

The Brazilian Experience in Fighting Corruption Through Leniency Programs and Plea Agreements

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The V Chamber of Coordination and Review (Anticorruption Chamber) is in charge of coordinating and reviewing the activities of Prosecutors who investigate and prosecute crimes and improbity acts (civil unlawful acts) committed by public officials, political agents or private individuals and corporations against the Public Administration in general, including foreign public administration.

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The Anticorruption Chamber performs two main functions:

REVIEW FUNCTION

COORDINATION FUNCTION

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LENIENCY AGREEMENTS

- new legislation
- establishment of procedures
- interinstitutional understandings

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A very brief view of two of the main ongoing cases in Brazil highlights the importance of these agreements on fighting corruption:

- Car Wash Case
- Greenfield Case

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The Car Wash Case

The Car Wash Case revealed a large illicit scheme where kickbacks were systematically paid by private companies to politicians, political parties and civil servants in exchange for contracts with Petrobras, the Brazilian oil company.

It is the largest investigation of corruption in the history of the country, so far.

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CAR WASH CASE RESULTS SO FAR



1765 COURT PROCEEDINGS
877 SEARCH WARRANTS
221 SUBPOENAS TO TESTIFY
213 ARREST WARRANTS
303 MUTUAL LEGAL ASSISTANCE REQUESTS
158 PLEA/COLLABORATION AGREEMENTS
10 LENIENCY AGREEMENTS SIGNED
282 DEFENDANTS CHARGED

