

COVID-19 and Corruption—Governance Challenges and Legal Recommendations in a Crisis Situation

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Abstract

This paper aims to analyze the global health crisis caused by COVID-19 and corruption aspects in Brazil. The pandemic brought several possibilities and opportunities for corruption. There is a major concern that the large amount of public funds involved may be appropriated by private and public agents and undermine the movements to slow down the outburst, spread, and containment of the SARS-CoV-2 virus in the country. Due to the state of public calamity, there was a legal “relaxation” of public procurement rules in the country. Unfortunately, corruption may thrive during times of crisis, particularly in developing countries such as Brazil. Corruption may damage government’s response to the pandemic and certainly denies people’s access to the public health system. It is a study based on current legislation and specific works on corruption in the health sector. The recommendations in this paper indicate that transparency and accountability mechanisms in the public procurement process through industry self-regulation in collective action projects may improve and strengthen battling corruption and the SARS-CoV-2 virus in Brazil, as legislative changes may be difficult to be implemented in a short period of time in the country.

Keywords

Corruption, COVID-19, Public Health Law, Governance, Public Procurement, Brazil

1. Introduction

Countries around the world face a global health crisis with the swift spread of the SARS-CoV-2 virus and the disease it causes—COVID-19. The outbreak affected developed and developing countries all together. Nations are still strug-

gling to control the COVID-19 pandemic with the multiple variants that have emerged. Promotion of health and safety for all citizens is a priority for governments. More than 344,000,000 people have caught the virus and more than 5,000,000 have died in the battle against it. These numbers are disturbing for all and that increase day after day. SARS-CoV-2 is an invisible virus, but so is corruption. Brazil was selected as a target sample of this research for two primary reasons. First, it is a developing country where corruption is a major challenge. Second, very few studies have analyzed the Brazilian legislation related to the health sector and the impacts of corruption during a pandemic crisis. Unfortunately, corruption may thrive during times of crisis, particularly in developing countries such as Brazil. This pandemic has exposed more than ever cracks in the health public systems worldwide and shown several possibilities and opportunities for corruption. As per a report from Transparency International (TI, 2019b), corruption in the health sector causes losses of over US\$500 billion a year at the global level in regular times. Corruption may harm government's ability to provide adequate health care mainly for those more in need (Al-Masbhi & Dureab, 2021).

Brazil presently sits on the top three lists of countries more affected by COVID-19 (Worldometer website). As per the Brazilian Ministry of Health website the country has almost 26,000,000 infections and more than 600,000 deaths. An outbreak response requires speed, not bureaucracy. Brazilian Congress approved a legislative decree that recognizes the state of public calamity in the country in force until December 31, 2020 and the government laid out more than one emergency funds support package being the first one in 2020 in the amount of US\$223 billion to fight COVID-19. Due to the state of public calamity, there was a legal "relaxation" of public procurement rules in the country. But without relying on traditional anti-corruption policies and programs to identify and prevent corruption and the legal relaxation to respond quickly to the pandemic, public funds have diverged, and documents forged. In many countries, corruption is systemic or endemic. "In these societies, corruption becomes customary practice; its punishment may be arbitrary, or the result of political pay-back." (Costa et al., 2020: p. 24). In most developing countries like Brazil, corruption has become systemic as shown in Table 1.

Corruption is not new in Brazilian history. Understanding the causes of corruption in Brazil starts with an analysis of its roots. For over 500 years, patron-client relations have been the norm in Brazil, as elites counted on loyalty from their "clients" in return for favors. By the time Brazil became a republic in 1889, a local oligarchy—known in Portuguese as *coronéis*—had established a patron-client relationship to generate votes in return for favors from the government (Costa, 2018). Corruption was also present under the military regime from 1964-1985 (Lagunes & Svejnar, 2020). The transition in 1985, from military regime to a democratic government, raised high expectations among Brazilians of improved transparency and accountability (Power & Taylor, 2011). In 1990,

Table 1. Brazil: corruption perception index TI.

BRASIL		
Year	Index/Points	Ranking/Countries
2021	38/100	96/180
2020	38/100	94/180
2019	35/100	106/180
2018	35/100	105/180
2017	37/100	96/180
2016	40/100	79/176
2015	38/100	76/167
2014	43/100	69/174

Source: Transparency International (2014, 2015, 2016, 2017, 2018, 2019a, 2019b, 2020, 2021).

