

Notes on Combating Corruption in Brazil and Operation *Lava Jato*

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I have often been invited to speak about the current state of the fight against corruption in Brazil. For the past three and a half years, I have been a privileged spectator of the path of Operation *Lava Jato*, the largest criminal investigation into corruption and money laundering that has ever happened in the history of my country. The criminal scheme discovered is so large that investigations today have not only spread to various cities around Brazil, but have also spilled beyond national boundaries. According to data obtained by the Federal Prosecutor's Office and freely available on their website, as of August 31, 2017, more than 30 countries have already requested documents from Brazilian officials to support their own investigations related to facts

[The fact that] our legislation assumes that there will be unlimited resources for the most diverse decisions during the course of the criminal process, as well as the existence of three different appeals levels, complicates criminal proceedings—which usually take more than 10 years to reach a final verdict. As a result, it was very common to face cases in which, despite the heavy sentences imposed by the initial trial judge and upheld by first court of appeals, the defendants never actually served their sentences, because the statute of limitations had run out before the time the final ruling was issued.

A clear example of the ineffectiveness of the Brazilian criminal process, which was also processed by the 13th Federal Court of Curitiba, was the so-called “Operation Banestado

Brazil as the *Mensalão*. In this case, the Supreme Federal Court condemned politicians directly linked to the sitting government, including a former presidential chief of staff, several congressmen and other political leaders, and bank directors; and these individuals have in fact served their sentences,

scheme.

To briefly summarize, this the exposed scheme was as follows: the political parties that formed the governing coalition had recommended people to high-ranking positions on the state-owned [company's] board of directors; the nominees, once in place [at the company], diverted resources and funds back to these political parties

repatriated abroad, and assets have been blocked in amounts that exceed 3.2 billion reais (approximately US \$ 1.03 billion), being the most effective operation in the recovery of assets in history.

Three and a half years since its beginning, one can also see that this success stems from several paradigm shifts for the Brazilian criminal process.

One of the first significant initiatives from the beginning of the operation was the establishment of task forces by the Federal Police and the Public Prosecutor's Office, with professionals who had gained extensive experience in previous operations. These professionals had enough knowledge to know the paths they should take during

congressmen are under investigation and face prosecution before the Supreme Court; and proceedings pending in the lower court include a former president of the Chamber of Deputies, former cabinet ministers, a former governor, and several former congressmen.

At any rate, in the same week that I write this article highlighting the merits of Operation Lava Jato, we continue to face new scandals. On September 5, 2017, we faced the shocking image of the seizure of more than R\$ 51 million (approximately US\$ 16.5 million) in cash hidden in boxes and suitcases: illicit funds received by a renowned politician linked to the current government and who has held relevant positions in the two previous governments.

All of this demonstrates the shift in Brazilian criminal prosecution, making crime riskier for those who think about practicing it. [Yet this shift,] even though it is an absolutely necessary point, is not enough for an effective cultural change in the country.

We have recently seen a coordinated attempt by members of the Public Prosecutor's Office to propose legislative reforms, supported by more than 2 million signatures, to better prevent and repress this type of crime—which nonetheless culminated in the passage in the Chamber of Deputies of a complete distortion of the initial proposal, which instead sought to maintain the status quo. There are several bills underway in the National Congress that seek to reverse the progress already made in Operation Lava Jato, as well as to retaliate against the actions of investigators, prosecutors, and judges.

It is obvious that, when fighting powerful forces, you must expect them to use every means at their disposal to keep the power they have conquered. Huow4ln6erfwerfmve resTr(y)20()] TJEET1 Od