WITH CORRUPTION, MONEY LAUNDERING, ORGANISED CRIME, FINANCIAL CRIME, DRUG TRAFFICKING, IN 67 SEPARATE PROSECUTIONS

8 CIVIL SUITS AGAINST 67 PERSONS AND CORPORATIONS

REQUESTING THE RESTITUTION OF US\$ 4.6 BILLION

CRIMINAL CHARGES INVOLVING BRIBES WORTH US\$ 2.03 BILLION

US\$ 3.3 BILLION HAD ALREADY BEEN RECOVERED/SECURED

US\$ 1.02 BILLION IN ASSET FREEZES

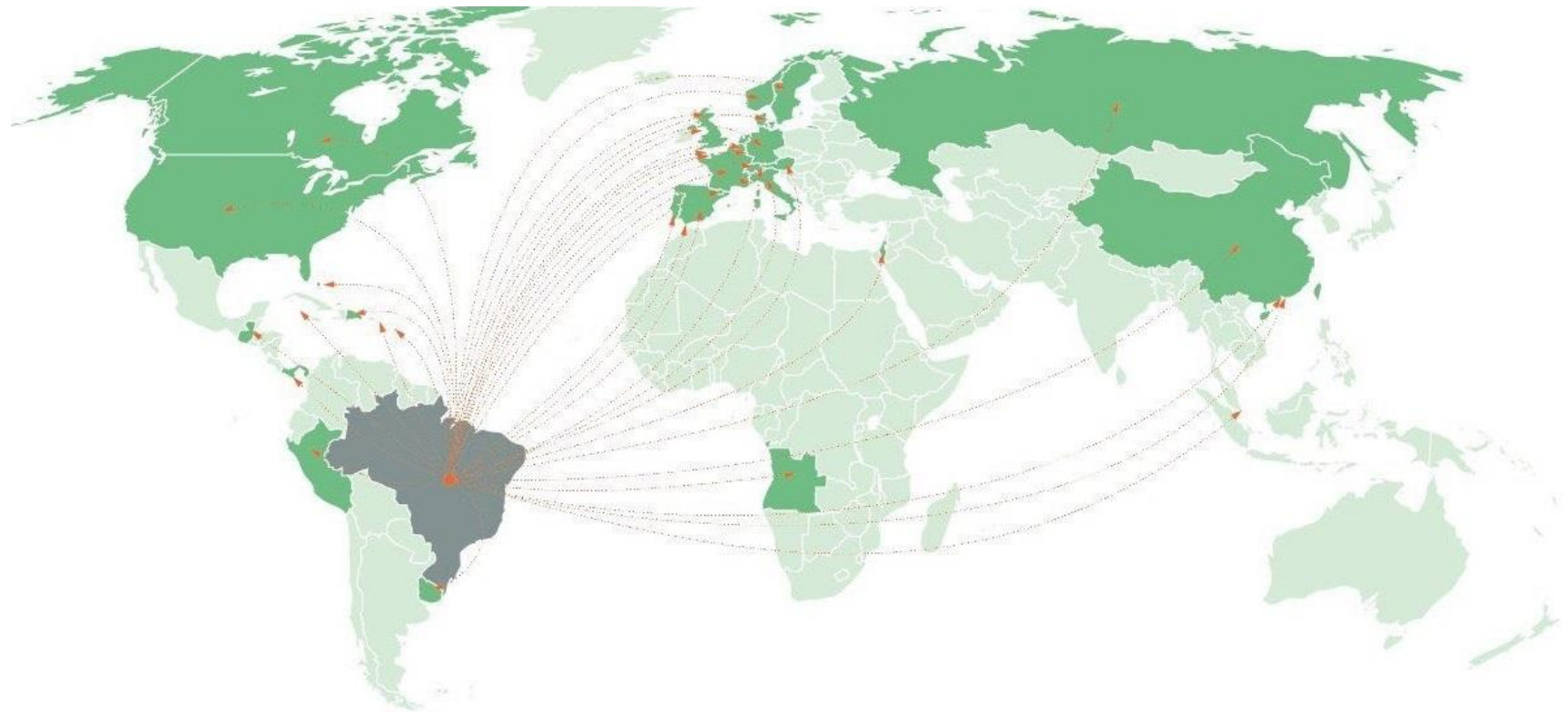
157 SENTENCES, TOTALLING: 1634 YEARS, 7 MONTHS AND 25 DAYS

data as of 31 August 2017 - exchange rate: USD 1.00 to BRL 3,1465

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Outcoming Mutual Legal Assistance – Car Wash Case

176 requests addressed to 39 countries



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Incoming Mutual Legal Assistance – Car Wash Case

127 requests from 30 countries



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Incoming Mutual Legal Requests Car Wash case Odebrecht Scheme

39 requests from 14 countries



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Besides international cooperation, other instruments intensely used are plea and leniency agreements.

- 158 plea or collaboration agreements signed by individuals, in Car Wash Case
- 10 leniency agreements involving companies, including Odebrecht

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- Odebrecht leniency agreement: approved by the Anticorruption Chamber in December, 2016
- US\$ 2,600,000.00 (22 years)
- Participation of the USA and Switzerland (20%)
- StAR's study - only 3% (US\$ 197 million out of US\$ 5.8 billion) was returned to the countries whose officials were alleged to have been bribed, between 1999 and mid-2012

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The Greenfield Case

- investigation of irregularities found in the administration of the four biggest pension funds in Brazil – FUNCEF, PETROS, POSTALIS and PREVI.
- As the investigations went on, the Batista brothers decided to cooperate and sign agreements, revealing a huge scheme of fraud in the pension funds, undue payments to politicians, during and after their electoral campaigns, money laundering, tax fraud and other crimes.

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Leniency Agreement

- payment, exclusively by the holding J&F Investimentos S/A: R\$ 10,300,000,000.00, equivalent to, approximately, US\$ 3.1 billions, for the victims: BNDES (National Development Bank); the Federal Government; FUNCEF (Federal Economists Foundation); PETROS (Petrobras Social Security Foundation); Federal Savings Bank; FGTS (Guarantee Fund for Length of Service).

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- **US\$ 700,000.00 for the execution of social projects, in thematic areas such as:**
 - Education in human rights, citizenship and prevention of corruption;
 - Support for activities of social control and transparency of public accounts;
 - Support for the cultural and artistic production of indigenous, quilombola and traditional communities;
 - Research and preservation of Brazilian cultural, historical and archaeological heritage;
 - Support for the integration or reintegration of convict prisoners and ex-convicts in the labor market.

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- Since the beginning of 2015, the Anticorruption Chamber has approved almost 20 leniency agreements, totalizing more than R\$ 24 billion (US\$ 7,2 billion) concerning penalties and anticipation of the repair of damages.

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Parameters and guidelines required by the Anticorruption Chamber:

1) leniency agreement is an investigation tool.

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2) the agreement shall observe the principles of:

- Opportunity
- Effectiveness
- Relevance to the investigation (utility)
- Proportionality

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3) The company is not exempt from **fully repairing the damages** that it may have caused, being the amount settled only an anticipation of this full repair.

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When a company accepts and signs a leniency agreement, it is relinquishing the presumption of innocence, by providing relevant information and documents which the authorities would hardly or never have access to.

Documents and other elements turned over by the collaborator cannot be used against it.

Thus, other natural persons and legal entities may be charged, but not those collaborators.

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- Other institutions may also sign leniency agreements (General Comptroller's Office, Attorney General Office)
- Joint teams to negotiate and sign agreements would be the ideal model to guarantee the efficiency of the instrument and security for the involved parties

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- Working Group - WG Leniency and Collaboration of the Anticorruption Chamber produced a technical study and a shorter note of that study. The first one is available on <http://www.mpf.mp.br/atuacao-tematica/ccr5>.

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Guideline No. 7: procedure

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CORRUPTION CAUSES:

- the undermining of institutions and democratic values, the jeopardizing of the sustainable development and the rule of law, and the damages caused to basic human rights, such as good health, quality education, sanitation, transportation, housing, among so many others.

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CORRUPTION has to be fought with courage, tenacity, seriousness, through the use of each and every tool that is available.

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Plea and leniency agreements, as well as the increasing international cooperation are indispensable tools and have undoubtedly raised the threshold of fighting corruption in Brazil, in a way that, we hope, has no return.

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Thank you!

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