

Brazil Country Study

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Abstract: The idea of “institutional multiplicity” describes the existence and the functioning of dozens of actors from the executive, legislative and judiciary. Based on different legislations, monitoring, investigation, prosecution and enforcement of sanctions are conducted with a great deal of independency. The way in which Brazilian anti-corruption law is currently organized makes impossible or extremely difficult to one identify how similar corruption schemes will or can be handled by the different set of institutions that intervene in criminal, civil and administrative proceedings. Case studies and in-depth interviews have shown that institutional multiplicity can lead to inconsistent decisions and foster re-work; on the other hand, it also highlights that multiplicity can contribute to overcome agencies capture problems (See Introductory Chapter). That is the research topic this chapter focuses on, summarized in the following question: how do institutions interact when handling corruption cases?

Key words: Brazil, Anticorruption system, coordination mechanisms, institutional multiplicity.

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1. Introduction

The present chapter starts to be written at the day Dilma Rousseff - recently reelected Brazilian President - addresses the country stating that one current corruption investigation “might, indeed, change the country forever”.¹ She refers to an investigation conducted by the Brazilian Federal Police regarding the public state oil company Petrobrás, one of the biggest in the world. Several arrests were made during 2014, but the historical moment highlighted by the President stems from the arrest of 23 people, among them high-ranking officials of the eight major building companies of the country, including some CEOs. The so-called “*Lava Jato* Task Force” investigates millionaire bribes paid by building companies in order to secure contracts with Petrobrás. The case became popular during the 2014 Presidential Elections, when privileged information from the statement of a key witness benefit from “*delação premiada*” were leaked to the press. Those bribes were supposedly transferred, after laundered, to finance political parties that support Dilma Rousseff’s government: PP, PMDB and PT. Some of Brazil’s biggest media organizations reported - two days before final election round - that Dilma and Lula knew about Petrobrás corruption scheme for almost 10 years - even though no evidence was presented². Dilma had to use her last campaign program to defend herself from what she called “electoral terrorism” with “criminal intent” from “*Veja* and its accomplices”, that stamped the fact in its magazine cover.³

Major corruption scandals are part of Brazilian political life for many decades. During the twelve years of Lula (2003-2010) and Dilma (2011-...) federal administration, investigations and prosecutions for corruption were closely followed – and frequently overstated - by the media. Before “*Lava Jato*”, the so-called “*Mensalão* Case” regarding the bribes to members of the parliament led to conviction and prison sentences imposed by the Supreme Court to prominent figures of Lula’s administration and his political party, PT⁴.

¹ “Eu acho que isso pode, de fato, mudar o país para sempre” quoted at “Investigação sobre Petrobrás deverá mudar o País ‘para sempre’, diz Dilma. *O Estado de São Paulo*, 16.11.2014.

² The cover of *Veja Magazine*, from October 29 2014, had pictures of both Lula and Dilma and the title “They knew about everything”.

³ See <https://www.youtube.com/watch?v=YEk6f9RpnOM#t=80>.

⁴ Called by the major media, “the judgment of the century”, *Mensalão* Case shed light to a bribery scheme involving advertising agencies and financial institutions that were allegedly in place – with the same actors – during the political campaign for reelection of Eduardo Azeredo to the government of Minas Gerais. Eduardo Azeredo used to be the president of PSDB, the major political party at the opposition. This case however was not prosecuted by the Federal Supreme Court, as the *Mensalão*

The country is therefore divided between the ones, like the former President Cardoso (from PSDB, the political party that leads the opposition to the current government) that considers “shameful” the current scandals;⁵ and others, like President Dilma that see the rising number of corruption investigations as a great indicator that anti-corruption enforcement institutions are in place and adequately performing their duties⁶.

Indeed, since redemocratization and the enactment of the new federal constitution in 1988, several legal and institutional reforms have provoked substantial changes in administrative control mechanisms (auditing, *corregedorias* and parliamentary investigations) and judicial interventions (criminal procedures, civil procedures for “improbity” and electoral procedures). New bodies were created within the Executive to allow national and international exchange of information and evidences, while old institutions were redesigned to strengthen their independency and hold new functions. And, above all, Brazilian civil society and international organizations, as OECD and UN, elevated corruption to a major social problem and heavily pressured the agencies for a due enforcement of administrative, civil and criminal legislation. Brazilian anti-corruption law was not developed and implemented at once; much on the contrary, it is the result of reforms that took place in different social and political contexts – and, of course, continues to be targeted by many social forces still today⁷.

In this scenario, the idea of “institutional multiplicity” describes the existence and the functioning of dozens of actors from the executive, legislative and judiciary. Based on different legislations, monitoring, investigation, prosecution and enforcement of sanctions are conducted with a great deal of independency. The way in which Brazilian anti-corruption law is currently organized makes impossible or extremely difficult to one identify how similar corruption schemes will or can be handled by the different set of institutions that intervene in criminal, civil and administrative proceedings. Case studies and in-depth interviews have shown that

Case, and still waits for a decision at the State level courts in Minas Gerais. (“Recurso adia sentence de Azeredo no mensalão mineiro”, *O Estado de São Paulo*, October 28, 2014.) For an overview of both cases, see “As várias faces do mensalão”. *Caros Amigos Especial*. Ano XVI, nº 60.

⁵ “O Brasil está começando a perder o rumo”, *O Estado de São Paulo*, September 22, 2014.

⁶ <https://www.youtube.com/watch?v=YEk6f9RpnOM#t=80>

⁷ As of December 18 2014, there are 788 draft laws in the national congress with the subject “corruption” (570 at the Deputies House and 218 at the Senate) Also, Dilma Roussef has made the “strengthening of the anti-corruption” one of the main topics of her reelection campaign. See <http://www.dilma.com.br/> (as of December 18 2014).

institutional multiplicity can lead to inconsistent decisions and foster re-work; on the other hand, it also highlights that multiplicity can contribute to overcome agencies capture problems (See Introductory Chapter). That is the research topic this chapter focuses on, summarized in the following question: how do institutions interact when handling corruption cases?

The present chapter is divided in five parts, including this introduction. The next section will give an historical introduction to current Brazil's anti-corruption institutions, highlighting its creation as an incremental process developed over several decades. The third section will describe Brazil's anti-corruption system using a procedural scheme that categorize enforcement in four different categories - monitoring, investigation, adjudication and sanction-enforcement - and add a fifth procedure that helps to support the other four: orientation or provision of information. The fourth section describes different relationships between those institutions and focus on different coordination mechanisms among them, dividing them between inter- and intra-institutional and inter and intra-procedural mechanisms. Finally, the last section gives an overall summary and highlights some of the coordination obstacles that found during our empirical research.

This case-study rely on data obtained through the review of institutional annual reports and those made for international institutions evaluations; analysis of current anti-corruption legislation; 23 in-depth semi-directive interviews with high and medium-level governmental employees – among them Directors, Councilors, Secretaries and Prosecutors, mostly from Federal level (3 from State or Municipal level).

2. Historical Approach

Since colonial times, dismissal and fines can be imposed to public authorities that received *gifts* in certain circumstances⁸. After the independence from Portugal, all Brazilian Constitutions - 1824, 1891, 1934, 1946, 1967 and the one in force at the moment, 1988 – explicitly mentioned public authorities and employees could be held accountable for different forms of misuse of public funds⁹. Also, since the first criminal code, in 1830, job dismissal, fine and incarceration are established for the “crimes against the good order and the public administration”.¹⁰ Similar provisions appeared in the following criminal codes (the 1890 and the 1940, currently in force).

At the civil sphere, on the other hand, the first provision appeared at second half of the XX century. Legislation from 1957 created civil mechanisms that allowed seizure and loss of assets in favor of the State (“sequestro e perda em favor da Fazenda Pública”) for abuse of public function, independently of the criminal responsibility (Law 3164/57). In the following year, a new legislation regulated “illicit enrichment” and opted for civil actions to pursue both assets recovery and damages reparation; the damaged public institution, public prosecutors and citizens under certain circumstances were eligible to start those actions (Law 3502/58). Both laws, however, were rarely applied (Marques, 2010, p. 33).

The scenario started to change with the 1988 Federal Constitution, which established a broad and complex control system of public administration. As suggested by Marques (2010, p. 37-38), articles from different sections of the Constitution might be organized in three axis: (i) internal control exercised by administrative bodies themselves (*Procuradorias*, *Corregedorias* and *Ouvidorias*); (ii) external control exercised by the accounting tribunals (at the federal, provincial and some time municipal levels), designed as auxiliaries bodies of the Legislative branch; and (iii) external control exercised by the Judicial branch, together with *Ministerio Público*, through criminal and civil proceedings.

It was also in the late 80’s that the Federal Constitution attributed to public prosecutors the institutional power to promote “public civil action”, a legal action

⁸ See *Ordenações Filipinas*, section LXXI, the Portuguese Legislation in force in Brazil during the colonial period (XVI century until the beginning of XIX century).

⁹ For a detailed explanation of them, see Marques (2010, p. 28-31). All legislation mentioned in this chapter can be found at <http://www2.camara.leg.br/>

¹⁰ Brazilian Criminal Code, 1830, “crimes contra a boa ordem e administração pública”, articles 129 to 166.

created in 1985 to advance the protection of public interests as the environment, the artistic, historical and touristic heritage, as well as the economic order and the public property (Law 7347/85).

2.1. The 1990's

Four years after the enactment of the Federal Constitution, Fernando Collor de Melo – Brazil's first directly elected President after military dictatorship, who lost his position through impeachment due to his involvement in corruption - promulgated the Improbity Law (Law 8429/92). This new legislation defined “acts of administrative improbity” and established non-criminal sanctions, strengthening the mechanism of the “public civil action” created before the federal constitution (Law 7347/85). The Improbity Law marks not only “the conclusion of the (...) process of independency” of the Ministério Público (Arantes, 2002, p. 76), but also became the “cornerstone of the judicialization of the politics in Brazil, as it expanded the [possibilities] of actions against public officials”, without jurisdiction privileges (*foro privilegiado*) granted at the criminal sphere (Arantes, 2002, p. 152-3). The law also tried to make the most of the great number of existing public prosecutors available to investigate, persecute and impose civil sanctions to public officials from the three branches of the government (Arantes, 2002).

