



DEMOCRACY WORKS | CONFERENCE PAPER | 2014

Brazil: Democracy and Corruption

by Marcus André Melo

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Executive Summary

This working paper was prepared for presentation at the Democracy Works Project seminar at Casa Das Garças, Rio de Janeiro, May 15, 2013.

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Corruption had been a central issue in Brazilian politics since the country's return to democracy in 1988. The path towards better accountability has been non-linear: institutional reforms have come in waves, triggered by major scandals and episodes of intense activism and mobilisation. Recently, a number of scandals involving prominent politicians and government officials have led to unprecedented developments, ranging from the impeachment of a president charged with involvement in corruption, to judicial rulings sentencing prominent government officials to jail. These developments have been possible due to the strengthening of the rule of law and improvements that have occurred in the web of accountability institutions since the promulgation of the country's new constitution in 1988. Moderate to intense political competition, an independent media, and civil-society activism have also contributed to these positive developments.

Comparative assessments of corruption, as captured in surveys, contain numerous measurement errors, and the evidence should be cautiously examined. Transparency International's Corruption Perception Index score for Brazil in 2012 was 43—the same value as South Africa. Brazil ranked 69th out of 183 countries, below Chile, Uruguay, and Costa Rica in Latin America. Brazil fared better in less-subjective studies of the payment of bribes. For example, citizens' experience of corruption as gauged by Transparency International's Global Corruption Barometer is surprisingly low, comparatively, and tends to focus on dealings with the police. The percentage of people in Brazil reporting having paid a bribe is similar to that of OECD countries and much lower than Chile, Mexico, or South Africa. The Bribe Payers' Index and the Global Corruption Barometer point to a similar conclusion: corruption is not systemic and is relatively less of a problem than in other emerging economies, or even some OECD countries. A less-rosy picture emerges when some indirect indicators of corruption are used. A widely used benchmark is the cost of political campaigns: Brazil has the most expensive political campaigns anywhere in the world except for the US.

Corruption in Brazil is not prevalent in federal public bureaucracies, some of which are highly professionalised, but is pervasive in local and regional governments. It is worst in the area of procurement and public works, at all

levels, and thus is a problem citizens do not experience in their direct dealings with the public machinery or service delivery (except for their dealings with the police). As well as this, corruption is part and parcel of campaign financing. This pattern of corruption is more similar to that found in industrial economies with ineffective checks and balances rather than that of developing and poor countries (where instead corruption in service delivery is high). Corruption affects developmental outcomes—particularly in education and health—in significant ways. For example, a quarter to one third of local governments have been found to produce serious irregularities in the use of educational and health funds. The level of corruption also influences students' achievement scores.

Brazilian citizens view parliaments, political parties, and the police as more corrupt than the citizens from the other 100 countries in the GCB sample. Conversely, they find public servants, the media, and the private sector less corrupt than citizens from other countries. Brazil seems to be unique in terms of how citizens view the role of the media in the fight against corruption. In the 2010–11 GCB survey, Brazilians selected the media as the institution they most trusted in the fight against corruption, giving it the highest percentage of all countries in the survey. Public sentiment against corruption is high, reflecting both high levels of aversion to corruption and intense media scrutiny, but also increasing judicial activism and intolerance towards political elites' misbehaviour. Roughly one third of Brazil's parliamentarians face charges in criminal and audit courts, prompting the creation of non-profit organisations to monitor corruption. Civil-society activism has led to impressive mobilisations involving over a million citizens, as in the case of the vote-buying prevention and *ficha-limpa* (clean-slate) laws. Citizens have shown increasing intolerance to corruption and are prepared to penalise misbehaviour: the probability of re-election for federal deputies and mayors implicated in illicit acts has decreased in recent elections by 18 percent and 11 percent, respectively.

Exposure of corruption is high under democracy as a result of enhanced checks and more effective oversight of institutional and government practices. The high level of corruption exposure in the country reflects not only an actual high prevalence of political corruption but also the improvements that have been made in monitoring, and punishing those involved in, corruption by the media, public prosecutors, and other judicial actors and institutions.

Much of the institutional strengthening in the area of accountability and corruption control under democracy has been scandal or crisis-led. The latest of which—the *mensalão*—has become a symbol of the maturity of Brazilian institutions because it set an important precedent: even highly popular politicians can face sanctions.

Corruption in Brazil is constrained by the work of a network of accountability institutions. The majority of these institutions—from the judiciary to audit courts and the federal police—exhibit comparatively high levels of professionalism, competitive salaries, and attractive careers, as well as adequate funding and meritocratic recruitment. Some institutions, such as the National Audit Court, outperform similar institutions of OECD countries. This suggests that the problems in many accountability institutions have less to do with administrative and organisational reforms than with their interplay with the political system: overall, political meddling, lack of coordination, and inter-branch rivalries, as well as arcane legal procedures, constrain their effectiveness.

The most effective of the accountability institutions are those less amenable to political interference: the Public Ministry, the higher courts and the media. The National Audit Court (Tribunal de Contas, or TCU) and the parliamentary inquiry commissions (Comissão Parlamentares de Inquérito), on the other hand, are particularly vulnerable to the influence of political majorities and the governing coalition. As a rule, the main costs of the sanctions involved have been 'reputational', but there have been decreasing levels of impunity—as signalled in the *mensalão* trial—and less political influence over decisions in lower level courts following the creation of the National Judicial Council (Conselho Nacional de Justiça or CNJ). A number of reforms are still in order. The most important of the institutional reforms is the conversion of the audit courts into independent judicial institutions.

There is wide national variation in both corruption levels and the quality of accountability institutions in Brazil. There is econometrics evidence that where the rule of law is stronger there is less corruption, more public goods provision such as education and health services, and more efficiency in the public sector. There is also less predation (measured as self-enrichment) by political elites. More pluralistic and democratic states (those with more competitive elections) also have less irregularities and wrongdoing in their municipal governments.

Introduction

This report addresses three interrelated sets of questions. First, it seeks to discuss to what extent the transition to democracy in Brazil has contributed to the increase in corruption or, alternatively, to more exposure of corruption and to improved conditions to fight it. Second, it discusses how democratic institutions in Brazil have been grappling with corruption and how effective these institutions have been. Third, it takes stock of the reform initiatives in the country and asks which reforms have more potential to reduce corruption, assessing also how democracy inhibits or favours their implementation.

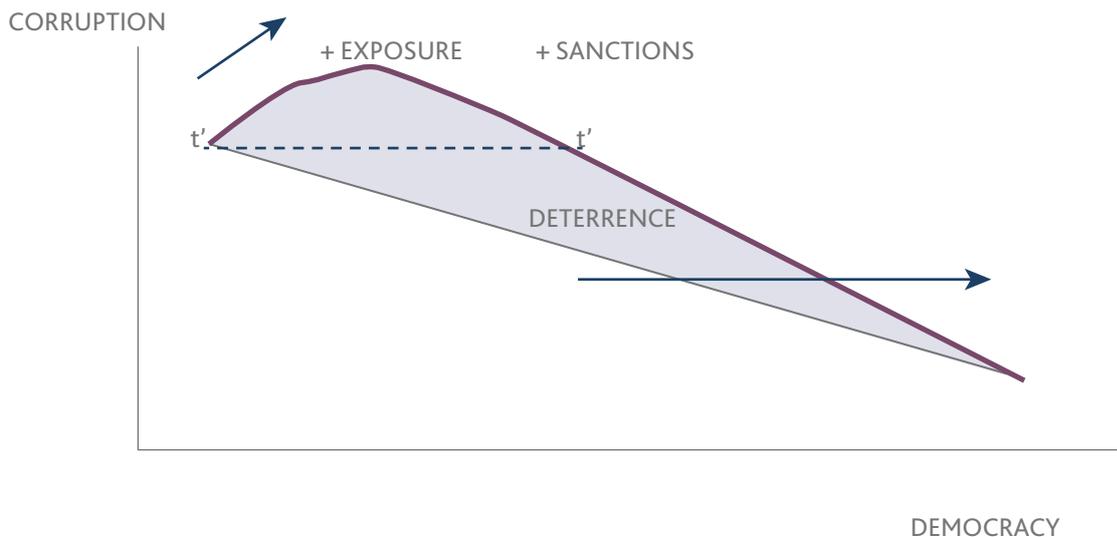
The report is organised in three sections. The first provides a summary overview of the comparative extension of corruption in Brazil—using available evidence—and discusses the nature of corruption in the country. The second section focuses on the web of accountability institutions in Brazil. It presents an analysis of major corruption scandals and shows how they triggered institutional reforms, illustrating the various responses of democratic institutions to the events. In addition, this section briefly reviews the overall functioning of the national audit courts, the internal comptroller, and the judicial system, as well as the media and civil-society organisations. Some evidence about the developmental impact of corruption in Brazil is also discussed. Because Brazil is a large federal country, the report explores to what extent regional institutions favour or constrain corrupt behaviour. There is great heterogeneity in the Brazilian federation—both in terms of the quality of controls over corruption and in levels of corruption—that allows us to explore how the different degrees in the rule of law and political institutions across the states affect democracy. The third section focuses on the interface between corruption and political institutions, and the reform agenda for fighting corruption in the country is discussed while some recommendations are proposed.

DEMOCRACY AND CORRUPTION

Corruption had been a central issue in Brazilian politics since the country's return to democracy in 1988. More recently, a number of scandals involving prominent politicians and government officials have led to unprecedented developments, ranging from the impeachment of a president charged with involvement in corruption to judicial rulings sentencing prominent government officials to jail. Corruption is an elusive phenomenon that is extremely challenging to measure diachronically and compare across countries due to its very nature. Comparative assessments of corruption and perceptions of corruption as captured in surveys contain numerous measurement errors and the evidence should be cautiously examined¹. Similarly we have serious limitations in the assessment of corruption over time. We do not have a counterfactual to evaluate whether democracy has led to an increase in corruption because we did not observe corruption under dictatorship. Exposure of corruption is intrinsically associated with transparency, rule of law, accountability, and freedom of expression, all of which are constituent elements of democracy. Thus, a great deal of corruption in non-democratic settings remains hidden.

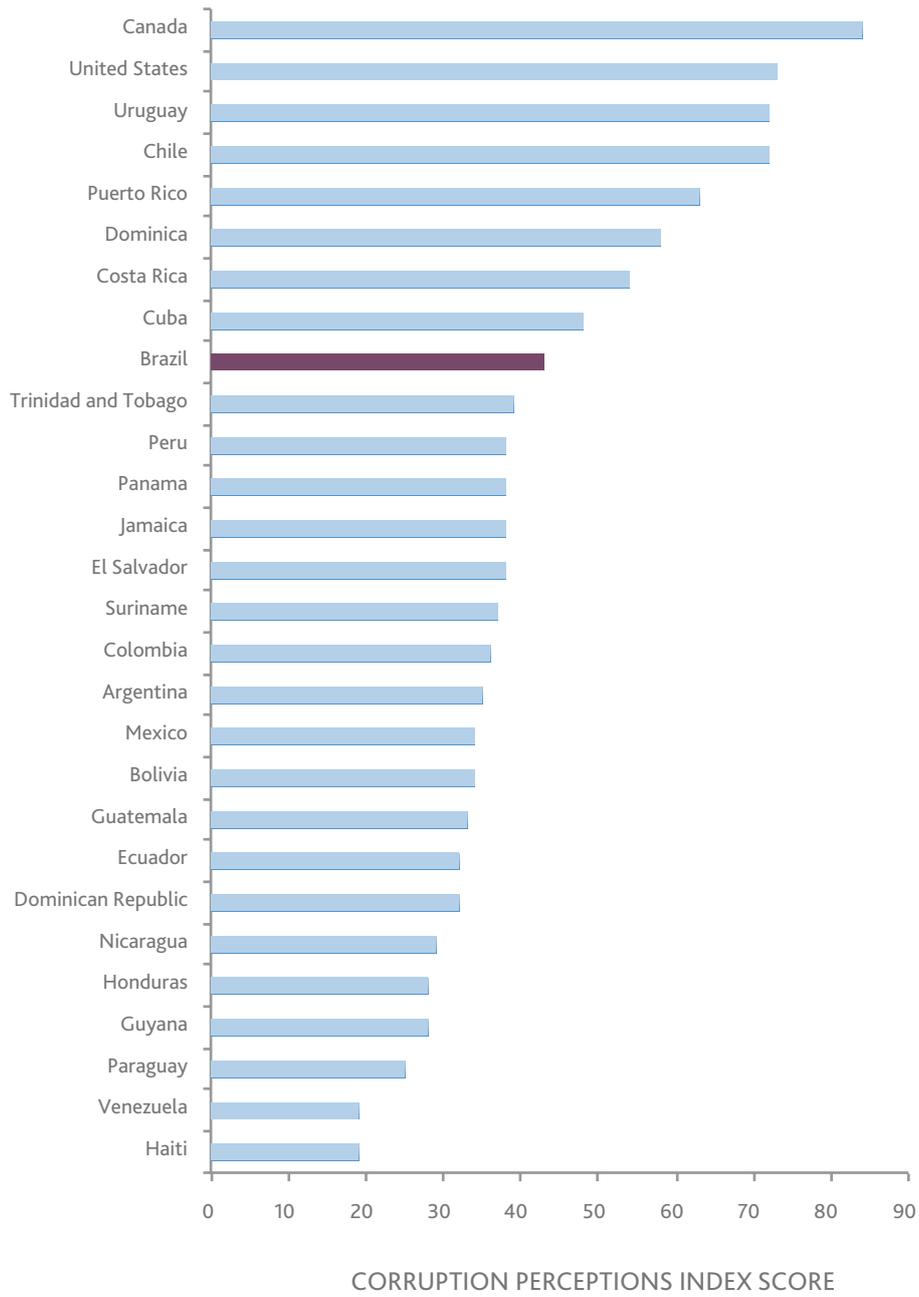
The overall effect of democracy on corruption is non-linear. There is hard evidence that democratising societies follow this pattern (Rock 2009). Figure 1 shows the hypothetical effect of democracy on corruption. In the earlier days of democracy there is more exposure of corruption, and thus there is an increase in perceived corruption even though actual corruption might increase, decrease, or remain the same. In the medium to long term, however, we expect a deterrence effect to take place because under democracy there is more accountability, less impunity, and less acceptance of corruption activity. If democracy means the strengthening of the rule of law and not merely electoral democracy—or an illiberal regime—this effect will lead to a decline in corruption because effective checks inhibit the practice of corruption.

