mechanisms in Brazil**

At the core of any effective strategy to combat corruption lies a strong system of accountability to discover and sanction those who participate in corrupt actions. Accountability institutions perform three primary functions:

- (1) oversight
- (2) investigation
- (3) punishment.

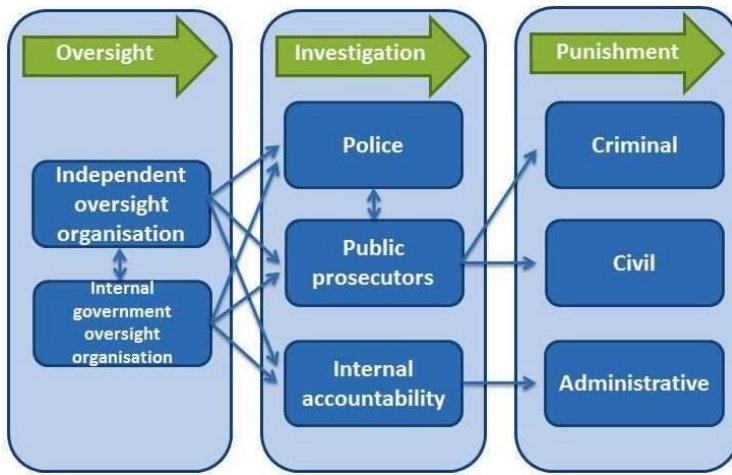
These functions are highly interdependent. Indeed, the completion of each one of the steps in the accountability process is largely dependent on the preceding and successive steps. Thus, without oversight, there is no investigation and without investigation there is no effective punishment. Interdependence goes in the other direction as well:

if punishment is unlikely to happen, this reduces incentives for effective oversight and investigation.

The lesson from the Brazilian case concerns the potential advantages of having multiple institutions able to perform the same function within the system of horizontal accountability.

The figure 1 (overleaf) illustrates this. If one of the regular avenues for performing one of these functions is blocked, the interested actors can pursue alternative avenues. This increases the likelihood that there will be accountability in one form or another at the end of the process.

**Figure 1: Institutional multiplicity in action**



**Corruption in Brazil: an Overview**

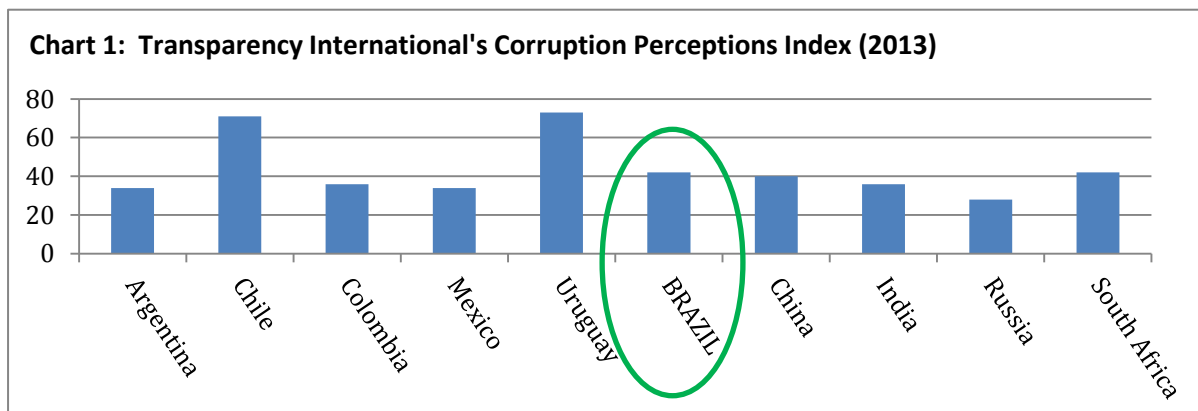
Over the past few decades, the fight against corruption has emerged as a top priority on the global development agenda as leaders in policy, academic, NGO and business communities around the world have increasingly recognized corruption as a force that undermines economic expansion and equality, accountable and transparent governance and social cohesion.