Besides the strengthening of Ministério Público, the nineties were marked by the creation of new institutions and substantial redesign of already existing ones. In 1993, the AGU (Advocacia Geral da União) was created to represent the Federal administration in all judicial and extrajudicial proceedings (Constitution, art. 131). Linked to the Presidency and with a very well remunerated career, AGU has units in all states of Brazil. As next section shows, AGU has recently developed working groups focusing specifically in public property with substantial impact at anti-corruption law enforcement.

By the end of the 90's, the Public Ethics Commission (Comissão de Ética Pública) was created to investigate the violation of ethical norms by high-ranking officials¹¹. This Commission – also linked to the Presidency – also acts as a consultancy body: authorities might report ethical doubts or make ethical consults before making decisions involving public expenditures or accepting gifts or

¹¹ For further information see CEP webpage: <http://etica.planalto.gov.br/> (as of December 18, 2014).

invitations from third parties. CEP was meant to be the central node of the new *Ethical system*, formed by ethical commissions spread out in all different institutions of federal public administration. Ethical Commissions were also created at the legislative branch, but with a broader scope: enforce disciplinary sanctions such as the loss of mandate¹².

At the Legislative branch, it is worth mentioning the shift that TCU's (Tribunal de Contas da União) role in government auditing has been through. Created in the first Republican Brazilian constitution, in 1891, TCU was set as an institution that supports Congress in its role of controlling the government (external control). Although somehow linked to the Legislative, the 1988 Constitution "specifies in detail the powers and responsibilities of TCU, thus guaranteeing the agency considerable autonomy from Congress as well" (Speck, 2011, p. 135). The current institutional design of TC is defined in the 1988 Constitution and in its 1992 Organic Law (Law 8443/1992)¹³. As Speck (2011, p. 136) points out, unlike many other countries, TCU and state auditing institutions in Brazil "are empowered to directly punish misconduct through imposition of fines and bans on public contracting". And, in many cases, as section 4 below shows, TCU reports misconduct to other institutions, also competent to impose sanctions.

Also in the Legislative, during the 90's, the number of Parliamentary Investigative Commissions (CPI) raised substantially at federal, state and municipal levels. According to Pedone at alli (2001, p. 201), the main feature of this form of control is its "political dimension" marked by "negotiations, coalizations [and] search for consensus and differentiation". The study of major CPI cases during the nineties led authors to conclude "these commissions play a fundamental role at the dynamics of the democratic process, as they are able to investigate and elucidate doubtful facts within the public administration" (Pedone ate alli, 2001, p. 222). Later and less optimistic analysis, however, points out CPIs "are simply too politicized" and "not especially effective", as "the vast majority" of CPIs are closed without a final report (Power and Taylor 2011, p. 253).

¹² For the Ethical Commission created in 1993 at the Senate, see <http://www.senado.gov.br/atividade/conselho/conselho.asp?con=445> (as of December 18, 2014). For the one created in 2001 at the House of Deputies, see <http://www2.camara.leg.br/a-camara/eticaedecoro> (as of December 18, 2014).

¹³ For an overview of new tasks and legislative changes regarding TCU, see Speck, 2011, p. 159 (footnote 15).

2.2. The 2000's

From early 2000's on, two sorts of institutional development in the anti-corruption domain can be observed. On one hand, legal reforms led to creation of centralized regulatory bodies within the public administration, the Judiciary and the Ministério Público, in order to strengthen the mechanisms of internal control (CGU, CNJ and CNMP). On the other hand, the internationalization of corruption and money laundering control, as well as challenges brought by enforcement institutions during the previous decade, led to the creation of a new set of bodies devoted to institutional coordination (ENCCLA and DRCI).

The Federal Comptroller's Office (CGU – *Controladoria Geral da União*) is the pivot body of anti-corruption at the federal administration. Created in 2001 and restructured in 2006, CGU is also directly linked to the Presidency and is currently in charge of internal control, disciplinary proceedings and advancing programs of transparency and prevention of corruption.¹⁴ It has become a role model and has inspired Comptroller Office in state and city level throughout the country (Interview 01).

The constitutional reform of 2004 successfully created the National Council of Justice (CNJ – *Conselho Nacional de Justiça*) and the National Council of Ministério Público (CNMP – *Conselho Nacional do Ministério Público*), which centralizes financial and administrative control of the Judiciary and Ministério Público, respectively¹⁵. Besides pursuing internal control, CNJ sets national public policies, goals and recommendations for those institutions, covering among its different areas incarceration, environment, human rights and also, corruption and improbity. At the end of 2012, CNJ launched the “Goal 18”, a set of measures aiming to identify all proceedings related to corruption and improbity at all federal and state appellate courts (TJs – *Tribunais de Justiça*), Superior Court of Justice and Supreme Federal Court. According to CNJ, that data gathering aims, among other things, “to answer the questions of FATF/OECD who evaluated negatively Brazilian efforts to handle

¹⁴ For CGU functions and competences, see Law 10.683/03, article 17 and www.cgu.gov.br (as of December 18, 2014).

¹⁵ Both created by the Constitutional Amendment 45/2004. For further information see <http://www.cnmp.mp.br/portal/> and <http://www.cnj.jus.br/> (as of December 18, 2014).

these crimes in view of the lack of statistics”¹⁶. Section 3.5 will present an overview of this data.

It was also during the 2000’s that ENCCLA was created. Although not formalized by a Law, ENCCLA is one of the most important debate forums for anti-corruption in Brazil. ENCCLA stands for *Estratégia Nacional de Combate à Corrupção e Lavagem de Ativos* and consist of an articulation among different institutions in the federal level - from the Executive, Legislative, Judiciary, among others – and civil society that act, directly or indirectly, in anti-corruption and anti-money-laundering. It has among its goals the “analysis of scenarios, the identification of threats, the definition of efficient and effective policies and the development of a prevention and money laundering fight culture and its correlation with corruptions crime” (MESICIC, 4th round, p. 8). Currently, more than 60 governmental and non-governmental institutions and private entities as banks send representatives to ENCCLA’s annual meeting – usually held in December – in which debates are held between thematic work groups and goals and programs to be created and developed in the next year are decided.¹⁷ Note that ENCCLA operates less in enforcement activities of anti-corruption strategies and more in its creation and adaptation. As recognized by several high officials, ENCCLA has been also extremely important in creating a communication channel between those different federal anti-corruption institutions and in making employees from these different institutions trust each other.¹⁸

At the judicial domain, exchange of information and evidence with foreign institutions substantially increased during the nineties. International cooperation in criminal matters was completely restructured with the Constitutional Amendment 45/2004. In that context, DRCI (*Departamento de Recuperação de Ativos e Cooperação Jurídica Internacional*) was created within the Ministry of Justice, with the main task of dealing with all sorts of international cooperation and asset recovery procedures. The body also plays a central role in the formulation and discussion of

¹⁶ News prepared by CNJ itself also mentions the Brazilian evaluation in the UNCAC implementation process. Vasconcelos, Jorge. “Justiça condena 205 por corrupção, lavagem e improbidade em 2012”. Agência CNJ, 15/04/2013. Available at <http://www.cnj.jus.br/noticias/cnj/24270-justica-condena-205-por-corrupcao-lavagem-e-improbidade-em-2012>. (as of 15.oct.2014).

¹⁷ For further information, see Machado (2012) and ENCCLA’s page at the Minister of Justice website: <http://portal.mj.gov.br/data/Pages/MJ7AE041E8ITEMID3239224CC51F4A299E5174AC98153FD1PTBRNN.htm> (As of December 18, 2014).

¹⁸ Interview 05 and Interview 11.

bilateral and multilateral agreements, as well as in the internal coordination of anti-corruption authorities through ENCCLA.

In 2008, AGU created the “permanent group of proactive action”, a group of public lawyers with the task of intervening on behalf of Brazilian State in proceedings related to public property and corruption – specifically improbity, public civil law actions and enforcement of TCU decisions. In 2011, the group received the Innovare Prize for its outstanding performance in filing actions and recovering assets. Answering the question of the main innovation of their practice, the group highlights “they work in coordination” and “complement[ing] the activity of the other control institutions”.¹⁹

During the 2000’s, different NGOs gained more relevance countrywide, mainly monitoring government activities, making anti-corruption denounces and, sometimes, organizing legislative changes. Some NGOs also produce publications, studies, manifests or/and texts that seek to empower citizens and other civil society groups in anti-corruption, while fostering a culture of probity, accountability and societal oversight over the government. While most organizations have a local range of action, other acts nationally, like *Transparência Brasil*, *Contas Abertas* and *Observatório Social do Brasil*²⁰. Some local NGOs are part of networks of similar institutions that unite their efforts and exchange information to better perform their jobs. One of the most famous networks is the one from “Amarribo”, a local NGO that gained national recognition after successfully denouncing Ribeirão Bonito’s mayor and removing him from office²¹.²² This network deals more specifically with electoral corruption, a topic that several NGOs fight against.

2.3. The first years of 2010’s

During the last years, Federal administration has fomented social control with the implementation of transparency measures, like *Portal da Transparência*, *Lei de*

¹⁹ Innovare Prize is granted annually for innovative practices within the Brazilian Judicial System. The board of selection is composed by Rede Globo and representatives of Judiciary, Public Prosecutors and Lawyers. For further information about the Prize and AGU proactive group, see <http://www.premioinnovare.com.br/praticas/grupo-permanente-de-atuacao-pro-ativa-da-agu/> (as of December 18, 2014). For the contribution of proactive group to recover assets at the TRT Case, see Machado and Ferreira 2014.

²⁰ For further information, check their website respectively at www.transparencia.org.br, www.contasabertas.com.br and www.observatoriosocialdobrasil.org.br (as of December 18, 2014).

²¹ For further information, check their website at www.amarribo.org.br (as of December 18, 2014).

²² This network Amarribo Brasil IFC is composed by 200 organizations present in almost 200 cities. For a full list, check http://www.amarribo.org.br/pt_BR/parceiros/rede (as of December 18, 2014).

Acesso à Informação initiatives, among others. The *Lei de Acesso à Informação* was an essential step in fostering governmental transparency for citizens and even for public employees, that many times struggle to obtain data from his or another's organization. This legislation allows any citizen to request information to public authorities who are obliged to deliver in 30 days when the information is not considered to damage personal rights (art. 11, Law 12.527/11).