FIGURE 1. THE EFFECT OF DEMOCRACY ON CORRUPTION



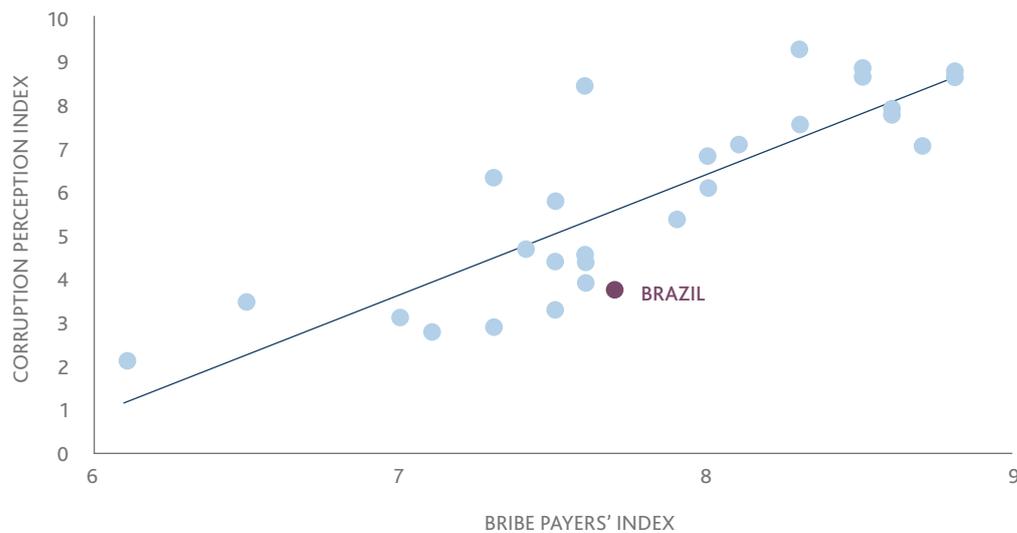
With the caveats about estimating corruption in mind, we can assess the available indirect evidence about the degree of corruption in Brazil and probe to what extent it is affected by democracy. Corruption is commonly defined as “the abuse of power for private gain” (Rose-Ackerman and Truex 2012, p.3). This definition implies that any illicit activities that involve the obtaining of an undue advantage should therefore be distinguished from the issue. The boundaries between the two in Brazil, as is the case in many countries, are often blurred, but the basic criteria adopted here and in the literature refer to essentially legal activities. If these criteria are relaxed, the phenomenon involved will become too complex and heterogeneous. Legality varies across countries, but in rich developed countries and upper middle-income countries like Brazil there is very little variation in terms of what is legally defined as corruption.

FIGURE 2: CORRUPTION PERCEPTION INDEX IN THE AMERICAS, 2012
SOURCE : TRANSPARENCY INTERNATIONAL 2012



The available evidence on Brazil from the Bribe Payers' Index, Corruption Perception Index, and the Global Corruption Barometer points to some convergence in the findings that corruption is not systemic, and the evidence would appear to indicate that corruption is relatively less of a problem in Brazil than in most countries at the same level of development, and even some OECD countries. The most commonly used indicator of corruption—Transparency International's Corruption Perception Index—is based on perceptions of corruption as opposed to observed corruption. By this measure, in 2012, Brazil's score was 43—the same value as South Africa—and it ranked 69th out of 183 countries worldwide, ahead of Greece (94th) and Italy (73rd). In Latin America, Brazil ranked behind Chile (20th), Uruguay (20th), and Costa Rica (48th), but ahead of Argentina (102nd), Colombia (94th), and Mexico (105th). See figure 2.

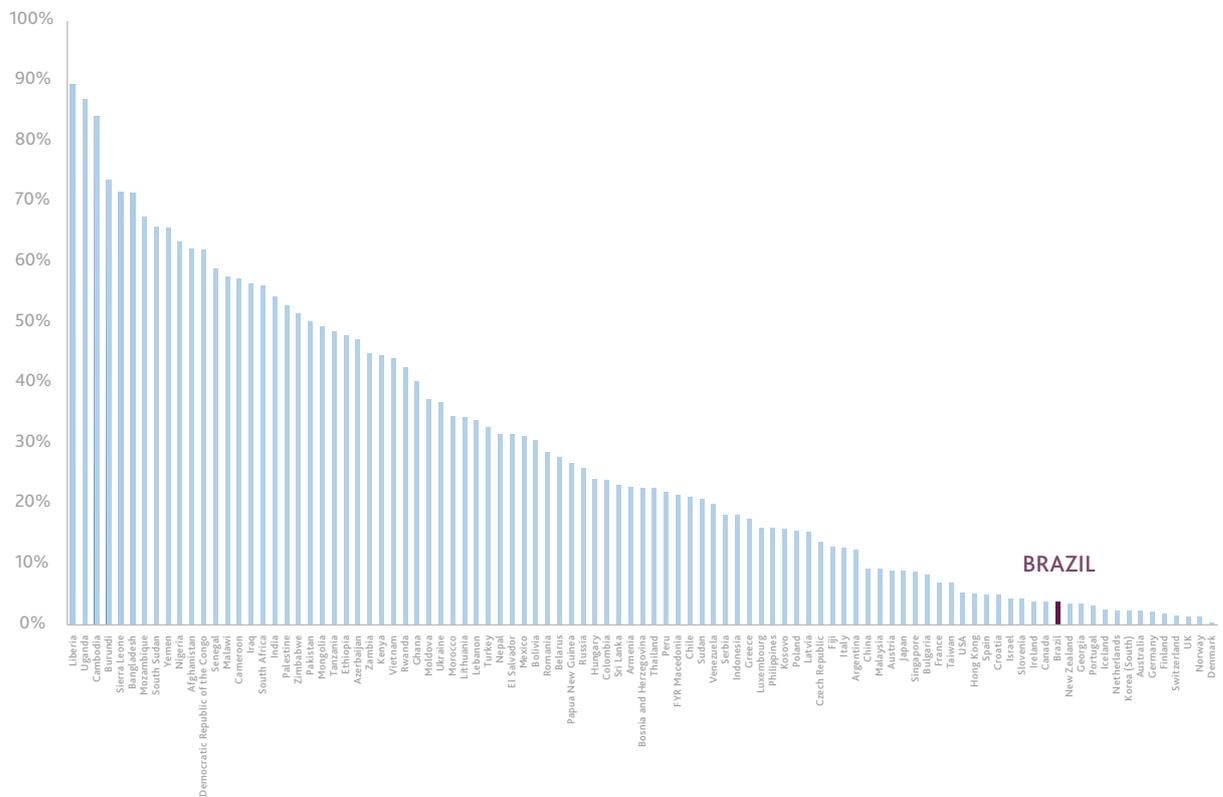
FIGURE 3. CORRUPTION PERCEPTION INDEX X BRIBE PAYERS' INDEX



In the Bribe Payers' Index (2011)—which ranks the likelihood of companies from 28 leading economies to win business abroad by paying bribes—Brazil scored 7.7, behind South Korea's 7.9 and France's 8.0, and ahead of the other BRICS countries (China, Russia, India, South Africa), as well as Argentina, Mexico, Turkey, and Italy, among others. Overall, Brazil ranked 14th whereas Mexico, China, and Russia had the lowest rankings (26th, 27th and 28th). Plotting the Bribe Payers' Index and Corruption Perception Index suggests that perceptions of corruption are less significant than the actual level of corruption practices, particular with reference to systemic or high corruption (see figure 3). On the other hand, a marked contrast seems to exist between the everyday experience of corruption and high corruption

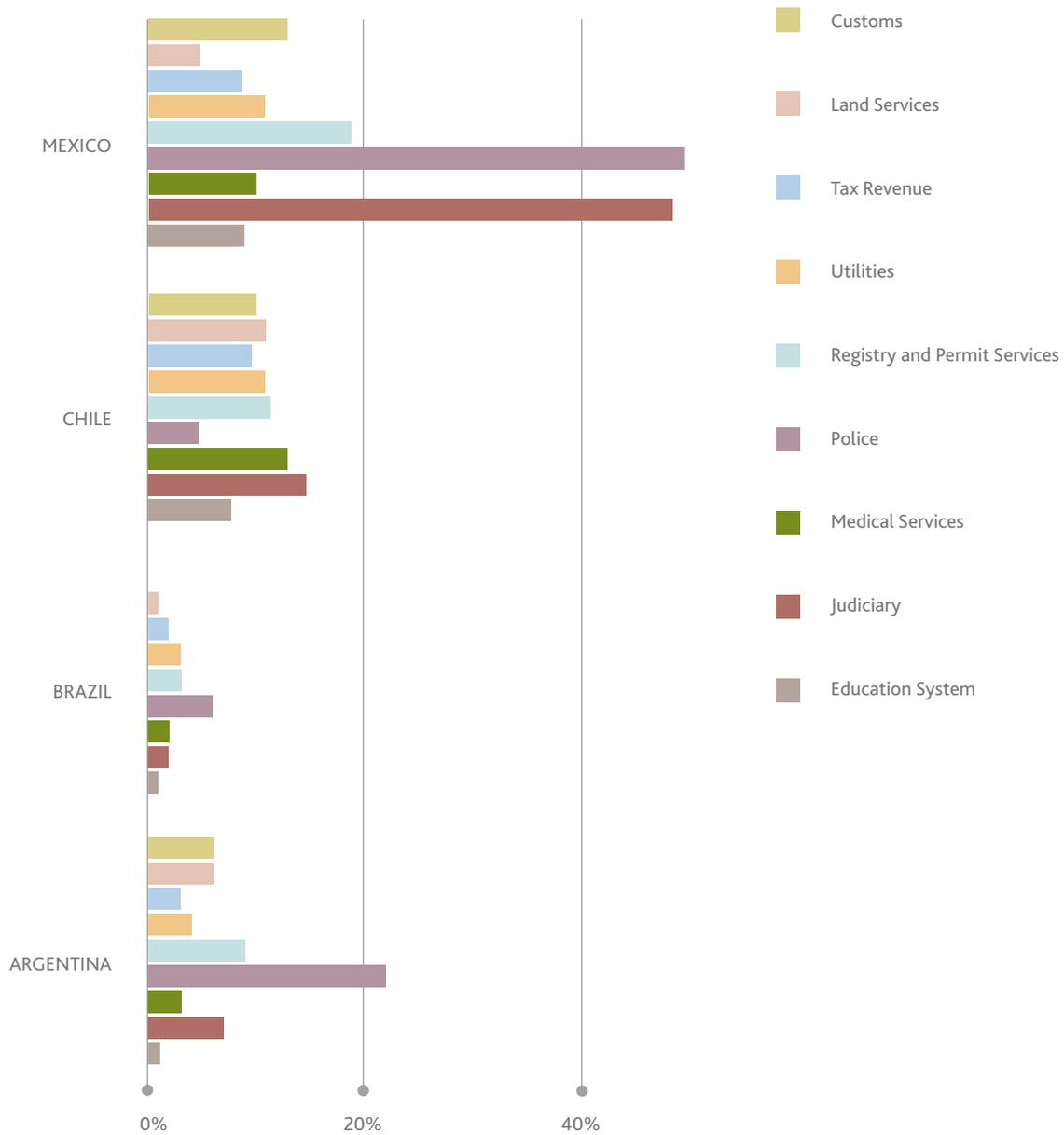
by senior public officials. Brazilian citizens' experience of corruption is, comparatively, surprisingly low, and tends to concentrate in their dealings with the police (see figure 4). In this perception of corruption, Brazil compares favourably to all Latin-American and BRICS countries, presenting figures similar to OECD countries.