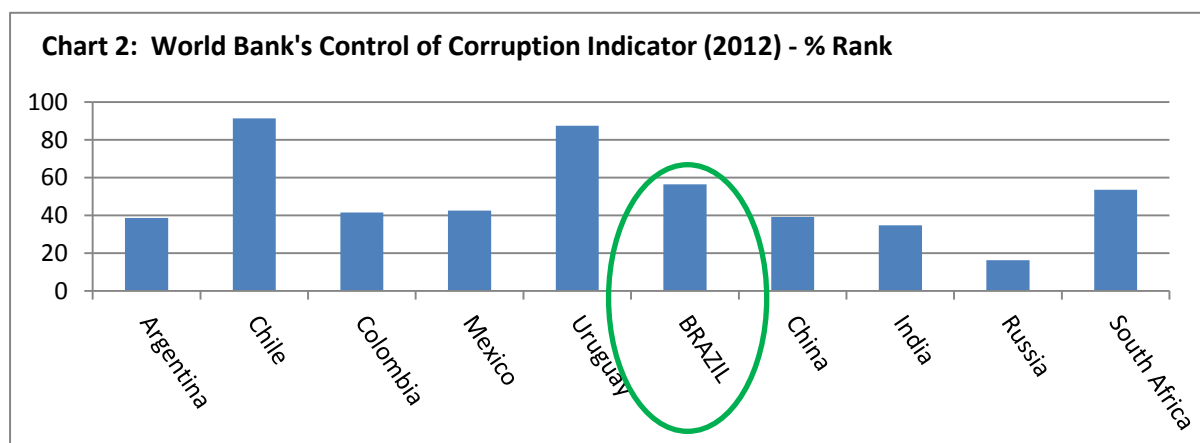
Moreover, institutional multiplicity can generate institutional improvements within the system by triggering processes and mechanisms that improve the overall performance of the system in at least four ways:

- 1) It may foster competition, which can drive institutions to improve their performance given the results or outcomes delivered by another institution performing a similar function.
- 2) A potential advantage of institutional multiplicity is compensation: if one of the institutions fails to perform its functions, another is equipped to fill the resulting gap. This could reduce the risk of failures in each step of the accountability process.
- 3) Collaboration between organisations may be advantageous simply because there are more human, financial and other resources available for the performance of a single task.
- 4) Complementarity may be especially advantageous due to specialization (two different institutions may contribute different skills to perform a particular task and these different sets of skills complement each other).

Characterized by strong economic growth and political stability over the past few decades, Brazil has avoided the most calamitous potential consequences of corruption, but its persistence in the country's economic and governance systems has not been costless. Recent studies estimate that corruption consumes between 1.4% and 5% of the country's GDP each year and surveys reveal that a large majority of the Brazilian public has little trust or confidence in the government.

On international surveys on perceptions of corruption, Brazil places around the median among all countries, as well as in comparison with its regional peers; it also outperforms the other BRICS countries (see Chart 1 and 2). However, while the country boasts an impressively comprehensive array of anti-corruption laws, Brazil's corruption scores have remained relatively stable over the past two decades. Moreover, numerous scandals at the federal, state and municipal levels and across all branches of government – most recently the Mensalão case, as well as





allegations surrounding the cost overruns associated with World Cup preparations – confirm that corruption remains entrenched in the country's political system.

### The Performance of Brazil's Accountability System

#### Oversight:

At the federal level, oversight is primarily managed by two institutions – the Federal Accounting Tribunal (Tribunal de Contas da União, TCU) and the Office of the Comptroller General of the Union (Controladoria-Geral da União, CGU) in Brazil.

While the TCU and the CGU occasionally communicate on cases, they generally conduct oversight activities autonomously, an arrangement which appears to have provided beneficial safeguards in at least one case. After the formalistic and ossified auditing processes of the TCU failed to detect a municipal ambulance kickback scheme, the CGU uncovered the scandal through its own monitoring in an operation that became known as 'Operation Bloodsucker'.

The bloodsucker scandal may be an example of institutional compensation or complementarity. Some may argue that the TCU's failure to detect the scheme reflects deficiencies in its auditing process, while the CGU's success in identifying the irregularities indicates that their auditing methods are more effective. If so, this would be a case of

compensation. On the other hand, one may claim that this is simply a result of distinct auditing methods. The monitoring techniques of the CGU were specifically designed with different parameters than those used by the TCU in order to increase the likelihood each institution could catch things undetected by the other. This is a case of complementarity. Regardless of which interpretation of the fact one adopts (compensation or complementarity), this illustrates how overlapping oversight functions may increase the chances of spotting wrongdoing.

#### Investigation:

The central institutions performing investigative functions in Brazil are the Federal Public Prosecutors' Office (Ministério Público Federal, MPF) and the Federal Police (Departamento da Polícia Federal, DPF).

Oftentimes the MPF will conduct criminal investigations in collaboration with the DPF, especially in criminal cases. Indeed, there has been an increase in the number of investigations in the last decade (Table 1), which appears to be the result not only of an increase in resources for DPF but also increased cooperation between DPF, MPF and other investigative bodies, such as state public prosecutors' offices, Revenue Service Inspectors and ministries. In many cases, joint task forces have been formed in order to better coordinate investigations. The results appear positive, suggesting that institutional multiplicity has led to collaboration.