In the massive June 2013 protests that were spread all across Brazil, corruption was a special hot topic. Although protests emerged and grew because of other reasons, it soon became an opportunity to citizens manifest their great disappointment with the current political status quo and the “high level” of corruption.²³ One of the main topics during the protest was a Draft Constitutional Amendment (PEC 37) that aimed to remove investigative powers from Ministério Público and grant them exclusively to the Police.²⁴ Even though interference in investigative capacities of public prosecutors would have impact in all criminal investigations, the debate was frequently around corruption cases. Media and civil society against PEC 37 have named it “PEC of Impunity”, a direct reference to their belief that corruption cases would not be investigated without the participation of the public prosecutors and would, therefore, assure impunity.²⁵

In 2012, CGU also promoted a national citizen - participative conference on anti-corruption and internal control, the CONSOCIAL (*Conferência Nacional sobre Transparência e Controle Social*). The even intended to invite civil society to express its opinions and formulate directives for the elaboration of policies and it was prepared for over 18 months, with local and regional preparatory rounds, in which social control themes were discussed and an 80 final proposals report elaborated²⁶.

Social movements were also crucial to the approval of *Ficha Limpa* Law – Clean Sheet Law (135/2010) – which forbids anyone convicted for corruption or improbity acts (among others) by a bench of judges (court of appeal or higher courts)

²³ Although the June 2013 protests in São Paulo did not start with anti-corruption claims, corruption was one of the themes that could be easily found among protesters all over Brazil.

²⁴ According to MPF, if approved PEC 37 would kill 12.000 ongoing MPF investigations (that in 2009 – 2013 have opened more than 300.000 investigations). For more info, check http://noticias.pgr.mpf.mp.br/noticias/noticias-do-site/copy_of_geral/pec-37-eliminaria-mais-de-12-mil-investigacoes-do-mpf-em-andamento (as of December 18, 2014).

²⁵ Since 2008, the controversy is subject of constitutional control at the Supreme Federal Court (RE 593727). As of December 2014, there was no decision. Available at: <http://www.stf.jus.br/portal/processo/verProcessoAndamento.asp?incidente=2641697>.

²⁶ For more information, please check the official's reports at CGU website: <http://www.cgu.gov.br/assuntos/controle-social/consocial>. (as of December 18, 2014).

to be elected for up to 8 years. The constitutionality of the law was questioned in the Federal Supreme Court in view of the principle of presumption of innocence but was upheld by the majority. In 2014 elections, for instance, Federal Prosecutors obtained the suspension of over 4.000 candidates; 497 requests were based on *Ficha Limpa* Law²⁷.

Finally, in 2013, after years in discussion at Government and Parliament, the so-called *Anti-Corruption Law* was finally promulgated. The law establishes, among other things, civil and administrative liability of legal persons for corruption and several other law enforcement innovations. Among them, we highlight lenience agreements and corporate liability with fines of up to 20% of its annual income.

3. Institutions and procedures

Our analysis breaks down institutions in what we called *institutional units*, as we are not only interested on institutional design but also on the lower level of proceedings and decision-making processes. Literature on corruption focusing on institutional design are interested in capturing the “big picture” and therefore frequently overlooks the phenomenon of “internal fragmentation” in key anti-corruption institutions. As our research makes the most to take into account a more procedural level of analysis, big categories of institutions – “the” judiciary, “the” public prosecutor, “the” police - become clearly insufficient to depict institutional interaction and coordination experiences and can even make the reader confused about how the system actually works. After all, one institution can perform multiple activities in different moments of a corruption case; however, most times, there will be a specific sub-unit inside it that institution that will only perform one activity (like only monitoring, or only investigation, or only prosecution) for one given area (crime, civil, administrative, ethics, etc).

Following the analytical structure proposed at the introduction, this chapter describes Brazilian anti-corruption enforcement institutions and its proceedings in five main areas: corruption (criminal law), improbity (civil law), auditing, public

²⁷ “MPF impugna mais de 4 mil candidatos, sendo 497 pela Lei da Ficha Limpa.” MPF. 19 de Agosto de 2014. http://noticias.pgr.mpf.mp.br/noticias/noticias-do-site/copy_of_eleitoral/eleicoes-2014-mpf-impugna-mais-de-4-mil-candidatos-sendo-500-pela-lei-da-ficha-limpa (As of October 16 2014).

employment and ethics (all three administrative law)²⁸. Using divisions of the areas in the horizontal axis, different phases of procedures in the vertical one and breaking down the institutions to sub-units, we came up with the representation of Brazilian anti-corruption system that can be seen in figure 1.

Although the figure is a very simplistic representation of a complex reality, it help us produce very precise descriptions of anti-corruption bodies as it (i) cleans up secondary bodies or programs not directly related to these five phases of the enforcement process; (ii) allows us to observe different tasks that are fulfilled by the same institution although not by the same sector or people; and (iii) sheds light in two phases that are usually left behind in legal analysis, but have an important role for the system to achieve its goals.

The framework is also meant to provide a tool to explore our main topic: inter-institutional coordination. When read horizontally, the table allow us to notice where duplication of efforts (two or more institutions playing similar roles) or its absence (no institution at all is committed to a certain task) might be; when read vertically, the framework helps us see that cases have to pass through several institutions from the moment it is uncover to the moment it is closed. When taken as a whole, the framework help us better understand how anti-corruption cases flow and to better identify coordination of efforts between and inside institutions (when two or more units play together - or according to a very specific division of labor - a certain task). The framework also helps to visualize institutional multiplicity and how modular arrangements - in which dozens of different combinations are possible and a wide range of unknown factors will lead the case to take one or multiple paths - are possible.

Next sections will give a brief description of the system using a horizontal reading of the framework. In each phase, the text will highlight some of institutions, units and procedures that we have identified as most relevant to the research – that is, to explore and understand inter-institutional coordination.

²⁸ This chapter does not cover electoral law and proceedings. For a complete assessment of the topic see Rennó, Lucio. Corruption and Voting. In *Corruption and Democracy in Brazil*. Power and Taylor (ed.). Notre Dame: UND Press, 2011.

3.1. Monitoring

We consider as monitoring those procedures that do not have a specific target, but are carried out in apparently regular scenarios to uncover irregularities what will then be further investigated. The main goal is to identify “points outside the normal curve”, collect preliminary data, elaborate reports and send them to institutional units that might have an interest on that data or report. Monitoring procedures can assume different forms - like audits,²⁹ inspections or follow-ups – and are carried out by different institutions as non-exclusive tasks: CGU, TCU, COAF, DRCI, CNJ and CNMP. Out of those, only COAF has monitoring as one of its main attributions. Non-governmental institutions like NGOs, media and citizens also play an important role and are important sources for subsequent investigative procedures (the next phase).

The strengthening of monitoring procedures represents a major step in the shift from a more *reactive* anti-corruption system to a more *proactive* one, in which one tries to curb corruption practices as early as possible, minimizing damages and public funds diversion (Interview 18). As one interviewee puts “[the] intention is to make a concomitant control, especially because it avoids financial losses to the state” and “[...] recovery success is often very low” (Interview 06).

Monitoring usually has as its target transactions, expenses, contracts, procedures and other acts carried out by public employees from institutions that receive public funds. Historically, anti-corruption monitoring was mainly pursued by TCU that was responsible to receive and appreciate annual reports of public institutions. However, at that time, monitoring was not an independent task, but something carried out almost concomitantly with adjudication (approving or disapproving institutions annual report, with the establishment of due sanctions when irregularities were found).

It was especially with the introduction of the internal control system (art. 74, CF/88) and with significant investments in Information Technology - with the creation of powerful data analysis’ software and system - that monitoring procedures started to grow in size, intensity and importance. Although the internal control system was already referenced in 1988’s Constitution, it only became fully regulated and operational in the 2000’s, with the consolidation of CGU, CNJ and CNMP. These institutions became central nodes of internal control in the Public Administration and

²⁹ The term “audit”, at least in Portuguese, might indicate monitoring or investigative proceeding. When using the term this report will specify to each function the “auditing activity” corresponds.

Judiciary and started to gather performance data on those institutions activities. In CGU's Observatório da Despesa Pública, COAF's Communication System or CNJ and DRCI's LAB-LD-FT massive data analysis are carried out by computers and potential irregularities are shown for human operators that do further analysis, elaborate reports and send to the responsible institution. Usually, when a monitoring report contains evidence of the practice of crime or improbity, it is sent to the Police and/or Ministério Público; when contains a disciplinary fault by a public employee to CGU and the employees' institution internal affairs; some reports even automatically are sent to other institutions, regardless of their results (Interview 01). Most are forwarded to the head of the other institution and each institution will have their own procedure on how that information will be processed and delivered within his institution.

There are also monitoring procedures that do not occur in constant basis, but are made periodically (every year) or occasionally. CGU's Municipalities Fiscalization Program draws around 1.000 cities every year for a closer assessment of how federal funds were spent; reports are not only published online, but are sent automatically to MP and TCU, among others.³⁰

Anti-corruption institutions - influenced by new public management and an increasing pressure from international organizations - also started to monitor its own internal procedures and to improve its data collection on the status of recommendations and sanctions imposed by them on others. For example, CGU, TCU and CNJ make recommendations to its units and try to monitor to see if those recommendations were implemented or not. In CNJ, a system called CUMPRIDEC has been implemented with this purpose; TCU's unit SEGECEX also has a system similar to that, as well as CGU (Interview 01, 04, 06 and 09). Some units also try to monitor if sanctions imposed were executed and how much diverted public was finally recovered; Ministério Público in Brazilian TCU is the institution responsible for that (Interview 06). CGU also has a system – CGUPAD – where federal disciplinary proceedings are inserted and is often used for monitoring and coordination purposes.

³⁰ CGU's annual report shows that the program has lost breath during Dilma Government. Within 4 years, the number of municipalities drew fell from almost 5.000 to 1.000. This fell was mainly due to budgetary reasons. For more information, check page 49 of 2013 CGU's Annual Report. Available at: http://www.cgu.gov.br/sobre/auditorias/arquivos/2013/relatorio_gestao_cgu_2013.pdf (as of 18 December 2014)

As mentioned above, monitoring is also done by civil society organization. “Às Claras”, “Meritissimos” and “Olho nas Emendas” are monitoring projects developed by Transparência Brasil and IFC/Amarribo (Interview 21 and 22); there are also mature civil society auditing experiences in the health sector (Interview 15).³¹ According to one interviewee, involving citizens and the community in those practices can bring benefits, since they are closer to the local administration and can uncover facts that would go undetected in data analysis or occasional visits made by federal monitoring institutions (Interview 15).