FIGURE 4. CORRUPTION VICTIMISATION



According to the Global Corruption Barometer 2010–11, the percentage of people that reported having paid a bribe in the previous 12 months was 4 percent, compared to 12 percent in Argentina, 21 percent in Chile, and 31 percent in Mexico (see figure 5). The institutions that paid these bribes were identified as the police, utilities companies, land services, the judicial system, medical services, educational services, regulation and permits services, and customs. Except for bribes to the police (in which Chile's rank is higher), Brazil fared better than all countries in Latin America. The reason for paying a bribe in 72 percent of cases was to speed up services and 3 percent involved receiving a service the person was already entitled to. The corresponding figures for receiving a service people were entitled to were significantly higher in Chile (41%), Argentina (24%), and Colombia

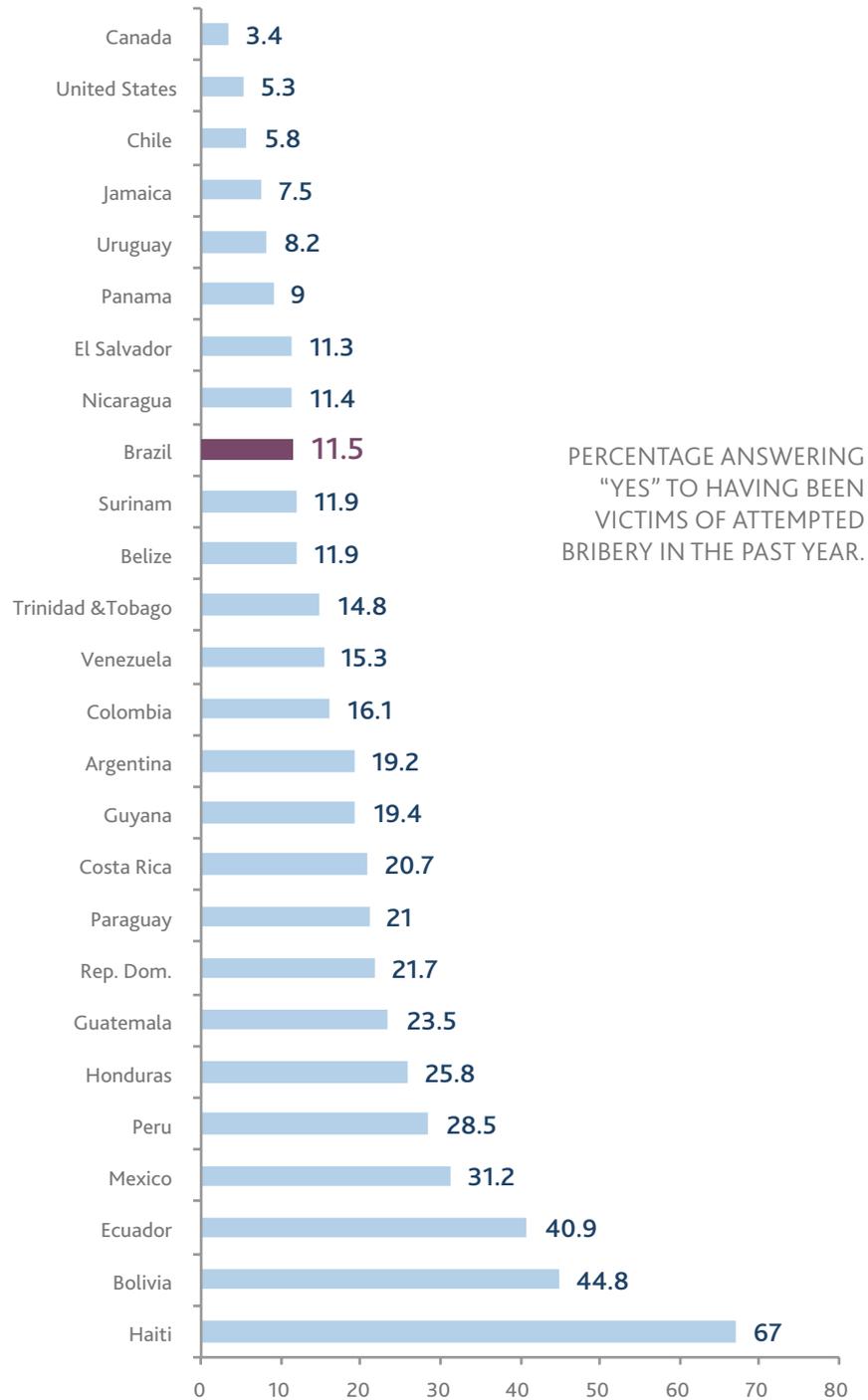
FIGURE 5. EXPERIENCE OF CORRUPTION
SOURCE: GLOBAL CORRUPTION BAROMETER 2012



% OF PEOPLE THAT HAVE PAID A BRIBE TO EACH OF NINE INSTITUTIONS IN THE PREVIOUS 12 MONTHS

FIGURE 6. CORRUPTION VICTIMISATION 2012

SOURCE: LATIN AMERICA PUBLIC OPINION PROJECT—GLOBAL CORRUPTION BAROMETER 2012.



(38%). The information on corruption victimisation—public officials’ attempts at collecting a bribe as opposed to actual payment of bribes—available from the Latin American Public Opinion Project’s AmericasBarometer, is similarly favourable from a comparative perspective (see figure 6). In summary, Brazil fares well both in terms of ‘low’ and ‘big’ corruption, and this is consistent with Ackerman and Truex’s contention that small and grand corruption are usually correlated (2012, p.3). What is counterintuitive is the fact that corruption is usually correlated with the extent of regulation and public intervention, and yet Brazil scores very low in surveys rating these factors, such as in the World Bank’s Doing Business survey. This discrepancy between the opportunities created by Brazil’s regulatory and administrative state, and the data on experience of corruption is not easily explained. The high number of politicians facing corruption charges is also puzzling in light of the data.

A less rosy picture emerges when some indirect indicators of corruption are used. A widely used benchmark is the cost of political campaigns. Brazil has the most expensive political campaigns worldwide if the US is not considered. This is all the more significant considering that—in addition to the stark disparities in income levels between the two countries—Brazilian political parties do not spend funds buying airtime, as they are entitled to a generous amount of free television time, and also that there are no primary elections in Brazil. According to Transparency International estimates, roughly US\$2 billion—compared to \$6 billion in the US and US\$100 million in general elections in the UK—was spent by Brazilian parties and candidates in the 2010 presidential election. Corporate donors fund a massive share of this campaign spending. Nearly 98 percent of winner Dilma Rousseff’s campaign donations—and 95.5 percent of her main opponent’s—came from corporations. Unlike the US where there is dispersion of donations across a wide range of firms and individuals, in Brazil there is a great concentration of campaign donations from a relatively small group of large donors. Existing research has identified the effect of an electoral victory on government contracts for a candidate’s corporate donors in Brazilian elections for the lower chamber. Boas, Hidalgo, and Richardson (2012) have found that public-works contractors can expect a substantial boost in contracts—at least 14 times the value of their contributions—when they donate to a federal-deputy candidate from the ruling Workers’ Party (Partido dos Trabalhadores, or PT) and that candidate wins office².

According to the 2010–11 Global Corruption Barometer, Brazilians believe political parties and parliament are the most corrupt institutions and 64 percent of those surveyed said corruption had increased in the past three year (see figure 7). Brazilian citizens view parliaments, political parties, and the police as more corrupt than citizens from 100 other countries in the Global Corruption Barometer sample. Whereas 73 percent of Brazilians view legislatures as corrupt or extremely corrupt, the average for the rest of the countries surveyed was significantly less, 57 percent. Conversely, Brazilian citizens find civil servants, the media, and the private sector less corrupt than citizens from the other countries in the sample. This positive view of public servants and the media is not surprising considering the high level of professionalisation of federal public bureaucracies in Brazil and the quality of the country’s investigative journalism (see figure 8).

FIGURE 7. PERCENTAGE OF PEOPLE VIEWING EACH OF 11 INSTITUTIONS AS CORRUPT OR EXTREMELY CORRUPT

SOURCE: GLOBAL CORRUPTION BAROMETER 2012.

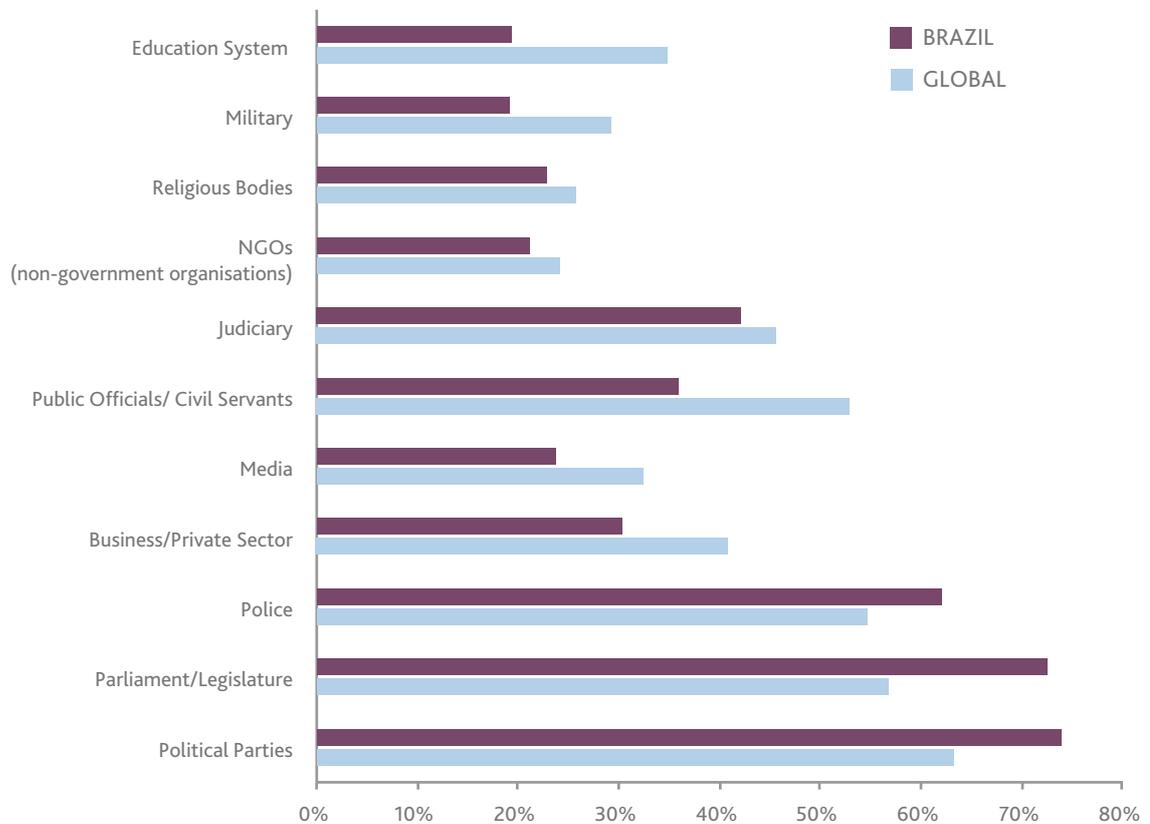
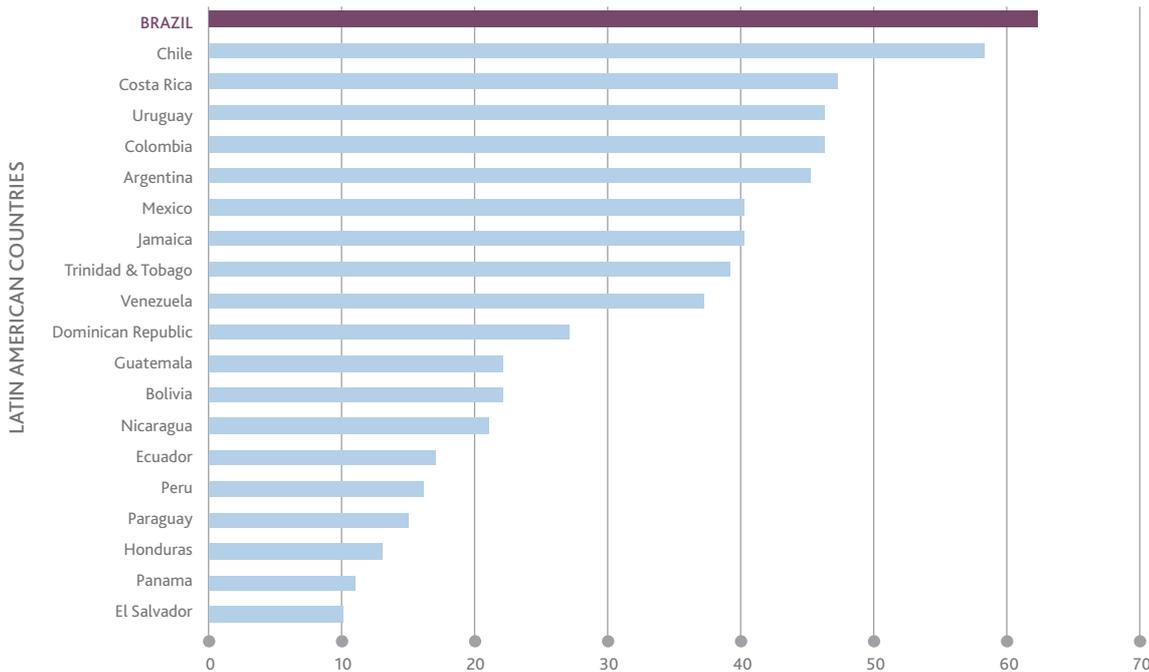


FIGURE 8. THE QUALITY OF PUBLIC ADMINISTRATION IN LATIN AMERICA

SOURCE: IADB 2009.