Fernando Collor de Mello became the first elected president after more than two decades of dictatorial regime. And in 1992, Brazil became the first country in Latin America to have its elected president—Fernando Collor de Mello—impeached on charges of corruption. At the time of Collor’s impeachment, Brazil enacted the Administrative Misconduct Act (Law No. 8429/1992), imposing financial punishments to public and private agents convicted of corrupt conduct. In 1998, Brazil issued the Law on Anti-money Laundering (Law No. 9613/1998), which created the financial intelligence unit in Brazil, named the Council for Financial Activities Control (COAF). Anti-money laundering rules were conceived to inhibit drug dealers and some acts of terrorism. Anti-corruption activity was not the main reason of the legislation, but it has profited enormously (Costa, Pagotto, & Musrafah, 2018). Despite some improvements in the legislative system, there is still a long way to go.

In sum, corruption in Brazil is related to outdated legislation, weak institutional framework, poor access to public information, low public participation, lack of transparency and the existence of conflicts of interest and impunity perpetrated by the judiciary/legal system (Costa, 2018). Some Brazilians even consider corruption as part of the Brazilian culture. In fact, many consider corruption to be the result of a cultural element, grounded in the *jeitinho brasileiro* (little Brazilian way) or the *malandro* (rascal). The *jeitinho* is an interruption of the rules temporarily in order to complete a task in a country where bureaucracy is a must live rule. Bureaucracy in Brazil is also an important source of corrupt activities in the country. The World Bank’s 2020 Ease of Doing Business Index, which measures countries’ regulatory environments to start and operate a business, placed Brazil 124th out of 190 countries (World Bank, 2019).

Corruption certainly may undermine Brazilian government’s response to the pandemic and deny people’s access to the public health system. By diverting funds, corruption hurts the Brazilian society. With such large outflows of mon-

ey, legal relaxation of law mechanism to previously control public procurement has caused a temptation of private and public sectors actors to put urgency and rapidity above everything else, including integrity. As the COVID-19 pandemic still continues to spread all over the country, it's important to discuss about the Brazilian vulnerabilities that makes it more susceptible to corruption in its public health system. Identifying corruption before it happens may help to get public health care to those who need it most.

2. Literature Review

Broadly speaking, corruption is comprehended as the misuse of public resources by public officials, for private gains. Among the most accepted definitions in the literature, corruption is described as “the abuse of public office for private gain” (Rose-Ackerman, 1999; Kaufmann, 1997). It is a definition used by a diverse range of public institutions and NGOs, including the World Bank (WB), the International Monetary Fund (IMF) and Transparency International (TI). Considered by TI as one of the greatest challenges in the modern world, corruption may paralyze good government governance, distort public policies, cause misallocation of public funds and resources, harm the private sector, and particularly affects the most vulnerable ones (TI, 2001). As per Nye's seminal work, corruption is a “behavior that deviates from the formal duties of a public role (elective or appointive) because of private-regarding (personal, close family, private clique) wealth or status gains” (1967: p. 416).

The Brazilian legal national and international framework to establish anti-corruption standards include: the United Nations Convention against Corruption (UNCAC), the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the US Foreign Corrupt Practices Act (FCPA), the Inter-American Convention against corruption, the Brazilian Clean Company Act, the Money Laundering Prevention Law, the Criminal Code, the Code of Criminal Procedure, the Antitrust Law and the Public Procurement Law.

Corruption arises at the boundaries of the public and private sectors (Rose-Ackerman, 1978). It affects the efficiency and legitimacy of state activities and distorts the criteria by which public policies are decided (You & Khagram, 2005). Corruption undermines good governance.

Like a disease, corruption will always exist. But this fact should not avoid an attempt to reduce the disease, neither paralyze efforts to reduce it. In Brazil, corruption may play a negative key role in the outbreak, spread, and slow containment of COVID-19. To a large extent, systemic corruption is an indicator of a non-efficient state that must be comprehended within a larger theoretical background than that of simply poor governance (Cartier-Bresson, 1997: p. 464). Corruption is made possible, if not encouraged, by quite a few problems in the country and flourished due to the lack of accountability in the bidding public procurement process, in the performance of civil servants and private actors,

and in the control of public resources (Costa, 2018; Silva, 1999).

Brazilian Federal Constitution of 1988 structures the health system based on the following pillars: equity, political and operational decentralization, tripartite financing and universal service (Brazil, 1988). Furthermore, it determines that health is a free economic activity for the private initiative, as regulated by complementary Law 8080 (Brazil, 1990a), that establishes attributions, competencies and responsibilities of the Unified Health System (known by its Portuguese acronym SUS), and complementary Law 8142 (Brazil, 1990b), that provides social participation and transfers of intergovernmental resources in SUS. The National Supplementary Health Agency (known by its Portuguese acronym ANS) was therefore created to regulate public contractual relations with the medical and hospital assistance private sector (Barbosa & Malik, 2015).