3.2. Investigation

An investigation usually starts from suspects of irregularities and consists in a procedure in which proofs and evidence is collected to foment an administrative or judicial adjudication procedure. They usually start either through citizens’ - sometimes public bidding competitors – (Interview 06) - or other institutions’ denounces (oral, textual, images, etc.) or through a given institution own initiative. They usually have as its result a dossier or a formal document in which findings and evidences collected are presented; this document is often sent to another unit – sometimes in the same institution, sometimes in another - to start an adjudication procedure when due.³²

In Brazil, there are institutions that deal almost exclusively with investigations – like Federal Police and CPIs – while others has it as one of its main functions – like CGU, TCU, Ministério Público, Corregedorias, CNJ, CNMP and Ethical Committees. There are also some institutions that play a supporting role in investigative practices – like COAF and DRCI – fomenting already existing investigative procedures developed by other institutions. With all those institutions in charge of investigations, it is not uncommon for the same corruption act to have open investigations in different institutions without one knowing about each other’s existence. Although Brazil has started to implement systems that allow, at least, members from the same

³¹ For further information, please visit the projects webpages respectively at:

<http://www.asclaras.org.br/@index.php>, www.meritissimos.org.br/ e olhonasemendas.com.br/.

³² We have identified this dynamics in the Ministério Público from São Paulo, in which GAECO is mainly responsible for investigating corruption cases, but persecution and adjudication is left for regular prosecutors.

institution (but different units) to see if there is any open investigation about a given person or company, coordination is still an issue³³.

Note that although investigative procedures do not impose direct sanctions on investigates, being the target of an anti-corruption investigation usually brings bad attention from the media and some reputational sanctions (at least in the beginning of the investigation), what can be personally and professionally damaging. Therefore, sometimes, the simple fact of announcing an investigation can already make a corrupt practice to be ceased.³⁴

There are administrative and judicial investigations, this latter in civil and criminal areas. CGU, TCU, CEP, CNJ and CNMP can all start administrative investigative procedures³⁵. Civil investigations are carried out by Ministério Público through a specific proceeding called *inquérito civil público*, established by the Public Civil Action Law. Criminal investigations are carried out by Ministério Público and the Federal Police, sometimes through specialized units that deals with organized crime (eg. MP's Gaeco, DPF's DICOR). While in criminal investigations Ministério Público can request Federal Police to investigate a given fact, a civil investigation (for improbity) of the same case cannot count with the police help (Interview 08).³⁶

Not always investigation reports explicitly points out which norms have been breached or which crimes or administrative violations were allegedly committed. Police reports and CGU investigative reports, for instance, can only bring elements and leave conclusions to be taken by the adjudicatory institution (Interview 12).³⁷

Anti-corruption investigations sometimes demands advanced techniques that only few institutions like Federal Police, MP and CPIs can use; others have their

³³ Although we did not have access to this system, it was mentioned as a great improvement by one of our interviewees (Interview 12). The system was created recently – in November 2012 – in the universal day against improbity. For more information about anti-corruption practices in Ministério Público, please check <http://combateacorrupcao.mpf.mp.br/> (as of December 18, 2014).

³⁴ Interviewee 07 reports a concrete case where all elements were set for the commitment of the crime and the simple fact of the law enforcement institution "started to gather information and ask for support [of other institutions] the public administration suspended the contract that were already signed".

³⁵ In the case of CNJ, CNMP and CGU investigative proceedings are mainly based on the Federal Public Employees Law (Law 8.112/90)

³⁶ Interviewee 12 also explains that internal opinions from the Federal Police stated that their forensic experts cannot work on civil cases under request of the Federal Prosecutors due to the lack of human resources and rise of the requests. Exceptions are considered for big cases under special requirement.

³⁷ Interviewee 12 explains that TCU, for example, selects, each year, around 400 to 500 big public works to audit. After investigation, a report is sent to the Public Prosecutor. In this report, auditor might present, at the conclusions, indicia of corruption and other crimes.

investigative procedures restricted to targeted data analysis (Interview 04 and 09).³⁸ In the Federal Police, for instance, an anti-corruption investigation can include surveillance of a place or person, use of undercover agents and sting operations, wire-typing among others practices that require previous judicial authorization in order to become evidence that could be later used in an adjudication procedure (Interview 02 and 07).³⁹

Investigative procedures can also be classified into *proactive* or *reactive*. A *reactive* investigation occurs after the fact was already perpetrated; it is backward looking and therefore heavily depends on information and monitoring reports sent by other institutions. A *proactive* investigation, on the other hand, is started while the crime is still happening and therefore it is regarded as the "ideal" form of investigation, as "the money does not leave the public safer" (Interview 07). While all institutions with power to investigate pursue reactive and proactive investigations, the number of proactive is still very small when compared to reactive.⁴⁰

Proactive investigations usually take place as taskforces developed by multiple institutions, among them CGU, TCU, Ministério Público and Federal Police (Interview 01 and 07).⁴¹ Since 2006, the number of taskforce operations raised from a couple in 2006 to almost 30 in 2012 (Interview 09). Most of those taskforce operations occur in a case-basis, normally when personal trust and synergy is developed between the staff of different institutions.⁴² Our research have found only one permanent and formalized taskforce, the *Força Tarefa Previdenciária*, in which Federal Police, Social Security Ministry and Public Prosecutors office work together on frauds related to pension funds for over 10 years now (Interview 07 and 11).⁴³

³⁸ Interview 04 and 09. Also, as interviewee 1 explains "we can frequently identify the problem, the unlawful act, the crime, but we can't find out who were the beneficiaries of the amount diverted. This can only be reached through access to telephone and banking records, and other information that only the Police and the Prosecutor [are able to get]."

³⁹ Interviewee 02 highlights that "special techniques of investigation" are necessary as in corruption cases much is done to erase the tracks of the crime. Interviewee 07 explains that the special techniques are the ones that require judicial authorization (wire-typing, searching and freezing). The ordinary techniques, also used in corruption investigations, are surveillance of a place or person, use of undercover agents and sting operations.

⁴⁰ Interview 05 and 07.

⁴¹ Taskforces might also be reactive when the operation is organized to in view of an ongoing investigation in one of the institutions.

⁴² Interviewee 02, for example, explains that different bodies can take the initiative of a joint investigation and after a certain time, in certain places, this relation gets stronger. And in these cases, there are "trust", "chemistry", "synergy" among the actors. And when a positive result is reached, more cases follow and a routine of working together is created.

⁴³ Interview 07 and 11. Interviewee 11 sums up why he believes taskforces work: "you put in the same room the guy taking care of internal controls, the guy from investigation and the one from law

Finally, some institutions participate both in investigation and adjudication proceedings as secondary players, helping primary actors to gather enough information. DRCI is one of them, supporting Brazilian authorities to gather evidence and establish communication with foreign authorities. COAF, Brazilian FIU, might also participate in investigative proceedings providing financial reports and analysis.⁴⁴

The media has also an important role in investigating anti-corruption cases – the so-called investigative journalism, an activity pursued by traditional media corporation groups, but also emerging political blogs. Some governmental investigators (as Federal Police officers or Public Prosecutors) cooperate with journalists, releasing information that can be useful for them if published and receiving information from the media in order to give a certain journalist the power to participate in some of its operations and having priority over other journalists in the release of information (Interview 02). Other institutions, like Federal Police, has a more rigid relation with the media and police officers has to be granted prior hand authorization in order to speak with the media about a given investigation (Interview 07).

3.3. Adjudication

Differently from the last two components, adjudication usually presupposes a three party system, in which you have two opposite parts (plaintiff and defendant) and a neutral part (the one who will judge). Usually, anti-corruption institutions either play the role of plaintiff or judge, seldom being the defendant. However, AGU is sometimes called to defend public institutions and authorities that are being prosecuted, especially in international courts (Interview 05). While in judicial processes those involved in accusing and judging are from different institutions, in administrative procedures they are usually from the same institutions – although not always from the same sub-unit.⁴⁵ Administrative procedures are usually more

enforcement... and they will sit in the same room to discuss one concrete case. So it works.”

⁴⁴ The value of the evidence produced by COAF was at least once considered insufficient by Brazilian Superior Justice Court (STJ) as legal base for granting access to bank and telephone records of the defendant. In view of that all the criminal investigation was dismissed. For more information, please check <http://www.conjur.com.br/2011-set-21/leia-voto-ministro-sebastiao-reis-anular-provas-sarney> (as of December 18, 2014) or have access the original decision here: <http://www.conjur.com.br/dl/voto-ministro-stj-sarney.pdf>.

⁴⁵ Usually, in corruption judicial adjudication procedures the plaintiffs are Ministério Público or another interested federal institution (like a foundation that had its money illegally spent by an

simplified than judicial procedures, especially those designed in the last decade. Furthermore, some administrative adjudication procedures have investigation and adjudication phases hard to distinguish. Usually administrative adjudication proceedings are also sent to the Ministério Público after they are concluded and they can also eventually become civil and/or criminal cases (Interview 03). CNJ “Goal 18”, mentioned above, shows there’s no common practice in this regard in state or federal level. The relation between the total amount of criminal actions and civil actions within the same court varies substantially.⁴⁶

Adjudication proceedings usually starts from an investigation or another adjudication procedure sent by another institution. It usually presupposes the guarantee of the due process and rights of defense and concludes with a binding decision from a judge. When this binding decision attributes responsibility to the defendant, it usually imposes one or more sanctions. When the defendant does not voluntarily defers to the sanction - or the authority has all it’s needed to guarantee its imposition, as happens with the dismissal – a enforcement proceeding starts, frequently lead by a different unit.⁴⁷

Procedures can be judicial, either in the civil area (public civil action and popular action) or in the criminal area; or administrative, like those taken in TCU or in the different correction (CGU, CEP) or ethical institutions/sub-units. Not only procedure requirements and steps change according to its nature/area, but also the range of possible sanctions and decisions that can be imposed. Note that different adjudication procedures can go on at the same time in different areas in autonomously matters, while some can wait for others decision before issuing its own – like CEP waiting for TCU (Interview 10).⁴⁸

administrator). Citizens can, sometimes, start these procedures as well, however the Ministério Público can intervene in the case. However, adjudication procedures are also carried inside TCU (where the accuser and the judge both belongs to the same institution) or in other institutions dealing with correction or ethics (as *Corregedorias* and Ethics Committees).