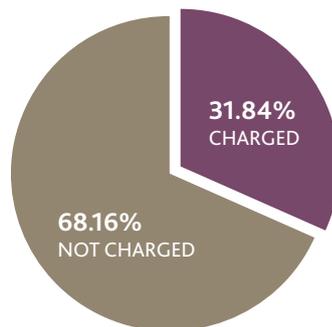


The picture that arises from the scant and indirect evidence we have is that corruption in Brazil is not prevalent in federal public bureaucracies, but tends to be pervasive in regional governments. It also tends to concentrate in the areas of procurement and public works, at all levels, and is a problem that citizens do not experience in their direct dealings with the public machinery or with service delivery (except for the police and street-level bureaucrats). Above all, corruption is part and parcel of campaign finance. This pattern of corruption is more similar to that found in industrial economies with ineffective checks and balances rather than that of developing and poor countries.

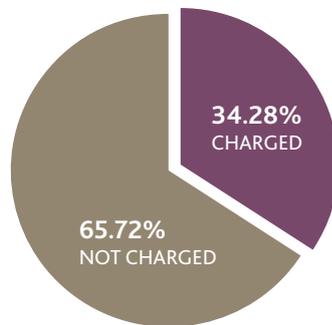
The very negative view that Brazilian citizens have of their legislators is justified when their legislators's criminal records are considered. Interestingly, although political institutions are viewed as the most corrupt in the country, the level of trust in political parties and parliaments in Brazil has been much higher than the mean level for Latin America identified in the Latinobarometro surveys. In 2008, 31 percent of senators, 37 percent of federal deputies, and 34 percent of state legislators faced charges in Brazil's criminal and audit courts (see figure 9). In 2011, a fifth of the members of the Brazilian congress were defendants in criminal cases in the Supreme Court. There were 136 legislators (including their deputies) involved in 293 criminal cases.

FIGURE 9. LEGISLATORS FACING CHARGES IN BRAZIL'S COURTS
SOURCE: TRANSPARENCIA BRASIL, 2008

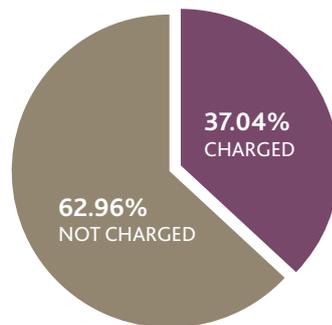
SENATORS FACING CRIMINAL CHARGES



STATE LEGISLATORS FACING CRIMINAL CHARGES



FEDERAL DEPUTIES FACING CRIMINAL CHARGES



The number of legislators involved in scandals—many of which did not lead to formal indictments in the courts—is also very high: 57 percent. In the current Rousseff administration, nine ministers have been dismissed because of corruption scandals, reflecting broader problems in the management of an ideologically heterogeneous coalition. This extremely high level of corruption exposure points to not only the actual high prevalence of political corruption (which is related to presidential choices of personnel and bargaining practices) but also the improvements in monitoring and exposure of corruption by the media, public prosecutors, and other checks and judicial actors and institutions. Plus there are other factors that make holding office attractive for individuals with a criminal record. Brazil’s politicians enjoy privileges when facing criminal charges, including when in trials in higher courts (where they have higher chances of influencing court decisions), and legislators also benefit from immunity against criminal prosecution unless the senate or lower house grants official permission to prosecute by majority vote. A constitutional amendment in 2001 eliminated some loopholes but the difficulties remain. Peer solidarity and *quid pro quos* continue to make it difficult to indict legislators involved in ordinary crimes.

Exposure of corruption is high under democracy as a result of enhanced checks and oversight. If checks-and-balance institutions improve and the rule of law is strengthened, it follows that new democracies will present high levels of corruption denouncements. Over time, the deterrence effect of the increased costs of corrupt behaviour tends to stabilise, leading to lower corruption levels, both actual and observed. Corruption has acquired great visibility in democratic Brazil as a result of the functioning of democratic institutions in the country. This led to higher exposure of corrupt acts despite the fact that the actual levels of corruption appear to be less dramatic when viewed from a comparative perspective.

The Web of Accountability Institutions

CRISIS-LED INSTITUTIONAL LEARNING

Much of the institutional strengthening in the area of accountability and corruption control under democracy in Brazil has been scandal or crisis-led. Enhanced visibility and control has engendered a number of scandals and crises, which, in turn, triggered institutional change.

The transition to democracy was indeed accompanied by the strengthening of accountability institutions (Power and Taylor 2011). The first changes were brought in by the new democratic constitution that was enacted in 1988. This charter vested great powers to a number of institutions including the Public Prosecutors Office (the *Ministério Público*, or Public Ministry) and the audit courts, and guaranteed full press freedom. The former gained autonomy from the executive branch and acquired enhanced powers to investigate official misconduct.

Interestingly, the delegation of powers to accountability institutions accompanied a similar delegation of constitutional powers to the executive branch. The latter

also acquired more independence and greater competencies. In the first decade of the new constitution there were a number of political scandals and the newly empowered institutions were put to the test. Under President Lula (2003–10) the accountability, environmental, and regulatory institutions, along with the media, faced harsh criticisms from the government but remained relatively unscathed in terms of the prerogatives they enjoyed. This outcome attests to their strength and the support they enjoy in society.

The most important of the corruption scandals under democratic rule involved President Collor (1990–92) and culminated in his resignation on the eve of the day the Brazilian congress approved his impeachment. This set an important precedent and partially mitigated society's deep-seated beliefs about unchecked presidents and the pervasive abuse of power during previous democratic experiences and under military rule. Collor's impeachment was the result of mass mobilisation for his resignation and impeachment and reflected the effectiveness of the newly empowered accountability institutions. Much of the findings about the president's racketeering scheme came as a result of a parliamentary inquiry commission, specially set up to investigate the case. The press also played a key role in uncovering connections within the presidential inner circle and denouncing malfeasance. Significantly, it was the Brazilian Press Association along with the Bar Association that filed the request for the opening of impeachment procedures. Congress impeached Collor and suspended his political rights for a period of eight years, although the Supreme Court acquitted him on the charge of embezzlement for lack of proof.

In the wake of the impeachment, the ban on corporate funding for party financing was lifted (on the premise that it would lead to more transparency of 'inevitable' private election financing) and legal framework was set in place to allow more transparency and supervision of campaigns donations. Public party funding also increased considerably in the wake of the scandal. In addition, new laws were approved: the Law of Administrative Probity, which stipulates rules for the Civil Service (Law 8429); the Law on Public Bidding Procedures (Law 8666); and the Law Creating the Council for the Oversight of Financial Activities (COAF) (Law 9613).

The second significant corruption scandal after Brazil's return to democracy was the so-called *anões do orçamento* (the 'dwarves scandal', named after the short stature of the legislators involved). Under the military, the legislature had played no role in shaping the budget and legislative control of the budget was practically nil. The dwarves scandal brought to the fore the inadequacy of the authoritarian legacy in the area of budgeting. After Congress regained the ability to influence the annual budget, the institutional arrangements it inherited from the authoritarian regime were characterised by the extreme centralisation of power in the hands of the rapporteur in the budget commission and a lack of transparency. This problem was compounded by high inflation that turned public accounts into a maze of difficult-to-interpret monetary values. The fraud consisted of approving, via amendments to the budget bill, the allocation of funds to phantom non-profit institutions created as needed for the sole purpose of malfeasance by members of the budget committees. The scandal came to the fore following investigations by

the federal police, unprecedented media coverage, and the work of a parliamentary inquiry commission.

The scandal triggered important reforms of budgetary institutions. Following recommendations from the inquiry commission, the reforms set new procedural and reporting requirements for the congress budget committee (CMO), increased significantly the number of members of the committee, and curbed the unilateral powers enjoyed by the rapporteur. Later reforms led to the introduction of ceilings for individual budget amendments, of collective amendments introduced by regional and statewide non-partisan groups of legislators, as well as sectoral committee amendments. Despite the numerous incremental changes introduced over the last two decades to foreclose corrupt use of budgetary amendments, pork-barrel projects approved as amendments have been associated with a large number of corruption incidents. Typically in these cases, legislators have approved projects in their constituencies, which were then executed via tenders that were rigged to benefit cronies and political donors.

The *mensalão*³ scandal during Lula's first administration (early 2004 through to May 2005) was the major scandal of Brazil's new democracy. It involved key members of President Lula's government in an illegal scheme that funnelled public and private funds to members of the Workers' Party (PT). In the legislature the opposition managed to garner support for the creation of a parliamentary inquiry commission to further investigate the case. Drawing on the materials produced by the commission, the federal public prosecutor, who was appointed by Lula, launched an independent criminal investigation and, in March 2006, called on the Supreme Court to open criminal proceedings against 40 individuals linked to the affair. In August 2007, by unanimous decision, the Supreme Court accepted the report of Supreme Court Justice Joaquim Barbosa, who was also appointed by Lula, and approved all 40 indictments with each of the accused having to stand trial.⁴

In late 2012, the Brazilian Supreme Court criminally convicted 25 out of the 40 accused and handed down high penalties ranging from tough fines to imprisonment. Those imprisoned included Lula's chief of staff, José Dirceu, the former PT president José Genoino, and party treasurer Delúbio Soares, who were all accused of racketeering and of intent to corrupt others (*corrupção ativa*). This outcome is surprising because, as the largest party, the PT should have been able to control the investigatory committee, including its president and rapporteur. However, the committee's official report concluded that the accused were guilty. In addition to Congress and to the federal public prosecutor, Lula and Dilma also had the opportunity to appoint the majority (eight out of 11) of the judges of the Supreme Court. Nonetheless, the main political leaders of Lula's government and PT were convicted and are expected to serve time in prison.

The *mensalão* led to a host of changes, some of which are currently being considered. Two innovations that have been implemented include an online registry of campaign contributions and stricter penalties for off-the-books campaign finance. Prior to the *mensalão*, the information on electoral financing was made available several months after the elections. Now, online information about the candidates' donors allow the public to use the information while making their electoral choices.

In addition to the cases cited, numerous other institutional reforms and innovations were also scandal-led. These include, among others: elimination, by constitutional amendment 35 (2001), of the need for congressional consent for the Supreme Court to hear cases against politicians (written into the constitution to protect politicians from censorship); the abolition of all CC5 accounts that were used for sending funds from illicit schemes (2005); the creation of a Code of Public Ethics, following two parliamentary inquiry commissions investigating conflict of interest during the Cardoso government's term; and the suspension of the tax exemption status of political parties (2007).

The *mensalão* has become a symbol of the maturity of Brazilian institutions because it has set an important precedent: that even highly popular politicians can face sanctions. The positive developments in fighting and preventing corruption have been possible due to the strengthening of the rule of law and of improvements in the web of accountability institutions since the promulgation of the country's new constitution in 1988. Moderate to intense political competition, the independent media, and civil-society activism have all contributed. Power alternation and an active and competitive opposition have also been key to preventing a power hegemony, as has occurred in a host of other countries in Latin America.