Cohen, Mrazek, and Hawkins once declared that while corruption in the health public system during pandemic crisis can affect a country's entire population, it is usually the poor that are the most vulnerable to its destructive effects (2007: p. 30). Some scholars argue that corruption may be considered as the most pervasive threat to efficient management in the public health sector, as this sector is much more exposed to corrupt practices for a large number of reasons. The large amounts of money involved, the number of different stakeholders and the asymmetric relationship between health professionals and patients are some of the reasons (Avelino, Barberia, & Biderman, 2013: p. 2).

Of all government activities, public procurement is one of the most vulnerable to corruption (OECD, 2009: p. 9). Transparency, integrity, fairness, competition and accountability are probably the most important public procurement system's goals (OECD, 2009: p. 9). Countries use public procurement regulations to some degree to further policy objectives such as fighting corruption (Nijboer, Senden, & Telgen, 2017). According to the UN Office on Drugs and Crime (UNODC, 2004: p. 1), roughly 10 - 25 per cent of all money disbursed on public procurement globally is wasted on corruption schemes. Most part of it is related to government procurement of medical supplies and medicines.

Becker's seminal work on crime and punishment provides a useful framework for designing an optimal law enforcement system against corruption, where rational criminals compare the benefit of violating the law with the possible cost of the violation—probability and severity of punishment (penalty amount, years in prison etc.) (Becker, 1968). The favorable calculation to a corrupt conduct derives from the economic result made by an individual who believes that will not be caught and therefore will never pay for its crime. The large amounts and speed of public funds spent to battle COVID-19 by the Brazilian government, the execution of prison sentences only after exhausting all the appeal options, as well as the “relaxation” of public procurement regulations and control may interfere with oversight control mechanisms and allow keen players from both public and private sectors to take advantage of the crisis for their own private gain and benefit.

Public procurement of medical supplies and medicines is one of the most vulnerable areas for corruption in the health sector. COVID-19 funds may be diverted and mismanaged by corrupt perpetrators and it can represent the difference between life and death. The experience of previous epidemics provides a perfect environment for corruption to flourish and that guaranteed further loss of life and declined in public trust. This raises questions of whether corruption in Brazil is playing a role in the outbreak of the disease as well as whether emergency funds are being used appropriately in view of the “relaxation” of public procurement rules in the country.

Several scholars affirm that corruption should be viewed as a problem-solving through collective action, and that particularly in a context of systemic corruption (Rothstein, 2011; Mungiu-Pippidi, 2011). Collective Action is defined as “a collaborative and sustained process of cooperation among stakeholders...[that] increases the impact and credibility of individual action, brings vulnerable individual players into an alliance of like-minded organizations and levels the playing field between competitors.” (World Bank Institute, 2008: p. 4). Collective action has been successfully used as a method to battle corruption (Persson, Rothstein, & Teorell, 2013). There are four major different types of collective action: anti-corruption declarations, principle-based initiatives, certifying business coalitions and integrity pacts. Fighting corruption must remain a priority in times of crisis and in this particular case of the COVID-19 outbreak and a collective action for self-regulation of the health sector against corruption may be an important tool.

3. Methodology

This paper is based on a selection of mainly public policy reports, books and research papers about corruption and in particular in the health sector. Its main goal is to promote the fight against corruption during pandemic crises in the public health sector through industry self-regulation in collective action projects. In order to guarantee transparency, accountability and integrity in public procurement legal processes, collective action projects must include the participation of all stakeholders (NGOs, academia, multinational and domestic companies, other interest groups and governments at federal, state and municipal levels). The ultimate aim in the collective action projects is to create conditions for all stakeholders to avoid the temptations of corruption particularly due to the state of public calamity and the “relaxation” of public procurement rules in the country. By strengthening transparency, using new technologies and artificial intelligence and developing a robust prevention and detection plan through a collective action for self-regulation of the health sector against corruption, Brazil would be in a better position to respond to a large-scale pandemic, like COVID-19.

4. Results

Among the types of collective action, it seems that integrity pact is the most ef-

fective tool for preventing corruption in public procurement law contracts. It is a formal document signed by contracting public authority and bidders to comply with best practices and maximum transparency and accountability. A third actor, usually a civil society organization, monitors the process and commitments made by both parties. Civil society organizations can play an oversight role as supporting actors in monitoring accountability tools and information sharing function to deter corrupt practices. All monitoring reports and results of the integrity pact project must be made available to the public ([World Bank Institute, 2008](#)).

Integrity pacts require an important operational cost and may not be the first choice, mainly during a pandemic crisis. But, in this unique circumstance, corruption must not be ignored. Effective monitoring is the only way to prevent corrupt actors to move forward in corrupt behaviors and to enhance disciplinary actions, sanctions and penalties against them. One can argue that effective monitoring is not a cost but an investment that may save lives. In fact, the emergence of new digital technologies offers valuable tools for all stakeholders—mainly, governments, private sector and citizens—to improve the transparency and efficiency of public investments in the current health sector ([Moreno, 2017](#)).