⁴⁶ While in some State Courts, as Ceara and Bahia, the number of criminal and civil actions are similar (around 2.000), in others there are much more criminal than civil actions (in Minas Gerais, more than 16.000 criminal actions were identified and less than 4.000 civil actions). The opposite also happens: in Rio Grande do Sul, for example, were identified 565 civil actions and 55 criminal actions. For a discussion and detailed description of this numbers, see Machado, Maira. “Crime e/ou improbidade? Notas sobre a performance do sistema de justice em casos de corrupção. *Revista Brasileira de Ciências Criminais*, forthcoming.

⁴⁷ Note that in Brazil public employees might be subjected to different sanctions; while a regular employee could be dismissed without remuneration, judges or prosecutors can only be retired with proportional earnings.

⁴⁸ Interviewee 10 explains CEP suspends the decision until TCU concludes their proceeding about the same person and the same facts “to avoid unfairness”.

Differently from most Latin American countries, Brazil has civil adjudicatory procedures for anti-corruption; the *public civil action* together with improbity law gives the possibility of concomitant anti-corruption persecution in criminal and civil spheres, duplicating institutional actors and frameworks. Sanctions in both proceedings are different; while criminal adjudication might lead to imprisonment, civil adjudication usually imposes prohibitions to assume public office or to contract with public administration for a given period of time. Both proceedings impose fines.

In criminal adjudication, passive and active corruption, money laundry, tax evasion and organized crime are the main crimes related to anti-corruption legislation. Although Brazilian statistics on that topic are for many reasons not reliable, according to December 2012 figures, there are 788 people arrested in the country for active and passive corruption⁴⁹.

Administrative adjudication is mainly pursued in three different areas: CGU's internal affairs system, TCU's Tomada de Contas Especial and Ethics Committee. While in CGU or TCU sanctions can include dismissal, fines and prohibitions to hire with public administration, ethics adjudication leads only to a public warning. As mentioned above, administrative adjudication is usually more simplified than judicial procedures and follow less strict rules: in correction procedures (*correição*), for instance, investigators and adjudicators are not individuals specialized in those tasks, but public employees – with or without training – that are selected *ad hoc* to perform those activities (Interview 01).⁵⁰ Even though administrative procedures are supposed to guarantee the same constitutional rights of defense required at judicial proceedings, the defendant still have the right to ask for judicial review for all administrative decisions.⁵¹ This leads to creation of judicial procedures to discuss the exact same content of the administrative ones; however, now the game is played by different institutions and rules for evidence gathering are different. Many cases are reversed in judicial courts not due to a wrongful content analysis, but due to procedures' failures occurred during the process (Interview 01). *Corregedorias* and TCU are aware of that and have been trying taking extra care to not commit those failures; however, the lack

⁴⁹ For a discussion about the reliability of these numbers, see Machado (forthcoming).

⁵⁰ Among training programs we have found, we highlight TCU Instituto Serzedello Côrrea and Superior School of the Magistrature and Ministério Público, responsible for offering professional training to its members. Programs like TCU's Diálogos Públicos and program CAPACITA, developed by CGU.

⁵¹ Brazilian Federal Constitution established in its article 5º, XXXV, that the law should not exclude from the Judicial review any injury or threat to the law.

of feedback of what happened to their process after they forwarded to another institution (like being considered irregular by the judicial court) makes identification of these problems harder.

In order to better structure adjudication procedures inside each institution, many have created coordination units that provides orientation, establish common norms, asserts its jurisdiction (*avocar*) over some procedures and join adjudication themselves. In internal affairs, CGU, CNJ and CNMP all have those units (Interviews 01, 04 and 19); for Criminal and Civil cases, MPF has the 2nd and 5th Chamber of Commission and Revision (Interview 14).⁵²

Despite those coordination efforts, involved actors still feel there is a long way ahead. Especially in what concerns adjudication, our research has struggled to find coordination mechanisms. Although corruption judicial adjudication cases tend to be complex and to involve groups of people with significant political power and access to good lawyers that usually explore all the possible appeals existent, the Judiciary, Ministério Público and Federal Police still cooperate very little outside the task-force operation schemes.

The existing statute of limitation laws makes the situation even more challenging, since the limitation is defined by the sanction (in the law or in the sentence) and not by the complexity of the case, number of defendants, international connections or law enforcement institutions involved. From the public authorities perspective, the limitation period in corruption cases is often insufficient to conclude adjudications and when it is reached it makes the whole procedure invalid and wastes hundreds of work-hours from public employees (Interview 14). Defendants also have on their sides the lack of institutional incentive for judges to prioritize corruption cases. The promotion at the judicial career, for example, takes into account performance data that gives judges equal points for each decision, unregard of its complexity; big complex corruption procedures are therefore usually left behind (Interview 04).

Another key feature of Brazilian adjudication procedures in corruption cases is “special forum” (*foro privilegiado*). According to the set of norms ruling the matter,

⁵² MP’s CCRs aims to connect and solve controversies among prosecutors working in related cases; it tries to solve “collective problems” and fix interpretations by hearing the parts involved and issuing understanding that, although not binding, can be useful to prosecutors from different regions. For more information, check <http://www.pgr.mpf.mp.br/areas-de-atuacao/camaras-de-coordenacao-e-revisao> (as of December 18, 2014).

there are three levels of courts of appeal that are competent to adjudicate criminal cases involving public authorities. The level of the appeal court is defined according to ranking of the public official⁵³. Cases involving multiple defendants – public authorities and citizens – might either go altogether to the appeal court or be split into parts in a way that special forum is only granted to public authorities. In the case of federal high-ranking officials, the Supreme Federal Court holds the special forum - what, being the highest court in the country, leave the defendants without the possibility to appeal from the decision. It's worth pointing out that there is no special forum at civil proceedings for improbity and therefore cases involving the same defendants might be investigated and prosecuted by different levels of jurisdiction.

3.4. Sanctioning

Sanctioning (or sentencing) is a key procedure rarely taken into consideration by the public opinion; even legal debate that tends to see the imposition of the sanction at the sentence or “the arrest” as the end of that case. Enforcing sanctions however requires new procedures to either manage prison time, to guarantee the payment of a fine or to return diverted money to the Public Administration.

This is valid both for administrative, civil and criminal procedures. In Brazil, the enforcement of criminal decisions is also a separate judicial proceeding carried out by a judge and prosecutor based at the “criminal enforcement section”, therefore different from those that participated during the adjudication phase⁵⁴.

In the civil domain at the federal level, the main actor is AGU. AGU is responsible for enforcing fines and compensation for damages from judicial and non-judicial (TCU, CGU mainly) adjudication procedures, when they are not voluntarily paid. The key unit, as mentioned before, is “Grupo de Atuação Proativa”. AGU is also responsible to recover assets sent overseas, especially to tax havens or other countries; AGU International Department works closely with DRCI, COAF and other such like international institutions.

⁵³ For a whole explanation of *foro privilegiado*, its origins and changes during the XXth century, see Ferreira 2014.

⁵⁴ For a discussion about the enforcement of sanctions in corruption case, see Carolina Ferreira, 2014, describing the proceeding of Nicolau dos Santos Neto at the TRT Case. .

Usually, low value fines are paid and some of those convicted opt to pay its debt in monthly installments, a possibility offered by administrative units.⁵⁵ Although fines can be, within the limits of the law, freely stipulated by adjudicatory institutions (the one's who judge), institutions should take into consideration other fines when fixing its value; that is, assets recovery procedures can be determined by different institutions, however the overall recovered money cannot exceed the total debt. Some other administrative sanctions are enforced by the public administration itself, like demission of public employees (Interview 19).

Despite all those efforts, according to estimates of our interviewees, only a very small percentage (less than 5%) of all diverted assets are ever recovered (Interview 06 and 18). Sanction enforcement procedures are also subjected to appeals and when the debt is about to be executed, many defendants already have no assets left in their name, making the whole procedure useless. Therefore AGU tries to make conciliations when possible. Along the year, it usually promotes the "month of conciliation" where proposals and better payment conditions are made to those in debt due to anti-corruption procedures as well (Interview 13).

Civil society also somehow enforces sanctions, although not formally. Using the tactics of "embarrassment", they enforce shaming sanctions against public officials, a procedure that due to its simplicity can have more effective results than official/formal ones (Interview 21)⁵⁶. A lot of times, those shaming sanctions will actually be the only sanction the corruptor will in fact face. However, that practice is dangerous and numerous are those cases that media and civil society condemns someone without evidence and imposes an undue sanction for innocent people (or, at least, without the necessary evidence to make those claims) - like the Veja case mentioned in the introduction of this chapter.

Prohibitions of contracting out with or being hired by federal administration - another recurrent civil or administrative sanction - needs to be carried out by each administrative unit so they can make the prohibition effective. Databases with names

⁵⁵ We highlight that some of those sanctioned to pay fines due to their involvement in the Mensalão case made crowd-funding to obtain funds to pay them (José Dirceu e José Genoíno). For more information, check <http://g1.globo.com/politica/noticia/2014/02/dirceu-arrecada-mais-de-r-1-milhao-para-pagar-multa-do-mensalao.html> (as of December 18, 2014).

⁵⁶ An example mentioned in our interviews was the creation of the Popular Transparency Index, that evaluated district representative's websites. With the help of the media, it became popular in Distrito Federal and made the responsible NGO to be contacted by several representatives. To view the index, please access <http://www.sitranspdf.org.br/>.

and details of those sanctioned with prohibition to contract with Federal administrations - like *Cadastro Nacional de Improbidade* and *Cadastro de Empresas Inidôneas e Suspensas* – were created very recently, in the last five years , in order to facilitate access and assure those prohibitions enforcement.⁵⁷ These databases function not only as an effective way to reduce the costs of enforcing those sanctions, but also as a way to publicize sanctions and, perhaps, dissuade others to commit the same corrupt acts.

3.5. Publicity of enforcement

Every year, all federal institutions are required to publish annual management reports (*relatórios de gestão*) in which they describe activities pursued and sometimes publish statistics about its performance, what can include number of proceedings made in that year and, sometimes, convictions and sanctions imposed. In every federal institution webpage, one might find statistical data concerning its personnel, expenses and activities; annual reports with an overall assessment of their activities are easily located online. However, this closed-format information (usually a PDF) or hard to understand files (like CSV files) are not always fully intelligible for most of the people. Annual reports, for instance, are not very detailed and contain statistical information that is usually aggregated in categories without further explanations on how the data was collected or what they actually mean. We highlight that these problems are not present in all institutions with the same intensity or degree. Data concerning Ministério Público numbers are much less detailed than data released by COAF, for instance.

