

Anti-Corruption Agencies in South Africa and Brazil

Trends and Challenges

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Abstract:

Corruption at all levels has become an everyday reality in South Africa and Brazil with dire consequences for both countries, leading to perpetration of social inequality. In both countries, the existing legislation and anti-corruption agencies have been unable to curb the phenomenon efficiently. One of the key reasons for this failure has been the modus operandi of the anti-corruption agencies, which throughout the years have faced serious changes (political, legal, administrative and organisational) in their fight against a multi-facet, complicated, and multi-layered reality. In both countries, the state bureaucracy apparatus, has over the years, faced both grand and petty corruption in both the public and private sector domains, whereby the competition for irregular thirst for wealth accumulation has reached unprecedented levels. The anti-corruption agencies then have to deal with a multiplicity of corruption diversions and dimensions in their efforts to detect, dissect, investigate and prosecute. There are a number of differences in the legislative frameworks determining the structure, functions and operations of such organisations in these countries. This article, based on an empirical paradigm rooted on interpretative qualitative methodology, will analyse and dissect the similarities, differences, achievements, failures and challenges in terms of mandates, efficiency efficacy, and resources allocation. This comparison will be located within the 'multiple versus single agency' debate.

Key words: Corruption; multi or single anti-corruption agencies; effectiveness; South Africa; Brazil

ABBREVIATIONS

- **ACTT** (Anti-Corruption Task Team)
- **AFU** (Asset Forfeiture Unit)
- **AGSA** (Auditor General of South Africa)
- **CGU** (Office of the Comptroller General)
- **CPIB** (Corrupt Practices Investigation Bureau)
- **DPCD** (Directorate for Priority Crime Investigations)
- **DPF** (Federal Police Department)
- **DPSA** (Department of Public Service and Administration)
- **DSO** (Directorate of Special Operations)
- **IPAC** (Independent Commission against Corruption)
- **IPID** (Independent Police Investigations Directorate)
- **JCPS** (Justice Crime Prevention and Security Cluster)
- **MAWG** (Multi-Agency Working Group on Supply Chain Management and Procurement)
- **MPF** (Public Prosecutor's Office)
- **NPA** (Nation Prosecuting Authority)
- **OECD** (Organisation for Economic Co-operation and Development)
- **PRASA** (Passenger Rail Association of South Africa)
- **PSC** (Public Service Commission)
- **SACU** (Special Anti-Corruption Unit)
- **SAPS** (South African Police Services)
- **SIU** (Special Investigations Unit)
- **TCU** (National Court of Accounts)
- **The HAWKS** (Directorate for Priority Crime Investigation)
- **UNCAC** (United Nations Convention against Corruption)

INTRODUCTION

The key question underlying the article is based on the comparative analysis of the realities surrounding the single anti-corruption agency in Brazil, with the multiple anti-corruption agencies in South Africa. The stepping stone upon which the article is based, is that in both cases, and despite the agencies' efforts, corruption is still flourishing in both countries in all spheres of society, hence the comparison will dissect the differences between the effectiveness or not, of a multiple or single agency, and in so doing explore the underlying issues. Operational, functional and systemic weakness, strengths and challenges are key in the successful fight against corruption.



THE DILEMMA: SINGLE OR MULTIPLE AGENCY?

International debate on the issue of multiple or single anti-corruption agency never ceases, mostly because corruption has reached new high levels of sophistication demanding greater effectiveness and efficiency in order to combat unethical behaviour by both public servants and the private sector operators. The reality is that 'ready solutions' and 'widely accepted/successful models' of anti-corruption approaches are not helpful anymore. A comprehensive analysis and understanding of the historical foundations, and a dissection of the specificities of the social, economic, technological, cultural and institutional context, are key in the final selection in terms of planning, implementing and operationalising new agencies (De Sousa 2009:3–4). This axiom has become more than evident in the relevant research report examining such agencies in Ghana, Malawi, Tanzania, Uganda and Zambia (Doig and Williams 2008:3–4).