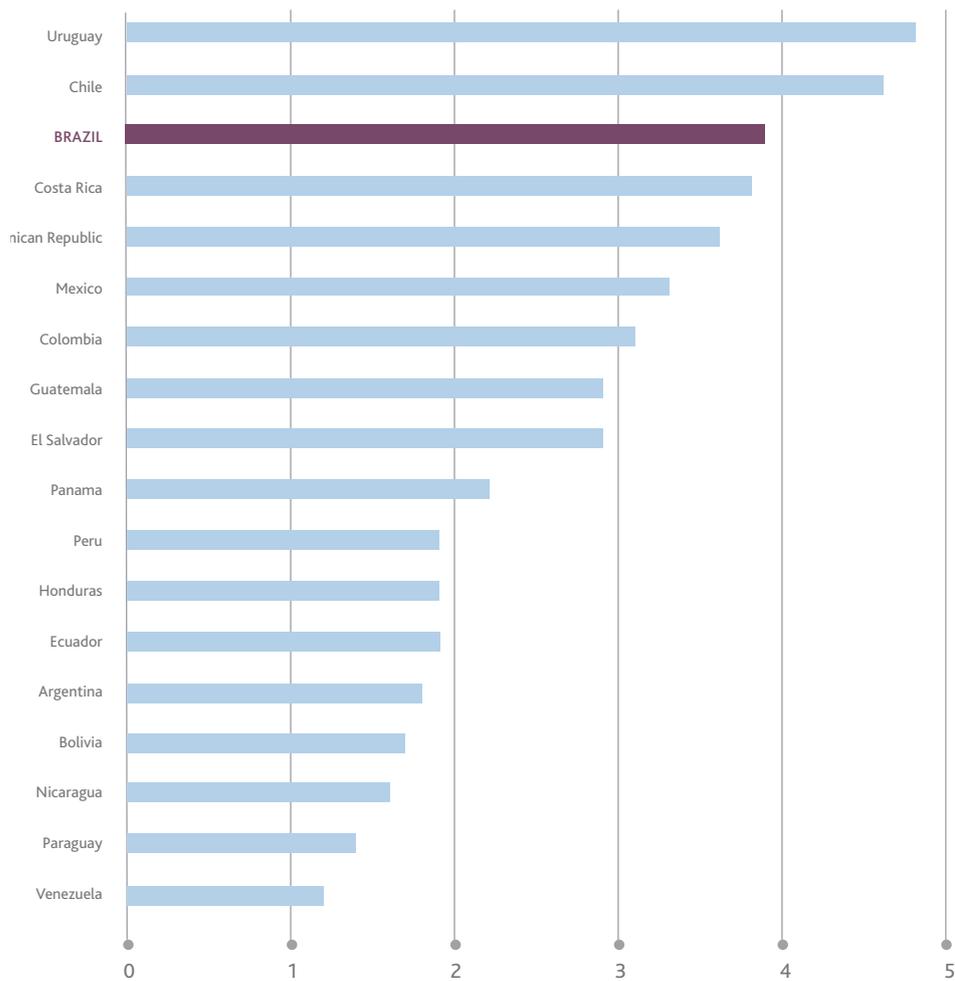
JUDICIAL SYSTEM

Corruption activity in Brazil is constrained by the work of a web of accountability institutions. Interestingly these institutions—from the judiciary to audit courts to the federal police—are notable for their comparative levels of high professionalism, competitive salaries, and attractive careers involving meritocratic recruitment, as well as for receiving adequate funding. This suggests that the problems of accountability institutions—with some exceptions—have less to do with administrative reforms than with their interplay with the political system. Several problems result from a lack of coordination between institutes, inter-branch rivalries, and political constraints to effectiveness, such as administrative bottlenecks that require institutional reform.

The most crucial institution in this network of accountability institutions is the judicial system. Notwithstanding notorious individual cases of criminal activity by members of the judicial system—and great regional heterogeneity in the quality of judicial institutions—the courts, particularly the higher tribunals, are viewed as autonomous and professional bodies. In existing rankings of the judiciary, Brazil and Chile are ranked as having the most independent and professionalised institutions in Latin America, particularly in the case of their higher courts. Chile has the top score with five out of seven existing indicators, whereas Brazil ranks first or second in six of them.⁵ In the Feld and Voigt de Jure Indicator, Uruguay, Chile, and Brazil have the highest scores (see figure 10). At the other extreme of the spectrum, Venezuela, Bolivia, Argentina, Honduras, and Ecuador are the worst performers. Brazil along with Uruguay and Chile are also the top performers in a long-term investigation of judicial independence in Latin-American countries.⁶

FIGURE 10. JUDICIAL INDEPENDENCE IN LATIN AMERICA

SOURCE: IADB 2006.



It is not uncommon in Brazil to see the Supreme Court ruling against the preferences of the executive. Presidents Cardoso and Lula both experienced important defeats in the judiciary where their reform initiatives were considered unconstitutional. Jaloretto and Mueller's (2011) careful empirical study of 649 Supreme Court decisions under Lula (2003–10) found no evidence of presidential influence or meddling. Despite the fact that the president had a majority of appointees in the court, interests closely associated with the presidential coalition faced defeats. A famous case involved the PT-dominated Workers' Central Union, which was defeated in its attempt to have standing in Adins (Unconstitutionality charges).⁷

Another good example of judicial independence was the mensalão trial, the results of which clearly suggest that the executive branch did not interfere with the court's decisions. This is all the more remarkable considering that at the time the government was at the peak of its popularity. In fact, Lula's government received the support of ten political parties in Congress, and enjoyed the highest rate of popularity among Brazilian presidents. Therefore, constraining a powerful player like Lula was not a trivial task. Despite Lula's apparent efforts at suasion (Lula paid visits to at least five of the 11 Supreme Court judges weeks prior to the trial, all of whom had been appointed by his party), the trials led to guilty verdicts for 25 of the original 40 defendants, including President Lula da Silva's most trusted minister, José Dirceu, as well as the former director of the state-controlled Bank of Brazil, three executive directors from Brazil's Rural Bank, 13 legislators, and eight private intermediaries.

Recent allegations of Lula's tacit involvement in mensalão by the scheme's principal money-lauderer and financier, Marcos Valério, have elicited further investigations from the public prosecutor. It appears that Lula's lieutenants will continue to pay: Dirceu faces nearly 11 years of incarceration and fines totalling almost R\$700,000 (approximately US\$350,000), while the former marketing director of the Bank of Brazil is to serve 13 years and pay over R\$1.3 million. It is the harshest indictment and single largest tally of political corruption condemnations in Brazilian history.

The state courts are much less autonomous and much less efficient than their federal counterparts. Local politicians, most notably governors, in the less-developed states enjoy great influence over local courts and there is much less observation by the media, civil society, and accountability institutions. Despite important changes in the wake of the creation of the National Judicial Council (CNJ), following the enactment of constitutional amendment 45, to oversee the work of the lower courts, much remains to be done at this level. For example, the arcane legal framework allows appeals of various sorts and the numerous loopholes make it possible for public officials facing corruption charges to extend trials and avoid imprisonment.

THE TRIBUNAL DE CONTAS DA UNIÃO (NATIONAL AUDIT COURT)

Other strong accountability institutions are the National Audit Court (Tribunal de Contas, or TCU) the federal police, the Public Ministry, the Controladoria Geral da União (an anticorruption agency and internal comptroller), and the media. These are all important institutions in the country's web of accountability and understanding their capabilities and constraints is critical to seeing the whole picture of corruption in Brazil.

Prior to 1988, the chief executive of the TCU appointed all the members of its board—seven in the state audit courts and nine in the national audit court—subject to approval by the legislature. The new constitution then stipulated

that two-thirds of the TCU's members (six justices) were to be appointed by the national congress, and one-third by the president who would only appoint freely (but subject to qualifications requirements) one justice, the other two being selected from a pool of career civil servants (senior auditors and prosecutors). The constitution secured that the new TCU would be autonomous from the executive branch, although its links with the legislature make it vulnerable to politicisation.

The TCU is a peculiar supreme audit institution because it does not follow the pure court model adopted in countries such as Portugal, France, or Italy. The constitution defines the TCU as an ancillary organ that assists the legislative branch in the monitoring of public expenditures. Unlike its counterparts in other countries, it is not a judicial institution despite its quasi-judicial *modus operandi* based on hearings, appeals, and rulings. The TCU's rulings have the status of administrative decisions on the legality and regularity of budgetary, tax, and spending decisions and are amenable to appeals in the judicial system. It enjoys, however, important privileges including the ability to issue fines and, more importantly, nullify ongoing tenders and auctions. It can also decide that holders of public office are not eligible to run for office because of misbehaviour.

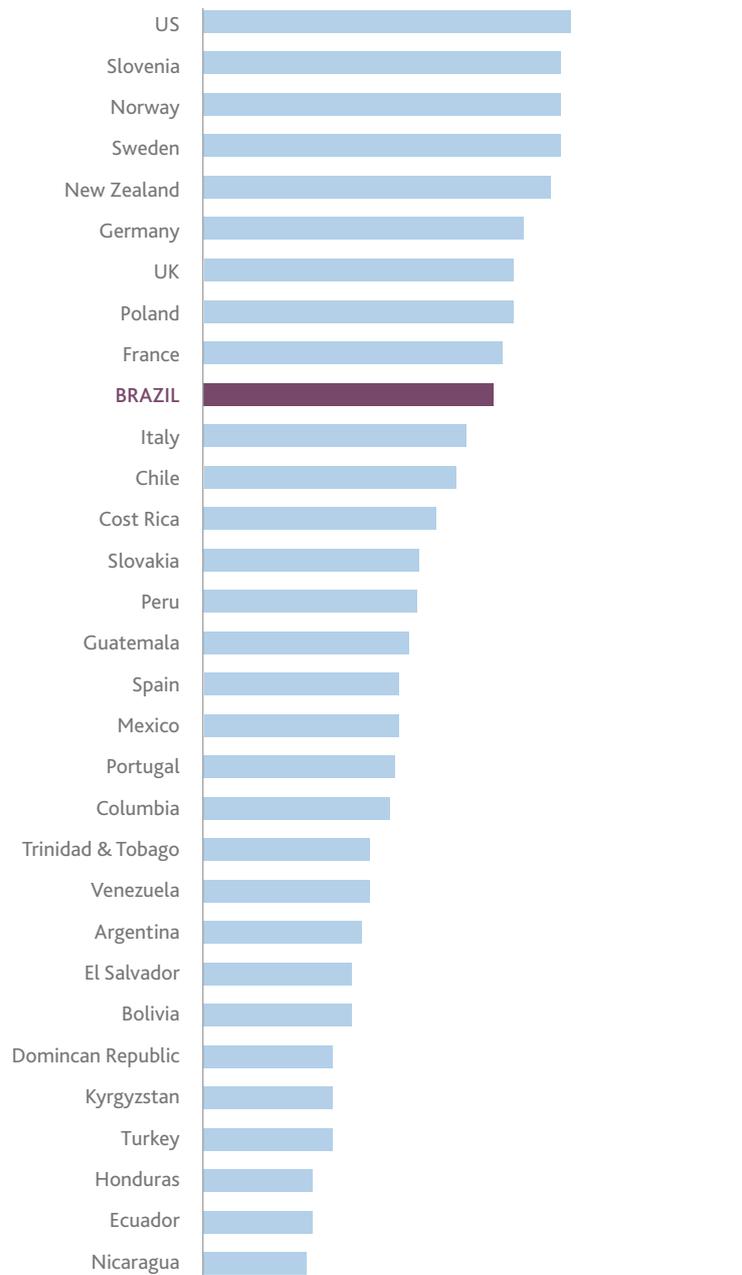
Since the return to democracy in Brazil, the TCU has evolved into a highly sophisticated and professionalised institution, characterised by meritocratic recruitment, large budgets, and sophisticated infrastructure. Boasting a budget of R\$700 million and counting on a staff of 2,400 people, the TCU is one of the most highly ranked institutions of its kind outside the OECD. According to recent rankings of supreme audit institutions worldwide by the Open Budget Project, it is a better institution than its Spanish or Italian counterparts (see figure 11).

Yet this impressive performance in comparative rankings masks serious problems of effectiveness. One problem is that the audit courts in Brazil are not part of the judicial system and their decisions can be appealed in the courts. As a consequence, after a case is heard in an audit court—a typical case can take several years until it is closed—those convicted of malfeasance and similar crimes can appeal in the judicial courts, which is a long and protracted process. In addition, because audits tend to emphasise the analysis of the conformity and legality of spending acts, and not the proper investigations that are typical of police or prosecutorial work (for example, search warrants, etc.), little in the way of serious irregularities is actually uncovered.