There are at least two ways in which enforcement is publicized: by (i) direct disclosing information about individual cases or about procedures and sanctions enforced or by (ii) indirect disclosure through the media or NGOs.

In the Judiciary, CNJ has required every court to identify how many cases of corruption and improbity were pending and report whenever each was judged⁵⁸. “Goal 18” – as it is named – published in late 2013 the total amount of anti-corruption cases in civil and criminal areas, differentiating those concluded and those pending; it

⁵⁷ Some of possible sanctions to applied in the Federal level like prohibitions to contract with a company that has been sanctioned are listed in article 12 from Law 8.429/92.

⁵⁸ See <http://www.cnj.jus.br/gestao-e-planejamento/metas/metas-2013/meta-18> (as of October 30 2014)

also shows the same data per court. That has contributed to create a context that gave substantial visibility for state-performance.⁵⁹ Civil society and the media may consult the CNJ website to verify the level of accomplishment of the goal by court – all state appellate courts and superior courts – and help to translate that information for the general public. As a purely quantitative measurement of number of cases sentenced out of the total of cases identified in each court, the accomplishment rate, however, does not cover the quality of the decisions.

There are also statistics on incarceration produced by each state - those competent to run the penitentiary system – and compiled by the federal Minister of Justice that publishes national results in a system called Infopen. The same production procedure applies for “Goal 18”, in which CNJ compiles data provided by state courts.

Although those statistics help to draw a timid overview of law enforcement institutions activities in Brazil, they are not very helpful to assess the performance of current anti-corruption system as whole. Governmental reports state only annual numbers of procedures in each phase alone (monitoring or investigation or adjudication or sanction enforcement); there is no easy way to track cases between phases or institutions – that is from/to monitoring, investigation, adjudication and sanction enforcement. In other words, it is impossible to determine, for instance, how many investigations lead to adjudicatory procedures in which sanctions were determined, neither how many of those were actually successfully enforced (and how much funds were recovered).

Publicity of enforcement also takes place through recent experiences of “registering” public employees and companies that were convicted (like the *Cadastrós* mentioned in the section above) or those who hold a clean sheet. An example of this last sort is the *Cadastro Pró-Ética* (Pro-Ethics Seal), an initiative developed by CGU Prevention and civil society. The idea is to publicly recognize companies that are seriously committed with ethics and anti-corruption policies. As of the end of 2013, only 12 companies succeeded in obtaining the seal but several others

⁵⁹ Piauí, for example, shows the lower rate of accomplishment of the goal (16%) regarding criminal actions judging 8 out of the 48 actions identified. Amapá shows the higher rate, also among criminal actions (98%), judging 504 out of the 515 actions identified.

have tried (Interview 01)⁶⁰. The seal aims to bring positive reinforcement and benefits for those who comply with anti-corruption laws.

We highlight that publicity of enforcement can theoretically lead to general dissuasion effects. However, in order for that to happen, the role of the media and NGOs in translating technical information and taking it to those more prone to commit those crimes are essential. Publishing reports that no one reads (although everyone can have access) or statistics that are often complex or incomplete does not seem to be able to dissuade no one. However, in this information is translated to a more *digested* language, dissuasion effects might arise. Mensalão case, for instance, is often regarded as one of the first cases in which high level politicians were arrested for more than a couple of weeks. The current Lava-Jato taskforce was one of the first operations in which high level businessman were arrested, even though it was provisory prison. Those cases were highly reported in the media what lead to a very wide publicization of its enforcement procedures.

⁶⁰ For more information, please access <http://www.cgu.gov.br/assuntos/etica-e-integridade/setor-privado/cadastro-empresa-pro-etica> (as of December 18, 2014).

4. Coordination mechanisms

Coordination has very blurred definition. As Peters (forthcoming) puts it “coordination is both a process through which decisions are brought together and an outcome of that process”. It seems to involve a set of decisions and actions that take into consideration procedures developed by other institutional units. It is not only working together in concrete, but also sharing information and knowledge about its needs and developing procedures that can better dialogue with each other. It is about creating formal and informal structures and procedures that allow better achievement of everyone’s goals and the whole anti-corruption system goals.

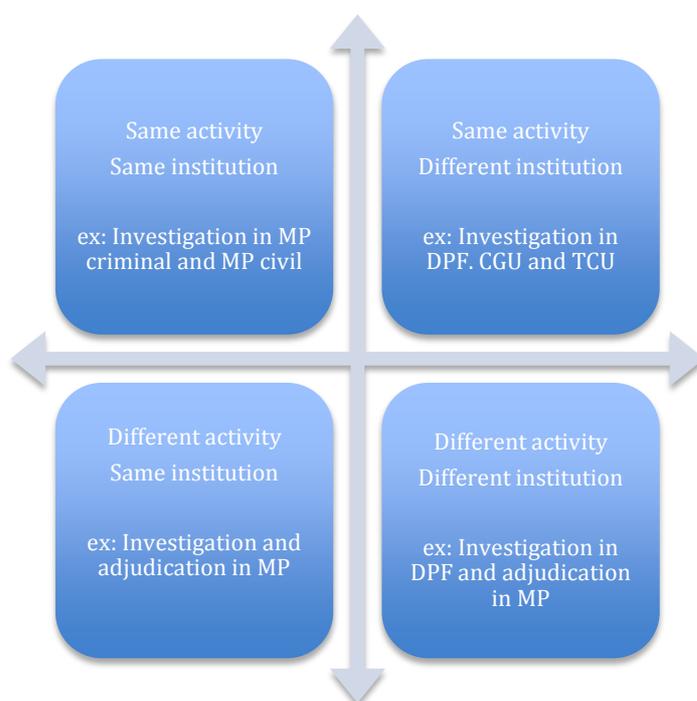
As Peters (forthcoming) points out, not always coordination is “voluntary and based on normative agreements”, but a good deal “is the result of either coercion or the use of incentives”. There are certainly various levels of coordination and different forms to achieve it. In fact, there are even institutions – like ENCCLA – that have coordination of anti-corruption strategies as its main goal. In our research, we have tried to identify some of those coordination strategies developed by institutions studied. Coordination is not always the case, however. Institutions also compete with each other to strengthen its power and budget. As Peters points out, “politics at an organizational level is about defending the organizations turf. Turf [...] represents the things that the organizations holds dear, and fears are threatened by other organizations, such as money, space, and time (Bardach, 1996)”.

During this research we have identified five possible interactions between two or more institutions or sub-units in the anti-corruption domain. Firstly, they can simply do not take into account the work developed by other institutions in all or in some of those procedures and tasks it develops daily. That is, they can (i) *ignore* the work developed by others. In our research, we have identified that federal and state level auditing institutions (*Tribunal de Contas*) hardly exchange information with each other regarding the irregularities they find during their monitoring and investigative procedures. However, institutitons and sub-units can take into account the work developed by others and (ii) *act independently and compete*, like sometimes the Federal Police and Ministério Público to what concerns investigative procedures or even sub-units of Ministério Público (GAECO vs. general)⁶¹. Or they can (iii) *act independently and but acknowledge indirect interference*. An example would be when

⁶¹ GAECO is a sub-unit from Ministério Público from the State of São Paulo in charge of investigating organized crimes. Currently it mainly deals with drug-dealing and political corruption.

CGU acknowledges that its monitoring and investigative reports could be used in a criminal investigation led by the Federal Police or adjudicatory procedure by MP and, therefore, tries to point out criminal evidence and collect evidence that can be later used in court. On the other hand, where there is some degree of coordination, institutions (iv) can work independently and coordinate their actions or (v) work together.

This chapter focus on this two last types of coordination and brings different examples below. Next sections will present four types of relationships between different institutional units organized according to the types of procedures. Using the binomials different/same and institutions/activities, we can distinguish 4 different levels of relationships:



4.1. Same function and same institution

As already mentioned above what we regard as an institution can be broken into a combination of institutional units. It is interesting to highlight that coordination among units of the same institution can be a very hard task to achieve. After all, some institutions are present in dozens of cities in Brazil (MP, TCU, Courts, CGU, DPF); some do not have anti-corruption as its exclusive goal (MP, Courts, DPF, Congress); some have a more *loose/autonomous* control over sub-units (MP and Courts), while

others have a more *tight/hierarchical* one (CGU or DPF). To make things more complex, sometimes multiple sub-units from the same institution are involved to pursue the same activity. In TCU adjudication procedure, for instance, 3 different sub-units are involved: fiscalization unit, MP in TCU and Ministers; each makes a report that will be taken into consideration by the Plenarium when taking their decision.

Institutions also vary according to their rules and format. While some are more hierarchical, others are horizontal; these different configurations certainly play a role in the ways in which coordination can be achieved and can foster better results. Ministério Público members – prosecutors – have “functional autonomy” secured by the Constitution, meaning that “when he believes he has to act, he doesn’t ask or consult anyone. When he [a prosecutor] receives the information he can open an investigation or, if he believes he has enough evidence already, he can propose the [civil or criminal] action directly” (Interview 12). That can lead to multiple prosecutions being initiated in different cities thousand of kilometers away from each other – especially in big public procurement procedures where actors act nationwide – without one necessarily taking the other into consideration.

All these factors bring different intra-coordination issues that need to be taken into consideration. We have mainly identified four different ways in which coordination was being fostered in this category. The first is (i) through the establishment of a central unit and strengthening hierarchical control. Hierarchical institutions, like CGU, TCU or Federal Police, usually have a sub-unit in Brasília that plans which activities and/or operations they are going to execute (Interview 07). Execution, however, is usually done by local units located across the country; seldom those that plan really execute it (Interview 01). This procedure is perceived to facilitate central coordination as it avoids having different sub-units working at the same time at the same topic in an uncoordinated manner. CGU has also experienced the creation of units to deal with topics that were decentralized between different units. *Secretaria de Prevenção*, created in 2006, for instance, unified all orientation and prevention proceedings (Interview 01). Corregedorias from CGU, CNJ e CNMP also have units that seek to coordinate different *corregedorias* from public administration⁶².

⁶² For that, they use systems like CGUPAD, a software that armazenating and sharing information about disciplinary procedures existent in all Federal level. (Interview 19)

Secondly coordination might result of (ii) sharing efforts, data and information collected by different units in the same function and in the same institution. In Ministério Público, different sub-units deal with investigation or adjudication procedures in criminal or civil areas. Therefore, there can be two investigation procedures or adjudication procedures going on at the same time, being led by different prosecutors. Although prosecutors are not obliged to share their efforts or evidences, this seems to be a growing concern inside the institution. In 2011, ENCCLA recommended Ministério Público to unify civil and criminal attributions in dealing with corruption and improbity (Recommendation 03/2011)⁶³. In 2012, a system was developed in which prosecutors can insert information about their cases and consult to see if there is any open investigation or adjudication procedure with the same people involved.