There are some encouraging examples where digital tools are powerful means of rooting out corruption in government, unscrupulous public officials and their partners in crime. For instance, the [Public Expenditure Observatory](#) (known by its Portuguese acronym ODP) aims to contribute to the improvement of internal control and to function as a support tool for Brazilian public management ([ProZorro](#)); the results of the ODP serve as input for conducting audits and inspections conducted by the Brazilian Federal Comptroller General (known by its Portuguese acronym CGU) strategic decisions by monitoring public spending. (ODP website). In addition, the InvestmentMap platform, launched by the [Inter-American Development Bank \(IADB\)](#), allows users to monitor the physical and financial progress of public investment projects in Latin America countries through data visualizations and geo-referenced maps. The platform encourages citizen participation through comments, recommendations, and demands to policymakers and by sharing photos of the progress of projects (IADB website). Face the COVID-19 historical challenge to corruption, the InvestmentMap platform has an already developed a specific module to monitor the funds expend in this pandemic crisis (IADB website).

5. Conclusion

COVID-19 outbreak affects developed and developing countries all together that struggle to control the pandemic crisis. An outbreak response requires speed, not bureaucracy. But without relying on traditional anti-corruption policies and programs to identify and prevent corruption, public funds can diverge, and documents forged. Corruption may divert funds and medical supplies and medicines needed to fight the pandemic crisis. Corruption is made possible, if not

encouraged, by quite a few problems in Brazil. It has flourished due to the lack of accountability in the bidding public procurement process, in the performance of civil servants and private actors, and in the control of public funds. Public procurement of medical supplies and medicines is one of the most vulnerable areas for corruption in the health sector. The experience of previous epidemics provides a perfect storm environment for corruption. This raises questions of whether corruption in Brazil is playing a role in the outbreak of the disease as well as whether emergency funds are being used appropriately. In a context of systemic corruption some argue that corruption should be viewed as a problem-solving through collective action.

Based on a selection of mainly public policy reports and research papers and books about corruption in general and in particular in the health sector, this paper aims to recommend the fight against corruption during pandemic crises in the public health sector through industry self-regulation in collective action projects. Self-regulation measures help to raise industry standards. By strengthening transparency, using new technologies and artificial intelligence and developing a robust prevention and detection plan through a collective action for self-regulation of the health sector against corruption, Brazil would be in a better position to respond to a large-scale pandemic, like COVID-19.

This study has a number of limitations. First, it is based on publicly available policy reports and research papers and books about corruption in general and in particular in the health sector; because of time restraints, it does not include richer background information that could be gained by exploring qualitative data through interviews with key stakeholders of the health sector. Second, evidences to back up what collective actions projects work best and why is limited. Although this research may be limited, it still has value in terms of helping understand a proposal of fighting of corruption in the health sector during a pandemic crisis. The results of this study encourage future research on case studies of other countries that may help build empirical data on which interventions may work more effectively.

This study has a number of limitations. First, it does not include richer background information that could be gained by exploring quantitative and qualitative data through interviews with key stakeholders. Second, the findings represent only one more step forward in establishing progressive improvement on legal research on corruption in the public health sector, but much work remains to be done. Although this research may be limited, it still has value in terms of helping understand the challenges of fighting corruption in Brazil in the health sector during a pandemic crisis and the importance of improving the legislation to deal with health crisis as well as the control and enforcement of the law. The results of this study encourage future research on similar case studies of other countries that may help build more empirical data and findings may work more effectively.

6. Recommendations

As regards recommendations for battling corruption in the health sector during

the COVID-19 crisis, this study proposes:

- 1) Formulation of long-term strategies to reinforce commitments to good governance through improvement of control and enforcement of the current legislation.
- 2) Promotion of transparency and accountability through the publications on governments' website all information related to funds released and public procurement contracts, names and beneficial ownership information of companies awarded contracts etc.
- 3) Encouragement of digital technologies tools as powerful means of rooting out corruption in the health sector and improving enforcement of the law.
- 4) Limitation of the use of emergency non-competitive legal processes after the pandemic crisis.
- 5) Empowerment of self-regulation collective actions projects to monitor market conditions to avoid collusion or overpricing.
- 6) Promoting the auditing of internal auditors (CGU) and independent auditors (collective actions, citizens etc.) related to the relief of the emergency COVID-19 funds.
- 7) Strengthening gaps in anti-corruption and money laundering legislations to tackle the current legal limitations.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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