In addition, the incentive structure facing the TCU seriously undermines its effectiveness. There is a lack of connection between the professional work produced by its cadre of auditors and the political logic that underlies decision-making at its top decision-making body. The latter consists partly of politicians appointed by the legislature with the qualifications for the post being easily met—no special training as an auditor is required. The functioning of the TCU is therefore marked by a tension between the technical logic imparted to the work by its meritocratic cadres and the political logic that drives decisions by the political appointees. Political appointees can therefore block politically sensitive issues and decisions. A recent episode illustrates the case: in 2010, President Lula vetoed an article of the annual budget law approved by Congress prohibiting disbursements to

FIGURE 11. THE QUALITY OF SUPREME AUDIT INSTITUTIONS IN OECD AND SELECTED COUNTRIES

SOURCE: OPEN BUDGET PROJECT 2012.



public works of a black list prepared by the TCU.⁸ Because the TCU lacks the capacity to effectively sanction corruption, its effectiveness depends primarily on the extent to which other actors—such as the media or opposition legislators—can publicise its audits. This is also valid for countries adopting the audit model. However, in these countries public account committees appoint the auditor general whose rapporteurs and presidents are constitutionally reserved for the opposition.

This incentive-compatibility problem is also present in other key accountability institutions, namely the parliamentary inquiry commissions. Historically, the inquiry commissions have played an important role as the main mechanism through which the legislature investigates allegations of misconduct and improprieties. The *mensalão* was one such case. But existing institutional rules favour the governing coalition, which have means to block investigations that could adversely affect the government. The fate of the inquiry commission set up to investigate vote-buying schemes is a case in point: it was discontinued because legislators from the incumbent coalition refused to sign a motion for deepening the investigations. The opposite happened during the so-called *dwarves scandal* because President Franco supported the investigations.

THE CGU

The professionalisation that occurred in the area of external audits also took place in the case of internal audits. In 2002 the Cardoso government transformed the existing *Secretaria Federal de Controle*—the internal audit body in charge of monitoring public expenditure and ensuring that financial rules are followed in the public sector—into the *Controladoria Geral da União (CGU)*, an anticorruption agency and internal comptroller. This measure was complementary to the enactment in the year 2000 of the *Fiscal Responsibility Law (FRL)*, which imposed a host of requirements for transparency, monitoring, and reporting on regional governments in Brazil. The existing *Tribunais de Contas Estaduais*—state audit tribunals—were mandated to check compliance with the FRL. They were also charged with monitoring the execution of constitutionally mandated federal transfers for education (*FUNDEF/FUNDEB*) and health (*SUS transfers*).

Since 2003, CGU has carried out audits of municipalities—at a rate of 60 per month—randomly selected from the 5,600 Brazilian *municípios*. Multidisciplinary teams of federal auditors spend one to two weeks in situ. Selection is via a lottery process that is monitored by a private external independent body—KPMG—and open to the public.

The incentive structure for the auditing of *municípios* in Brazil contrasts with that found in the area of external control, and the recent expansion of audit activities reflects the balance of costs and benefits—the federal government benefits from fighting corruption in local governments because mayors and local agents bear the reputational costs of corruption. There is hard evidence that the practice of random audits have had an important deterrence effect in relation to corruption activity (Zamboni 2012), leading to a reduction in corruption in education and health.

By saying that accountability institutions are independent from the executive, we do not necessarily mean that they are immune from political influence or that they are equally efficient. For instance, the Brazilian judicial system's slowness, especially when it comes to addressing political corruption, generates a negative effect that goes beyond courts and extends to the entire society a generalised feeling of impunity as well as a loss of confidence in the courts and other accountability institutions. However, contrary to pessimistic claims on accountability deficits in new democracies, including Brazil, there is evidence that checks on corruption can be effective where there is political competition and where politically insulated officials participate on the boards of accountability institutions.

THE MEDIA AND CIVIL SOCIETY

Another key independent player in the web of accountability institutions is the Brazilian media. Brazil has a complex and very competitive media, which plays an active role in providing an investigative style of journalism that denounces corruption and political wrongdoings. The industry includes a diversified newspaper market with at least four newspapers with national distribution, three main weekly news magazines that have played a decisive role in uncovering political scandals, several radio networks that have strong journalism departments, and a competitive television market, which has come to be the most important source of information in the country. The media system has been characterised by the presence of a vibrant commercial press with important levels of autonomy in relation to the state.⁹ The market share of top press outlets in Brazil is 11 percent—the second lowest in Latin America (except for Mexico)—compared to 35 percent in Argentina, 38 percent in Uruguay, and 26 percent in Chile (the regional average is 35 percent). In turn, the largest ownership concentration at 33 percent is also the second lowest in Latin America (except for Peru), compared to 94 percent in Uruguay, 65 percent in Colombia, and 75 percent in Chile (the regional average being 59 percent) (Michener 2010, chapter 4). Competition in the media markets and the fact that media companies are not controlled by industrial or financial companies also implies that there is no significant media bias towards specific industrial groups or corporations.

Brazil seems to be unique in terms of how citizens view the role of the media in the fight against corruption. In the 2010–11 Global Corruption Barometer, Brazil was the country where the media was selected as the institution most trusted in the fight against corruption with 37 percent of those surveyed choosing the media from the selection of institutions in the survey, the highest percentage of all countries (n= 99). The corresponding figures for Chile, Argentina, and Mexico were 11 percent, 24 percent, and 16 percent.

The independent nature of Brazil's web of accountability institutions has the potential to elevate the cost of political wrongdoings even from a politically and constitutionally powerful executive. The *mensalão* was the most publicised event pertaining to corruption in Brazil. In 2005 and 2006 there were over 28,000 exposés in national newspapers about the *mensalão* (see Figure 12). The Clean Slate Law (discussed below) ran a close second. Under the current PT government,

many proposals for regulating the media have been proposed in reaction to its role in uncovering official wrongdoing.

One example that illustrates well the degree of autonomy of the investigatory media in Brazil was the episode leading to the resignation, in 2010, of the government's chief of staff, Antonio Palocci, who was considered one of the most influential officials in President Rousseff's administration. Although Palocci had the support of former president Lula, who actively lobbied for his retention in office, he was forced to resign under great pressures from allegations of illicit enrichment following denunciations by Brazil's premier newspaper, *Folha de São Paulo*. The media also played a crucial role denouncing a corruption scandal in the Ministry of Transport under Rousseff's administration. The most important weekly news magazine, *Revista Veja*, carried out investigations and publicised the Court of Accounts' audits about irregularities in the ministry's dealings. According to *Veja*, officials from the Ministry of Transport charged a bribe of 5 percent to have a contract approved. Supposedly, the money collected from this scheme would be allocated to the leaders of one of the Rousseff's coalition partners, the Party of the Republic (PR), which ran the ministry. In the wake of *Veja's* denouncement, President Rousseff fired 17 top public officials, including the minister for transport, Alfredo Nascimento.

Despite the late adoption of open government and transparency laws in 2011, Brazil boasts a host of transparency initiatives that make it a top performer in participation and transparency in Latin America (Michener 2010). It includes myriad initiatives ranging from fiscal transparency requirements under the Fiscal Responsibility Law (2010) to extensive arrangements for the monitoring of health and education transfers to encouraging e-procurement. These precede the Open Government initiative and somehow explain the late adoption of transparency laws, to which the US initiative in selecting Brazil as its model partner played a key role. In the Bellver and Kaufmann index of transparency, Brazil is placed between the 75th and 99th cross-nationally, and the 2012 Open Budget Index's score of 73 places Brazil's federal government in its second-best category, alongside Norway and Sweden, and ahead of all Latin-American countries and all non-OECD countries apart from South Africa.

In the *Global Corruption Barometer 2010–11*, 88 percent of respondents in Brazil agreed that citizens could play a role in fighting corruption. Consistent with this widespread belief, civil-society mobilisation has led to important institutional reform initiatives. The first of these developments is the Law Against Vote-Buying, approved in 1999 (Law 9840), shortly before the local legislative elections in 2000. The law was presented by popular initiative, the first of its kind since the introduction of this provision in the 1988 Constitution. Over a million signatures supporting the bill were collected as a result of intense mobilisation led by the National Conference of Brazilian Bishops during 1997–99. The law closed most of the loopholes in the existing legislation concerning electoral campaigns. The bill was unanimously approved and received Cardoso's presidential sanction five days after the legislative vote. Between 2000–08, 660 politicians were impeached as a result of the law. In the mayoral elections of 2008, 223 mayors had their elections nullified for breaching the law (see table 1).

FIGURE 12. CORRUPTION IN THE MEDIA: *MENSALÃO* AND *FICHA LIMPA*
SOURCE: DEU NO JORNAL, TRANSPARÊNCIA BRASIL

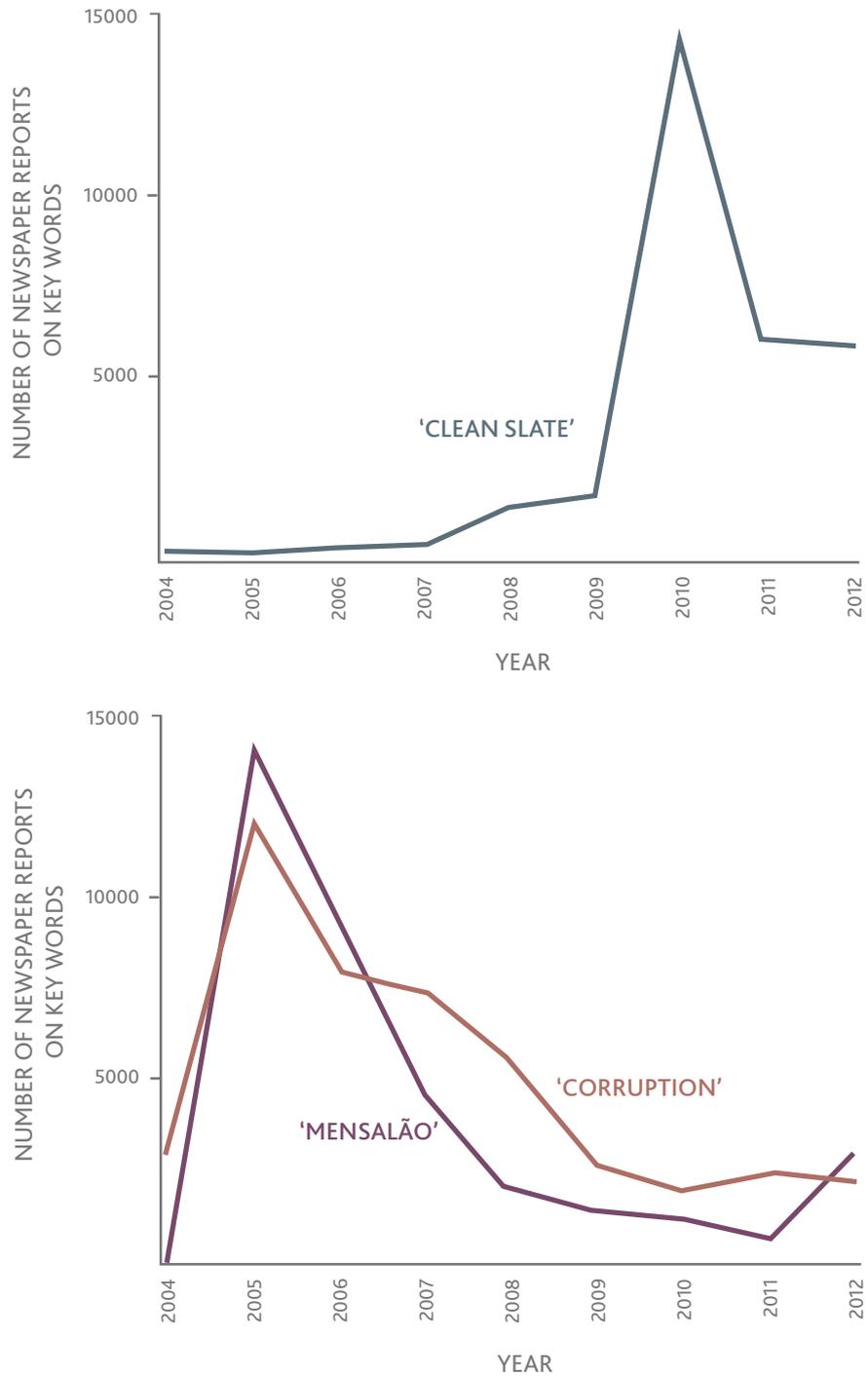


TABLE 1. IMPACT OF VOTE-BUYING LAW (2000–08)

| POSTS | NUMBER OF NULLIFICATIONS |
|----------------|--------------------------|
| Governors | 4 |
| Senators | 6 |
| Federal Deputy | 8 |
| State deputy | 13 |
| Prefeitos | 508 |
| Councillors | 84 |
| TOTAL | 623 |

The second major civil-society initiative was the Clean Slate Law (Ficha Limpa). The law's stated objective was to prevent the election of candidates to public office who had been convicted of crimes by collegial bodies, even if the sentence was not final and the convicted could appeal. The National Conference of Brazilian Bishops had begun its campaign called 'Fighting Electoral Corruption' and proposed bill 519/2009 as a popular initiative bill, managing to collect 1.3 million signatures in 26 states. The initiative led to the formation of a larger movement, the National Movement Against Electoral Corruption, which counted on the support of 43 professional bodies and associations including the National Association of Magistrates, the Brazilian Bar Association, the National Association of Federal Judges, and the National Association of Public Prosecutors. Congress approved the bill that then received presidential sanction in May 2009, so it could be applied to the elections in November that year (Law 135/2010). Candidates that had been impeached, who either quit office to prevent conviction or were found guilty (even if appeal was still possible) were barred from running for office. Some appealed to the Supreme Court, that upheld their demands on the grounds that the constitution required that laws regulating elections were only effective after one year of promulgation.