We have identified that sometimes different sub-units can just work together in one phase (investigation) and then move apart in the next (adjudication). Also, cooperation and evidence gathering seems more common when the original case started in the criminal sphere and then moved to improbity, than the other way around (Interview 14).

The third way was (iii) through the creation of specialized groups focused on anti-corruption in institutions that does not have it as its only goal. Federal Public Prosecutor (MPF) has created specialized sub-units to coordinate anti-corruption procedures at the appeals level (CCRs). The CCR try to connect and solve controversies among prosecutors working with related cases; it tries to solve “collective problems” and fix interpretations by hearing the parts involved and issuing understanding that, although not binding, can support prosecutors from different regions. As mentioned above, AGU also created a group dedicated full time to anti-corruption and improbity cases (*Grupo de Atuação Pro-Ativa*). At first, that group would only propose enforcement procedures; now, however, they are also have to manage them, what is consuming a lot of resources and have decreased the number of new actions pursued every year (Interview 13).

Finally, we have also identified (iv) forums in which representatives from different units talk to each other and develop common goals. *Fórum Nacional de Gestão do MP* gathers all representative of MP from all over the country to discuss

⁶³ Available at ENCCLA website, mentioned above.

themes related to MP management area, personnel management, public bidding processes and contracts, budgets, internal control, among other things (Interview 13). Even if not directly related to law enforcement, this sort of meeting strengthens personal relationship and inter-personal trust which proved to be a key component of coordination strategies, as discussed below.

4.2. Different function and same institution

Two examples of institutions that performs multiple activities are: MP that performs investigation and adjudication and CGU that performs monitoring, investigation and, when related to public employees' rights and duties, adjudication and sanction enforcement. These tasks are usually performed by different units inside that same institution - there are exceptions however, like MP prosecutors that can start investigation and adjudication procedures (Interview 02). Therefore, coordination usually took place through the (i) creation of central units for coordination or (ii) through the joint planning of actions together.

In CGU, the Executive Secretary is the institution responsible to coordinate units from different functions and "make the bridge between the Minister office and the other areas". When there is, for example, an auditing proceeding (*auditoria*) in which public employees are involved, *SFC* (Internal Control) and *Corregedorias* are the ones to deal with that case. The Executive Secretary role is then to facilitate communication between those areas; however, it only makes this bridge in some cases, usually the more complex ones (Interview 16). In AGU, there are also occasions in which a consultancy unit and prosecution units (adjudication or sanction enforcement) develop joint works, in which the first brings knowledge to foment an adjudicatory strategy, contribute to draft initial documents and work together to define settlement strategies (Interview 13).

4.3. Same function and different institution

There are enforcement procedures that are better performed when different expertises are integrated to accomplish the same goal, like investigation. An anti-corruption investigation usually requires accountant analysis, financial intelligence analysis, criminal analysis and public employees legislation analysis. Anti-corruption

institutions cannot develop all these types of analysis alone and some sort of coordination is regarded as essential (Interview 01 and 11). That is also the case when it is necessary to gather evidence for an administrative investigation that can only be obtained through a previous judicial authorization, that often needs to be requested by another institution.

Some institutions have units that have the main task of making this interinstitutional articulation. In CGU, for example, there is a *Diretoria de Operação Especiais* in Brasília that plans this interaction between CGU and other institutions in taskforces, for example. Regional units cannot decide by themselves to create taskforce operations, for example, as NAE – *Núcleo de Ações Estratégicas* – is the one who deals with other institutions (Interview 01).

In order to address those issues, coordination takes place in at least two different ways. The first is the creation of task forces and joint operations (Interview 06). In the last decade, the most famous corruption cases in Brazil were *born* one or two years before they got media attention, usually by taskforces involving actors like CGU, DPF, MPE, MPF, Federal, Banco Central, COAF (Interview 01). The number of task force operations is rising each year – more than 30 in 2013 according to the information provided by the Federal Police (Interview 07).

Although MP is involved in different taskforce operations, its functional autonomy also makes harder for other institutions to guarantee MP participation in these joint-procedures; the decision to join or not the taskforce is entirely up to individual Prosecutors (Interview 01). However, MP usually works close to the police in criminal investigations (Interview 02); even though that is not a routine, interviewees often regarded it as desirable (Interviews 02 and 05), as it prevents that evidence collected by the Police can later be declared insufficient or even disregarded by a criminal judge, among other problems. Note that taskforces are not a routine, but are implemented only in some cases, after careful assessment and other institutions willingness to participate (Interview 07). Brazil has only one example of a permanent task-force; one devoted to frauds to Pension Funds (*Força Tarefa Previdenciária*) that integrates MPF, DPF and Pension Funds Ministry (Interview 07).

Secondly, coordination also takes place through the adoption of common standards and behaviors that have the potential to benefit the work of other institutions – things like paying attention to common deadlines or looking and reporting elements that can be useful for their actions. Communication between these

organizations, when it is not sharp, might represent a huge problem, especially when several organizations are involved. Delays from one institution in giving an answer or forwarding reports can cause delays to the whole procedure and have direct impact on the work developed by other institutions (Interview 05). Units can also work closer to each other and sometimes ask the help from each other to interpret data and evidence that they do not have the skills or are not competent to do themselves (Interview 07).

Coordination does not occur at the same degree between different levels (international, federal, state and local). At the international arena, coordination is perceived as more intense especially when AGU, DRCI and others get involved in the same activity or case. AGU even coordinate their work with private actors, like international law firms responsible to adjudicate in the name of Brazilian government overseas (Interview 05). At the state level, on the other hand, TCU and TCE, for instance, hardly share information or invest in joint investigative efforts, but they do work with other institutions (Interview 03).

4.4. Different function and different institution

This is perhaps the level in which most coordination problems arise. As shown above, anti-corruption strategies build on each other and a monitoring or investigative procedure developed by one institution will likely be used by another institution to perform another activity (i.e. COAF monitors financial transactions, send this information for TCU to build a investigation, that will send this procedure for MP to adjudicate in Courts, that will be used by AGU to enforce that sanction) (Interview 01). Institutions need to be aware that their reports will eventually be forwarded to different institutions that are composed by employees with different training and that are assigned to develop particular tasks that require certain cares and information. And also that those reports can be forwarded to other institutions in the future (Interview 10).

Brazilian law requires that most institutions forward their reports and decisions to others once the procedure is finished. Depending on which violations the institution perceives in a case, it chooses who it will send it to: if a crime, to *Ministério Público* or *Polícia Federal*; if assets recovery or sanctioning, to AGU, etc. (Interviews 03 and 09).

These information and reports are sent to the institution and not to a particular sub-unit; therefore the institution decides who is going to receive or internally process that information – if it goes to the civil, criminal or both areas – is something decided by the receiving institution and not the one who sends the report or information (Interview 09).

To address those issues, we have noted that coordination between different institutions and different procedures also took place in at least two different ways. The first involves the assignment for a given unit of the task to identify institutions for which a given information would be *useful* to. In CGU, for instance, one of *Secretaria Federal de Controle Interno*'s main role is to find relevant information about possible corruption practices and figure out to which institutions would be interested in receiving it and how soon that document must be sent (timing issues) to avoid that procedures become useless in the close future due to statute of limitations restrictions, for example (Interviews 01 and 09).

The second way is also through task-force operations. Although most institutions have broad goals, most do not have enough resources and powers to independently fulfill its goals. An examples is CGU: its goals are broad (evaluate, control, fiscalize), but its procedural capabilities have strict limits; CGU cannot adjudicate except in cases of disciplinary actions; it cannot use special investigation techniques, like infiltration or telephone “bugs”, it needs other institutions to gather that evidence (Interview 09). Although some taskforces operations and networks can involve multiple activities – usually investigation and adjudication together - sanctioning institutions – like AGU – are hardly invited for them. It is true that including AGU could bring direct benefits, either because a earlier strategy to assure that a defendant will still have property in his name to guarantee part of his potential sanction in the case this arises is highly desirable or simply because information gathered in sanction enforcement can also be shared with investigators and adjudicators start a new case. Note, however, that these are rarely done.

Not always the activity and interaction flux between different institutions is the same in both directions. MP, for instance, demands a lot of information from CGU (Interview 16); although CGU sends them a lot of reports, they do not request too much information (Interview 09). However, MP – and almost all institutions that do request or receive information from others to foment their procedures – hardly give any feedback of what was done with that information or procedure to the institution or

unit that forward it. Feedback, when done, is made in a case-by-case basis (Interviews 14 and 16).

Interaction between institutions can also get turbulent sometimes: prosecutors can get angry when CGU refuses to cooperate as requested or can simply ignore their requests (that is considered to be very rare though - Interview 09). The relationship between CGU and TCU, on the other hand, is described as positive: TCU and CGU jointly select those units that will be subjected to CGU monitoring procedures and later be send to TCU for their assessment (Interview 01).

COAF also has an important role in sending monitoring information for other institutions to perform their jobs. Its final reports - RIFs (*Relatórios de Informação Financeira*) foment different institutions, especially DPF and MP and, to a lesser extent, TCU and CGU (Interview 08). International coordination in this area is also present and done by DRCI (Interview 11).

There are also some forum initiatives that regard coordination between different institutions and different procedures. *Rede de Controle da Gestão Pública*, for instance, created the possibility of joint work between different institutions in a more permanent forum; however, it lost its importance and force in the last years, especially after the president of TCU – and its creator – left its job (Interviews 06 and 14).⁶⁴

⁶⁴ In the state level, we have identified the creation of FOCCO - Fórum Permanente de Combate à Corrupção – and MARCCO – Movimento Articulado de Combate à Corrupção – in different states, especially those from the Northeast.

5. Conclusion

Overall, this chapter depicts Brazil as a country in which a wide range of institutional sub-units interact in pursuing different procedures to enforce anti-corruption law. This scenario seems to be the result of an incremental development intensified with the promulgation of the Federal Constitution in 1988. We can cluster developments in three main periods: the 1990's, a period marked by the creation and implementation of several institutions and landmark laws; the 2000's, with the strengthening of internal control and a rising concern for efficiency and coordination; the 2010's, with more transparency, popular participation, intensification of anti-corruption procedures including the business sector.