**Table 1: Departamento da Polícia Federal (DPF) Corruption-Related Operations**

	2005	2006	2007	2008	2009	2010	2011
Operations carried out	67	167	188	235	288	270	256
Public servants imprisoned	219	385	310	396	183	124	260
Police officers imprisoned	9	11	15	7	4	5	4
Total persons imprisoned	1,407	2,673	2,876	2,475	2,663	2,734	2,085

<b>Notable Scandals (1988 - )</b>			
<b>Name</b>	<b>Type of Corruption</b>	<b>Branches/Level of Gov't Allegedly Involved</b>	<b>Resolution</b>
Collorgate (1992)	Extortion, influence-peddling	Executive: President Fernando Collor de Melo and his former campaign manager	Collor resigned but was acquitted of bribery charges by the Supreme Tribunal Federal (STF) in 1994. He currently serves as a Senator.
Anões do Orçamento (“Budget Dwarves” or “Budgetgate”) (1989-1993)	Kickback and bribery scheme	Legislative: 38 sitting government officials	19 members of Congress were expelled and 4 resigned, but none were convicted of corruption-related crimes in connection with the scandal.
Cardoso’s Vote-Buying Scandal (1997)	Vote-buying	Executive: administration of President Fernando Henrique Cardoso & legislative: at least 5 members of Congress	2 legislators resigned from Congress.
São Paulo Regional Labor Court (1992-98)	Embezzlement	Legislative: Senator Luiz Estevão & judiciary: Judge Nicolau dos Santos Neto, “Lalau”	Estevão was impeached and stripped of his parliamentary immunity, although he was acquitted of criminal charges. Lalau was convicted of criminal embezzlement and sentenced to prison in 2002.
SUDAM & SUDENE (2001)	Embezzlement	Legislative: Senator Jader Barbalho & regional development banks	Barbalho resigned from office but was elected to the Chamber of Deputies in 2002 before returning to the Senate in 2011. In July 2013, the Federal Court of Tocantins convicted him and 10 others for misappropriating public funds. Appeals are pending.
Mensalão (“big monthly stipend”) (2005)	Vote-buying, embezzlement, money-laundering, misuse of public funds	Legislative: 18 deputies and 1 former deputy	In November 2012, the Supreme Federal Tribunal (STF) found 25 individuals guilty of related crimes and, in November 2013, the STF issued arrest warrants for 12 of the 25 although several of the convicted have appeals outstanding.
Operação Sanguessuga (“Operation Bloodsuckers”) (2004-06)	Kickback scheme	Legislative: 90 incumbent and 25 former members of Congress	None of the 72 legislators alleged to have participated in the scheme were expelled or faced criminal charges. The Federal Court of Mato Grosso opened criminal cases against more than 300 defendants (mayors, former congressmen, advisors), but handed down only 31 sentences with 22 convictions.

Despite being the exception rather than the rule, in a few cases the investigative powers of MPF seem to have led to compensation for the lack of police action. The cases in which MPF played a prominent role include the recent mensalão case.

#### **Punishment:**

The most important institution involved in the punishment of corruption-related offenses is the federal judiciary through civil and criminal suits. Recently administrative sanctions have gained a greater importance in the country.

The level of institutional multiplicity in punishment in Brazil is considerably lower

than oversight and investigation. Independently of the civil and criminal sanctions imposed by the judiciary, the CGU, TCU and internal accountability bodies can impose administrative sanctions on actors found to have engaged in corrupt activities.

However, the ultimate sanctioning authority in Brazil remains the judiciary, which possesses the power to review and overturn punishments imposed by other entities (Federal Constitution, art 5, XXXV).

This lack of institutional multiplicity reduces the likelihood of punishment. Indeed, the Brazilian judiciary is characterized by very low

rates of corruption convictions. Such underperformance is attributable not to sporadic errors in execution but rather to fundamental structural problems such as excessively formalistic processes, burdensome procedural rules and judicial corruption. These problems not only affect the enforcement of civil and criminal sanctions, but they also interfere with the enforcement of administrative sanctions.

### **Disadvantages of Institutional Multiplicity**

The Brazilian case suggests that significant benefits can be derived from having institutional multiplicity in a country's accountability system. There are, however, potential disadvantages associated with institutional multiplicity:

1) the creation of institutional overlaps may be interpreted as an inefficient allocation of resources, particularly in low-income developing countries where scarce fiscal resources already struggle to provide adequate coverage for other societal needs, such as education and health;

2) the competition engendered through institutional multiplicity may be destructive, creating unproductive tensions between two institutions performing the same function;

3) if accountability institutions themselves fall prey to corruption, institutional multiplicity may create more opportunities for corruption; for example, if authorities from multiple (corrupt) investigation institutions are able to extract bribes by threatening innocent citizens with false charges, the overall risk and incidence of corruption may increase.

We acknowledge these limitations, which should be considered in a careful cost-benefit analysis on a case-by-case basis, taking into consideration the resources, capacities and policy needs within individual countries or societies.

This briefing is based upon IRIBA working papers 8 'Mapping Corruption and its Institutional Determinants in Brazil' and 9, 'Brazilian Anti-corruption Legislation and its Enforcement', by Mariana Mota Prado and Lindsey Carson, available at <http://www.brazil4africa.org>

#### **Further reading:**

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IRIBA is a DFID funded research programme, based at the University of Manchester. It brings together an international team of researchers, examining how lessons from Brazil's development experience can be learned and adapted for African countries.

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