The Clean Slate episode highlights the failures of mechanisms of vertical accountability—the vote—as well as horizontal accountability—checks and balances. It underscores the failure of vertical accountability because it assumes that elections are not efficient mechanisms for 'throwing the rascals out' and, therefore, it is necessary to prevent corrupt politicians from running for office. It also suggests that the mechanisms of horizontal checks and monitoring between the branches of government are not working properly. Specifically, the Clean Slate Law represents a concrete proposal to fight the levels of impunity resulting from the judicial system's sluggishness.

The available evidence on citizens' capacity to sanction misbehaviour in elections, even when informed about corruption, is mixed. Juca, Melo, and Renno (2013) estimated the impact of involvement in corruption scandals in the likelihood of re-election. They found that federal deputies implicated in corruption scandals while holding office saw their chances of re-election reduced by 18 percent. This

finding is surprising because usually in contexts where corruption charges are very common the marginal effect of information is negative. Also, the same econometrics exercise led to a contrary finding: politicians reported as having a criminal record had higher chances of re-election as they tended to be more senior and had bigger campaign chests, along with more informal connections. Pereira, Melo, and Figueiredo (2009) also found that when audit reports containing evidence of corruption by mayors were released up to four months before elections, their chances of re-election were reduced by 11 percent, though this effect was mitigated by investments in the areas of housing, health, education, and sanitation—the more a mayor invested in these areas the less the negative impact of scandals would be.

THE MINISTÉRIO PÚBLICO

The central piece in the network of accountability institutions is arguably the Public Ministry (Ministerio Publico). Compared to its counterparts elsewhere (and not only in Latin America) the Public Ministry is unusually strong. Under the constitution, this prosecutorial body is formally independent of the other three branches of government, enjoying great autonomy over its budgets, sets its goals with little outside interference, and has adopted highly meritocratic recruitment systems. As a result of this almost complete autonomy, the Public Ministry has been called a fourth branch of government and has played a fundamental role in selecting cases to investigate and prosecute. In addition to the federal ministry, there are state public ministries in all of Brazil's 26 states, as well as the federal district, that also play a significant role in tracking official wrongdoing. The scope of their prosecutorial work is almost unlimited and there is little internal hierarchy as their work is largely decentralised, allowing individual prosecutors to initiate investigations without much interference from their heads of department. Unlike the judiciary it is a proactive institution. It has played important roles in virtually all of the major corruption scandals in Brazil. Its effectiveness depends, however, in its interaction with the federal police for investigation work and with the courts for trials. There have been ongoing rivalries between the federal police and the Public Ministry over the former's power of investigation—a controversial topic in the current political agenda following the approval of a constitutional amendment in this area in the Chamber of Deputies.

Summary

Accountability institutions play important roles in deterring corruption. Zamboni (2012) and Leite (2010) find impressive efficiency in the role of the CGU in constraining opportunistic behaviour of mayors in the Brazilian municipalities. Even Taylor and Buraneli (2007), who critically assessed political corruption outcomes in Brazil, recognise the strength and professionalism of these institutions and suggest that the main problems are to be found in their interaction with each other. Critics of the web of accountability mechanisms in Brazil tend to underestimate Brazil's achievements because they do not assess the Brazilian institutes in comparison to others in developing countries or even in Latin America. But on the other side of the ledger there are serious inter-agency rivalries involving the interactions among the federal police, the Public Ministry and the judiciary in their attempts to curb corruption, as well as political constraints placed on the effectiveness of corruption control.

In summary, accountability institutions are robust organisations but the most effective in controlling governments are the ones that are less amenable to political interference: the Public Ministry, the higher courts and the media. The TCU, the CGU, and the parliamentary inquiry commissions are all vulnerable to the influence of political majorities and the governing coalition.¹⁰

REGIONAL VARIATION

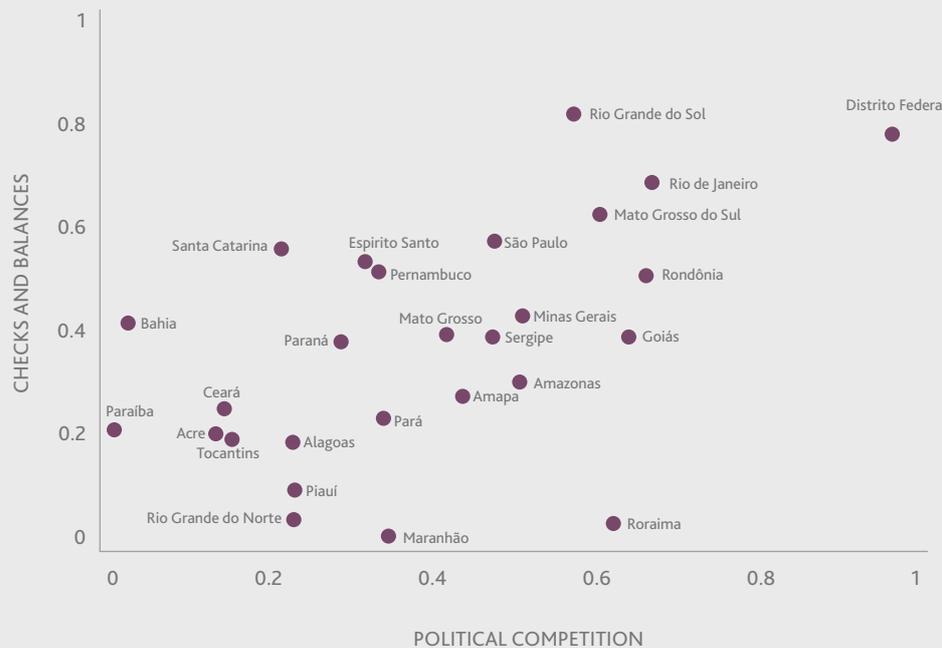
There is considerable variation in the quality of checks and balances across the Brazilian states, and failing to acknowledge this can lead to distortions. The data for criminal charges against legislators are national averages, for example, and there are enormous regional variations. The incidence of corruption is much higher in states in the North and Centre-West regions. In Tocantins, 75 percent of federal deputies face criminal charges—five times the figure for Pernambuco. The corresponding figures for Paraíba (44%), Roraima (45%), and Rio de Janeiro (43%) are also impressively high. Among state legislators there is enormous variation as well: 73 percent of politicians from Goiás and 63 percent of politicians from Rondônia are defendants in criminal or audit courts.¹¹ In the country's north region, 28 out of 65 members of the lower house of Congress face accusations in the judicial system.

Regional state institutions also vary significantly. The most important institutions for corruption control at the state level are the *tribunais de contas estaduais* (state audit courts). Table 2 contains miscellaneous information about these institutions. Significant variation can be observed in their effectiveness. In states with more power alternation there is more activism on the state courts—measured by the number of special audits they initiate (Melo, Pereira, and Figueiredo 2009)—because there is more mutual monitoring among rival elites. Also, there is strong evidence that where there is integration between the Public Ministry and the audit courts there is more audit effectiveness (proxied by their sanctioning rates).

TABLE 2 STATE AUDIT INSTITUTIONS (TRIBUNAIS DE CONTAS) IN BRAZIL

| STATE | YEAR OF CREATION | NUMBER OF ADMINISTRATIVE UNITS UNDER JURISDICTION | NUMBER OF EMPLOYEES | TC BUDGET (% OF STATE BUDGET) |
|---------------------|------------------|---|---------------------|-------------------------------|
| Acre | 1987 | 207 | 149 | 1.16 |
| Alagoas | 1947 | 256 | 681 | 0.87 |
| Amazonas | 1950 | 282 | 515 | 1.48 |
| Amapá | 1991 | 120 | | 2.12 |
| Bahia | 1915 | 380 | 720 | 0.45 |
| Ceará | 1935 | 119 | 205 | 0.28 |
| Federal District | 1960 | 124 | 589 | 2.32 |
| Eírito Santo | 1954 | 386 | 484 | 0.81 |
| Goiás | 1947 | 49 | 507 | 0.95 |
| Maranhão | 1946 | 518 | 306 | 0.98 |
| Minas Gerais | 1935 | 2,196 | 1,291 | 0.89 |
| Mato Grosso | 1953 | 497 | 400 | 1.61 |
| Mato Grosso do Sul | 1979 | 630 | 428 | 2.55 |
| Pará | 1947 | 81 | | 1.34 |
| Pernambuco | 1968 | 720 | 616 | 1.47 |
| Paraíba | 1970 | 650 | 352 | 1.05 |
| Piauí | 1891 | 1,174 | 104 | 0.72 |
| Paraná | 1947 | 1,330 | 477 | 0.93 |
| Rio de Janeiro | 1947 | 640 | 240 | 0.80 |
| Rio Grande do Norte | 1957 | 452 | 332 | 0.92 |
| Rondônia | 1983 | 203 | 284 | 1.54 |
| Roráima | 1988 | 85 | 206 | 1.69 |
| Rio Grande do Sul | 1935 | 1,218 | 1,005 | 1.01 |
| Santa Catarina | 1955 | 1,871 | 451 | 0.74 |
| Sergipe | 1969 | 235 | 353 | 1.88 |
| São Paulo | 1921 | 3,021 | 1,364 | 0.34 |
| Tocantins | 1989 | 350 | 356 | 0.84 |
| Bahia * | 1980 | 954 | 449 | 0.27 |
| Ceará * | 1954 | 1,584 | 300 | 0.22 |
| Goiás * | 1977 | 1,204 | 293 | 0.57 |
| Pará * | 1980 | 630 | 177 | 0.77 |

FIGURE 13. CHECKS AND BALANCES AND POLITICAL COMPETITION IN THE BRAZILIAN STATES



Alston, Melo, Mueller, and Pereira (2010) propose a checks-and-balance index built with information on the quality of state institutions: the audit courts, the state public ministries, the share of independent media in states, the quality of regulatory bodies, the local judicial systems, along with the NGO density in the different states. Table 2 contains the states' scores for two periods in time. Figure 13 plots the checks-and-balance scores against the level of political pluralism in the state, reflecting the degree of competition within their elections.

Alston et al. found that wealth accumulation by state political elites is much greater in states with weak checks and balances. On average, a decrease of one point in their checks-and-balances index implies that the probability of self-enrichment rises by 8 percent. Media independence shows great variation across the states. States' political elites control about 8 percent of all local concessions for radio and TV in Rio Grande do Sul, but 100 percent in the state of Roraima. The study shows that the more independent the media, the less the degree of wealth accumulation in the states. Interestingly, the national media has proven to be one of the most important remedies to curb corruption in state and local governments. Although governments and local elites may control the local media in a number of states, their influence over the national media is very low. Power abuse and corruption in the states have received great coverage, prompting the federal Public Ministry to intervene in numerous cases across the country. Highly publicised corruption scandals in the states of Alagoas, Rondonia, and Roraima are exemplary cases.

THE DEVELOPMENTAL IMPACT OF CORRUPTION

The aggregate welfare impact of corruption is admittedly very substantial but, to a large extent, estimates of corruption are informed guesses based on dubious assumptions. According to some estimates, corruption costs Brazil from 1.5–5 percent of GDP, with 69.9 percent of the country's firms identifying the issue as a major constraint to Brazil's integration into world markets. We have used the CGU's audit findings to inform our research in this report, as the data is reliable, and coming from randomised audits it is therefore immune to the problems associated with selecting sources such as judicial condemnation, denouncements, police investigations, and scandals. Using the audits allowed us to check how different levels of democratisation affect corruption across the states and municipalities.