As showed above, anti-corruption procedures are spread out in multiple legislative areas, like criminal, civil, administrative, internal affairs, ethics, was makes possible the same corrupt act to have multiple procedures running at the same time. This institutional multiplicity leads to a modular system, in which when one institution does not take action, there is usually another that can perform a similar task and keep the system moving - be it in the same area (civil, criminal, administrative, ethical) or not. However, adjudication is mainly dependent on *Ministério Público* and Judiciary; when these don't act or take too long to do so, only auditing or ethical proceedings can be enforced. This "bottle-neck" effect is created by dominant judicial interpretations of articles of the Federal Constitution that states that "the law shall not exclude any injury or threat to a right from the consideration of the Judicial Power" (art. 5, XXXV) and that "no one shall be deprived of freedom or of his assets without the due process of law" (art. 5 LIV). That interpretation makes all administrative adjudications (like those from CGU, CNJ or even TCU) subjected to judicial review and therefore deprived of efficacy. Sanction enforcement faces a similar situation; AGU, MP and Judiciary are almost the only actors that can enforce criminal or patrimonial sanctions (fines, restitutions, etc.). This generates a great workload for AGU, since it has to handle with a great amount of procedures started by a wide range of anti-corruption institutions.

Although coordination has been significantly improved during last decades, it is important to note that not always institutions coordinate with each other. Competition is sometimes reinforced by the fact that institutions usually fight to protect their turf - be it demanding exclusivity to pursue a given procedure (ex:

Federal Police in criminal investigation) or simply not cooperating with others requests (ex: judge that do not allow criminal investigation documents gathered by Federal Police to be shared with CPIs, like in *Lava Jato* taskforce).⁶⁵ As this research is mainly based in interviews with key-actors, experiences of successful coordination were described in much more detail than situations of conflict and competition.

Institutional vanity also plays a significant role in fostering competition or in making coordination challenging between anti-corruption institutions. Sometimes, institutions decide not to share their cases with others in order to be the ones to receive credit for uncovering big corruption cases; according to interviewees, this is a problem Federal Police frequently faces (Interview 07). Most of the biggest operations that are credited and seen as uncovered by the Federal Police often started in another institution (like CGU) and are the result of a collective task-force operation; however, the Federal Police is the one who usually win the laurels as is the one who makes arrests and other procedures that are more appealing to the media and visible to the public.

Brazilian institutions have implemented different formal coordination mechanisms like creation of new institutions to centralize planning and to distribute tasks among its units; the creation of new information exchange channels between and inside institutions, like forums and databases integration; the popularization of taskforce operations and pro-active investigations; among others. However, informal mechanisms were also extremely important to make all those initiatives work. After all, it takes more than signing papers and formalizing institutional partnerships to facilitate coordination to actual take place.

As several of our interviewees mentioned, in Brazil personal trust seems to be an invisible ingredient that not only greases existing coordination mechanisms and makes them work better, but also allows new coordination and institutional relationships to take place. Anti-corruption procedures usually deal with sensitive and confidential information, that sometimes have among its target governmental employees; public officers do not feel comfortable sharing those data with people they do not personally trust. It seems that there is little institutional trust among sub-units – be it in the inter- or even intra-institutional level. Collective forums, like ENCCLA,

⁶⁵ It was after a lot of political pressure that the judge responsible for the Lava Jato investigation allowed information to be shared with other institutions. For more information, please check <http://g1.globo.com/jornal-da-globo/noticia/2014/11/juiz-aceita-compartilhar-informacoes-da-lava-jato-com-outras-autoridades.html>.

and institutional events are regarded as good mechanism to not only discuss and cooperate in a procedural level, but also to build ties and trust among personnel. As we have heard in our interviews, big anti-corruption investigations and adjudications were born in after-work chatting over a cold beer; personal trust makes people select institutions sub-units that might not be specialized in that topic, but in which they feel their information will be secured and that effective joint work is possible (Interview 23).

The lack of institutional trust is, of course, not the only obstacle to coordination that we have identified. Inter-institutional relationships often face time and language obstacles. As procedures are normally sent to other institutions at their end and as their duration varies significantly, institutions might receive notice of anti-corruption case years after the first institution got to know about it or after the case actually took place. This has impacts in evidence collection – that sometimes cannot be recollected – and in statute of limitations. For instance, if TCU takes a long time to send an adjudicatory decision to the Police or MP's investigative unit so it can start the investigation – and sometimes that can take more than 2 years – any opportunity of pursuing proactive investigations, avoiding further damages and gathering more solid data is lost (Interviews 07 and 15). Another example of a timing problem can occur in the relationship between TCU and CGU's Internal Affairs: if CGU waits the TCU report on a given employee conduct, disciplinary procedures are often dismissed due to statute of limitations (Interview 19). Therefore, CGU usually have to act and take its decision regardless of the adjudication decision TCU – that, for instance, might have uncovered that case.

Note that institutions often – but not always - can share information and evidence collected before the final report is actually finished, but only when there is express request, something that is unlikely to happen unless that case is already being investigated or adjudicated by the requester unit (Interview 19). Information exchange does not always take place with fluidity, as one interviewee puts, between civil and criminal investigative or adjudicatory procedures (Interview 19); as a possible solution, he affirms that more formal and permanent channels of communication and information exchange could be extremely useful.

Inter-institutional coordination often faces languages obstacle: very often, one institution cannot fully comprehend or utilize reports made by others, due to language and analysis methods pursued. MP and Federal Police have shown difficulties in

understanding investigation reports from CGU, due to report technical language and management/efficiency focus – and not a legal one (Interview 01 and 14). That leads to the creation of “waste”, as big sections and analysis from investigative reports are totally disregarded by adjudication ones and sometimes procedures redoubled.

In order to tackle those problems, collective forums - like *Rede de Controle do Gasto Público* or ENCCLA – have incentivized the creation of basic procedural standards and common orientation to facilitate inter-institutional dialogue. Specialized anti-corruption units – like AGU’s *Grupo de Atuação Pro-Ativa* – create events and other opportunities to explain to other institutions what AGU needs from them in order to increase the chances that sanctions will be enforced and diverted public funds restituted when sanction enforcement starts.

Coordination among civil, criminal and administrative proceedings is still a challenge – especially to what concern intra-institutional coordination in *Ministério Público* and Judiciary. Sub-units that deal with civil, criminal and administrative investigation not always communicate or coordinate with each other, elevating the procedural costs for them – since joint efforts could theoretically reduce financial and human capital needed to pursue those activities. This lack of coordination, especially present in the *Ministério Público*, has already been the basis of a recommendation by ENCCLA, as mentioned before. ENCCLA, however, can only recommend institutions to adopt those measures and cannot, under any circumstance, impose them. Until now, we were not able to gather information in the *Ministério Público* to confirm that initiatives in this path have already being taken.

There is also an ongoing debate about whether proof and evidence produced in a civil or administrative investigation can be used as evidence in a criminal adjudication cases. Some judges still reject inter-procedural evidence exchange, as defense lawyers claim that the evidence collection proceedings in these different procedures (administrative, civil and criminal) varies and not always follow the more defendant-protective regulation present in criminal evidence production (that requires *contraditório* and *ampla defesa* of the defendant during evidence production). STJ already refused evidence produced by COAF and used by MPF to ask to break bank and communication secrecies of the investigated people in the taskforce operation Operation Boi Barrica/Faktor (Interview 13)⁶⁶. These rigid and restrictive Judiciary

⁶⁶ Check footnote 45, above.

dominant understanding for the non-utilization of the “lend evidence” (*prova emprestada*) seems to not foment cooperation between units and to disregard “procedural economy” (*economia processual*) principles stated in the Federal Constitution after Constitutional Amendment 45/04 (art. 5º, LXXVIII).

Finally, we must recognize that although, during the last 10 years, Brazilian Public Administration has put a significant amount of information available online, there is still a long road in order to achieve better information exchange between governmental institutions or between governmental, civil society and citizens. Especially some period after the *Lei de Acesso à Informação* promulgation, the duty of public administration to provide citizens with performance information got clearer and more management and institutional information can be found online in websites like *dados.gov.br*; procedural information and statistics are still very scarce. As we have heard during in our interviews, the duty of producing information and releasing to the public actually contributed for inter-institutional sharing, as it pressured them to collect data that was not previously collected (as now citizens could require it and public administration punished if not able to comply with the request).⁶⁷

This performance and management information is usually stored in databases that have increasingly been shared among them. Database integration is also essential to help coordination between different procedures and institutions, as data from Police can be useful by MPF, data from TCU to CGU, etc. As one interviewee puts, “if we didn’t integrate the databases, they are not effective [...] if there is not an strategy that thinks about it, police officers – like myself – cannot know that perhaps CGU already the information I need in another database that if merged to mine can bring significance improvements for my task” (Interview 11). In the last years, more and more partnerships were made between institutions for inter-institutional database sharing (Interview 07). A multi-institutional forum – *TI Controle* - was even created to function of the ENCCLA of database integration; its main idea is not to create new databases or store the information all at the same place; but providing easy access for

⁶⁷ In case the public administration does not provide the data in the given period, sanctions applied might include warnings, fines, dismissal, temporary suspension or even the prohibition to contract with government until rehabilitation is given by the same person that applied the sanctions. For more information, check article 33 from Law 12.527/11.

all of institutions to access and contribute to the existing databases, with the possibility to do cross data analysis.⁶⁸

As we have learned in our research, coordination can be seen as a *two-way road*: if one wants others to cooperate and share information with him, he also needs to do the same for them. In order to continue to increase coordination, a mix between institutional and non-institutional mechanisms must be put in place: a system based on personal trust alone is not sustainable, as when employees and officials change or turn-over, coordination might cease. However, a system based only in institutional relationships might not have enough grease as it would seem required to make anti-corruption coordination machinery run smoothly. Fostering coordination requires a willingness to cooperate and sometimes work hard and get little or no credit at all. As put by one interviewee, to coordinate “means you have to give up your immediate priority for collective priority; it means you have to invest work, intelligence and resources to reach a goal of everyone and not only a goal of your sub-unit.” (Interview 17). And not all institutions are willing to do so; in the short run, it is easier to just focus on its own work and disregard others. However, as this chapter shows, in a country like Brazil the costs of uncoordination in law enforcement are very high.

⁶⁸ *TI Controle* was created under the guidance of TCU and CGU, it started in 2006 with the goal to unify access to databases and standardize information inside the public administration; to create interoperability between their systems.