The Fiscal Responsibility Law (2000) has led to a much-strengthened fiscal governance in Brazil, but there is still hard evidence that corruption is rampant in local governments. This is a result of local institutions being weaker than their national counterparts, and is particularly the case with the local courts system and media (although this is mitigated when the national media cover local issues, though only the most outrageous cases get their attention). Improvements in federal oversight and financial centralisation have clearly reduced, but not eliminated, local mismanagement and corruption.

In Brazil, the extent of diversion of funds in the educational sector is substantial (see below) although there is indirect evidence that increased monitoring may be reducing it (Zamboni 2012). Using CGU data, Mendes estimated that between 13–55 percent of FUNDEF funds were irregular. In turn, Ferraz and Finan (2011) found in a study of 790 municipalities that 35 percent of funds had evidence of corruption. Melo, Leite, and Rocha (2012) also found extensive evidence of corruption. Of over 42,876 audits from the first 14 GGU lotteries, there was evidence of corruption in 21 percent of municipalities in the area of education and 27 percent of municipalities in the area of health (see table 3). There were 9,212 observations in the education sector, of which about 55 percent were found to have irregularities. The number of irregularities in health spending was higher, though this is consistent with the sector requiring more resources. A striking number of serious irregularities were found in both sectors. For example, 2,200 items of equipment supposedly purchased—including motor vehicles and computers—were not found (see table 4).

Ferraz and Finan (2011) also found that corruption affected the quality of municipal education. Municipalities with detected corruption were much less likely to have adequate school infrastructure or to provide in-service training to teachers. Teachers and school directors in these municipalities were more likely to cite a lack of resources as a principal concern. In municipalities where audit irregularities were found, test scores were on average 0.35 standard deviations lower (a dismal outcome by global standards), and failure and dropout rates were higher. The gap between spending allocated to education at the source and funds actually spent on service delivery on the ground largely explain the low impact public spending has on educational attainment (Brunes et al. 2012).

TABLE 3. MUNICIPAL AUDIT FINDINGS

| CGU—RANDOMISED AUDITS SUMMARY DATA (1-14) | | | |
|---|--|---------------|---------|
| | Categories | Universe | |
| | | N | percent |
| Ministry | Health | 11.935 | 27,8 |
| | Education | 9.212 | 21,5 |
| | Social development | 5.836 | 13,6 |
| Responsible level of Govt. | Prefeituras | 33.400 | 77,9 |
| Justifications | Partly justified | 435 | 1,0 |
| | Not acceptable | 19.889 | 46,4 |
| | Nonexistent | 21.807 | 50,9 |
| Object of audit | Execution of Project or public work | 11.412 | 26,6 |
| | Bidding process | 7.011 | 16,4 |
| | Managerial aspects of existing good or equipment | 6.378 | 14,9 |
| | Rendering of accounts | 5.072 | 11,8 |
| Finding | Irregularities | 23.327 | 54,4 |
| | Improprieties | 15.714 | 36,6 |
| TOTAL | | 42.876 | |

TABLE 4. MUNICIPAL AUDIT FINDINGS

| CGU - RANDOMISED AUDIT—MAIN FINDINGS BY TYPE | | |
|--|----------------|---------------|
| Audit Finding | Irregularities | Improprieties |
| Equipment not found | 2.224 | |
| Nonexistent or irregular Documentation | 1.629 | |
| Irregularities in Bidding | 1.081 | |
| Deviation of funds for other destinations | 884 | |
| Non existent or Irregular invoicing | 752 | |
| Failures in Project execution | | 2.036 |
| Non existent /inefficient monitoring | | 999 |
| Non existent stock control | | 731 |
| Lack of infrastructure | | 644 |
| Qualified personnel non existent or inadequate | | 454 |

There is much evidence that the quality of state institutions (including the state audit courts and the local judiciary) matters. In the area of education, Melo, Leite, and Rocha have shown that checks and balances affect corruption, finding evidence that where state audit courts are stronger and the judicial system better there is less corruption, even accounting for human development and per capita income. In their study, the authors use *irregularidades* (irregularities) as a synonym for corruption. Irregularities are distinct from *impropriedades* (improprieties), which involve some form of infringement of due procedures but don't necessarily involve the misappropriation of resources (for example, the use of food that is improper for consumption—the best-before date has expired). The types of irregularities found ranged from missing equipment—for example, vehicles supposedly purchased—to fraud in competitive bidding. The prevalence of corruption is also affected by the degree of pluralism in the state. The study shows the non-linear effect of political competition: at low and high levels it generates incentives for corruption and has substantive significance. Where pluralism is low and authoritarian practices are widespread there is higher corruption. The mean value of serious irregularities committed by mayors in municipalities where there is little political competition is more than twice that of municipalities controlled by a single party of families. For each 10 percent increase in the margin of victory of candidates over their rivals there is an increase by a factor of 1.119 in the expected number of corruption events. A 30 percent margin increases the number of corruption acts by roughly 34 percent. A 50 percent margin is predicted to cause a very substantial increase in the number of corruption irregularities, from 6.2 to 9.8.

POLITICAL INSTITUTIONS AND THE REFORM AGENDA

Political institutions certainly influence the specific forms that corruption takes, although there is hardly any consensus, among both experts and policy makers, on how this influence occurs. The reform of Brazilian institutions has been a key issue in the anticorruption reform agenda. Brazil is a multiparty presidential democracy; political transactions hinge on building coalitions and this creates a specific incentive structure for political corruption. The mensalão scandal triggered much of the current reform debate and its key claim was that coalition building and campaign financing unequivocally lead to corruption. The argument underlying a current proposal for changing electoral rules is that moving to a closed-list proportional representation system would make it possible to introduce exclusively public campaign financing. Advocates of this reform proposal argue that this change will also strengthen parties.

Brazil's electoral system is currently based on open-list proportional representation and the states are the primary electoral district. The number of representatives that the states send to the Chamber of Deputies is proportional to the states' populations but the constitution sets a floor of eight representatives per state and a ceiling of 70 for the larger states. The open list allows voters to select their preferred representatives from a pool of candidates thereby encouraging intra-party competition and undermining the party leaders' control over candidate selection and campaign finances. In terms of campaign finance the open list certainly creates incentives for candidates to look for funds for their campaign chests on an individual basis.

There is no consensus among experts about the effects of the proposed change¹². Although most agree that it would probably make campaigns cheaper and enhance women's political representation, the proposed impact on corruption is unclear. Under the open-list system there are incentives for candidates bargaining with individual donors—some of this bargaining perhaps being illegal—whereas under a closed-list system parties will engage in the negotiations with the donors. The resulting change will continue to primarily affect the actors involved in political corruption: from individual candidates to political parties, so it is therefore difficult to predict the specific impact on corruption overall. Although overall accountability may be strengthened and political representation in general improved if certain measures are taken, the available evidence from countries adopting closed lists does not support the claim that the level of electoral corruption will decrease with the introduction of closed lists. Rather the resulting loss in citizen's capacity to sanction behaviour within the open-list system may increase corruption. One probable effect would be to 'oligopolise' the market for political funds in the hands of party bosses.

The adoption of proportional representation and high magnitude (high number of representatives) districts in Brazil has led to an extremely high number of political parties by international standards—over seven in the last two decades. As a consequence, the winner in the presidential elections has to engage in extensive ex-ante and ex-post bargaining to form a coalition government. For critics of the status quo the need to form coalitions is the major driver of corruption. To ensure governability, presidents have to offer ministerial portfolios and key posts in the bureaucracy to future coalition partners, many of who are ideologically distant from the presidential party. Proponents of institutional reforms argue that the balkanisation resulting from these negotiations is conducive to corruption. This conclusion is the lesson some proponents draw from the *mensalão* scandal. However, Brazil's experience of coalitional presidentialism under Cardoso was not marked by attempts at buying the support of a markedly ideologically diverse coalition and offers an important contrast to coalition management under Lula. These contrasting experiences strongly suggest that a president's style of coalition management can affect corruption outcomes (Pereira, Power, and Raile 2011).

It is true that Brazil's coalitional presidentialism creates incentives that undermine accountability. Parties in the current coalition have little incentive to expose the corruption of current or potential coalition partners. The lack of a clear alternation between fixed groups of parties deters inter-party monitoring. Even if a party that uncovers a scandal is rewarded in the elections for its vigilance and integrity, the scandal provides marginal benefits for all opposition parties, and could produce a race in which opposition parties compete to reveal a scandal (or everyone may keep quiet if the scandalmonger could be excluded from future coalitions as a punishment). Maybe the remedy to the electoral rules question would include replacing the pure proportional representation system with a mixed system combining a first-past-the-post component within a proportional system. Reforms reducing district magnitude may contribute to enhance accountability because it enhances citizens' ability to sanction official wrongdoing. Still, larger districts imply lower barriers to entry for new parties or new candidates, and this increased competition helps reduce corruption, whereas the adoption of a pure plurality

system, including possibilities such as single-member districts, would create barriers to entry to potential competitors in the electoral market and could foster corruption, as suggested by a number of studies (Persson, Tabellini, and Trebbi 2003). There are no clear-cut choices that link electoral rules and coalition-formation mechanisms to corruption levels.

TOWARDS STRENGTHENED CONTROLS OVER CORRUPTION

The common, one-size-fits-all approach to fighting corruption involves recommendations for better funding of accountability agencies, higher salaries for their staff, greater transparency in public-sector dealings, eliminating red tape, increasing citizen's awareness, and reducing state regulations (Rose-Ackerman and Truex 2012). But a reform agenda should go beyond these generic prescriptions and include very specific incremental reforms. Improvements will follow continuing micro-institutional change in all of these areas. On the other hand, there are macro reforms that are in the current agenda but which are significantly flawed. Current proposals for reforming electoral institutions and coalitional presidentialism are based on thin evidence that they would reduce corruption. More importantly, their political viability is very low.

The building blocs of a reform agenda should involve middle-range changes. These include strengthening freedom of information and media independence, and reforming the legal framework regulating the funding of political campaigns. But the most important involve the TCU. This institution should be significantly overhauled so that it becomes a full-blown judicial institution and its constitutional status should be upgraded to that of the higher courts. Its decisions should be legally binding and only subject to appeal in the Supreme Court. This would considerably reduce the time involved in the judgement of corruption charges, improving the overall efficiency of the accountability cycle of public expenditures. The same changes should be implemented in the states' audit courts. Currently these institutions account for substantial and increasing shares of public budgets without bringing proportional benefits in terms of the value added to public-sector efficiency in virtue of their *modus operandi* and legal status.

Brazil's media and the Public Ministry are the most independent institutions in the country. Not only does the public perceive them as the least-corrupt institutions but the available evidence supports the claim that they are less vulnerable from outside interference. Guaranteeing media independence is one of the most important tasks in the future fight against corruption. It is even more important for the local media, which tends to be dominated by local political elites. Attempts to regulate the media, which have been in the reform agenda of the current PT government since 2003, should be resisted and measures to insulate the media from political elites should be implemented.

Campaign finance reform is necessary and should include ceilings for corporate and individual donations. Current legislation allows corporations to give money directly to candidates, up to 2 percent of their gross annual revenues. Tying the contribution limit to a firm's revenues means that private firms can potentially donate vast

sums of money. This limit should be set at a flat-ceiling, making it easier to enforce as it could not vary across firms and over time. In turn, individual donations that are currently capped at 10 percent of the contributor's gross annual income should also be limited in similar ways. Flat and easily verifiable limits may not eliminate illicit bargaining but may discourage it over time. Some progress should certainly result from this change.

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1. Andersson and Heywood 2009, Rose-Ackerman 2006, Treisman 2007, Tanzi and Davood 2001.
2. An electoral victory brings an additional R\$138,601–R\$346,267 (US\$73,921–\$184,676) in government contracts.
3. *Mensalão* is a monthly bribe to legislators in order to secure political support in Congress.
4. Pereira, Power, and Raile (2011).
5. Ríos-Figueroa and Staton (2008)
6. Pérez-Liñán and Castagnola. (2009).
7. A host of institutions were granted standing to file cases of unconstitutionality, including political parties, governors, and national confederations. The Workers' Central Union was not formally a confederation—but it was certainly national in the terms of the scope of its actions—hence the controversy.
8. “Lula contraria TCU e libera verba para obras irregulares”, Folha de São Paulo, Janeiro 28, 2010.
9. Porto (2011)
10. The Central Bank and the Federal Revenue Service also perform an important oversight role in tracking financial flows, counting on the cooperation of bodies such as the Council for the Oversight of Financial Activities (COAF).
11. Even considering that some of these charges result from failure to comply with administrative procedures, and therefore the actual extent of criminal behaviour may be lower, the figures are dismal and are consistent with qualitative evidence from press reports.
12. For contrasting findings on the effects of coalition governments and electoral rules on corruption in a large sample of countries see Kunicova and Rose-Ackerman (2005), and Persson, Tabellini and Trebbi (2003).

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