The Organization for Economic and Co-operation Development (OECD) as well as the United Nations Convention Against Corruption (UNCAC) have proposed that there is a need for such institutions to operate in accordance to articles 6 and 36 of the Convention, in short as Prevention Agencies; Law Enforcement Agencies; or Category 3 Combined (Prevention and Law Enforcement Agencies; OECD 2007). Heilbrunn (2004) contributes to this understanding by classifying the agencies four models: the Universal Model, Investigative Model, Parliamentary Model and the Multi-Agency Model. The Universal Model agencies have produced the widely acknowledged, most effective institution of its kind, the Hong-Kong's Independent Commission against Corruption (ICAC) that was instrumental in stopping corruption, based on a solid legal and regulatory framework and almost sweeping powers to operate (Klitgaard 1998:108–110).

The Corrupt Practices Investigation Bureau (CPIB), established in Singapore, is considered the epitome of an Investigative Model operating since the early 1950s that was strengthened by the enactment of the Prevention of Corruption Act of Singapore in 1960 in order to empower its investigating capacities and enhance its community-based educational initiatives (CIPB 2017). The multi-agency model is based on the existence of a number of components that have well-defined functions and systems and based on exchange of information, coordination and cooperation at all levels and is devoid of political interferences.

The lack of a centralised anti-corruption agency to coordinate the fight against corruption, has been described as a key weakness given the multi-layered corruption realities that demand a multiplicity of factors such as abundance of resources, high degrees

of knowledge, sophistication in detection, analysis, universal support, and a strong, well-organised and cooperative judiciary. These are prerequisites for success for this model (Meagher 2005).

Irrespective of the type of anti-corruption agencies operating, there are some widely accepted characteristics that are key in their success such as strong political will and unquestionable support at the highest political level; political and operational independence to investigate the corrupt; adequate legislative powers of access to relevant documentation and to question witnesses; fair, ethical, honest, transparent and accountable leadership which enjoys the trust and confidence of the citizens; clear reporting hierarchy (Klitgaard 1988:98–99; Heilbrunn 2006; De Sousa 2008); sufficient, skilful, knowledgeable, staff and sufficient resources; special legislative powers; high levels of coordination, cooperation and information sharing with other anti-corruption agencies (Kpundeh 2005:123–124; OECD 2005:4–5); preventive and educational components, and the ability to investigate, detect, examine and analyse information that lead to prosecutions of the corrupt (OECD 2007:11–12).

THE SOUTH AFRICAN MODEL

The South African model is based on a rich and diversified laws, rules and regulations that have created a comprehensive anti-corruption group of agencies, and constitutionally-based institutions with similar and occasionally different priorities. Thus the National Prosecuting Authority (NPA) undertakes criminal proceedings on behalf of the state; the Asset Forfeiture Unit (AFU) freezes and seizes proceeds of crime; IPID (the Independent Police Investigative Directorate (IPID) functions as an investigator on corruption and maladministration in the South African Police Service; SIU (the Special Investigating Unit (SIU) investigates corruption at all levels and recovers losses through legal initiatives; SAPS (the South African Police Service) investigates all forms of corruption, and finally, the DPCI (the Directorate for Priority Crime Investigations), whose role is detect, investigate and combat offences that have been described as 'national priority'.

This multiplicity of agencies are supplemented by the Public Service Commission (PSC) which assesses, monitors and evaluates state policies, practices, compliance, and control as well as the effectiveness of anti-corruption agencies; the office of the Public Protector whose role is to investigate and report to the state institutions corrupt activities in all spheres of society, and the Auditor-General of South Africa (AGSA) who is in charge of researching and reporting compliance through performance and forensic audits of all state-funded entities.



The National Treasury, the South African Receiver of Revenue and the Financial Intelligence Centre (FIC) which investigates proceeds of corrupt actions, including money laundering, are key in the state anti-corruption fight (Woods and Mantzaris 2012). This Daedalus-like anti-corruption group is 'coordinated by ACTT (the Anti-Corruption Task Team dealing with 'high priority corruption') and MAWG (the Multi-Agency Working Group on Supply Chain Management dealing with corrupt practices related to Supply Chain Management and procurement). It can be understood that such a multiplicity of agencies demands the prioritisation of cooperation, co-ordination, monitoring and assessment for success (OECD 2008:12). Above all the technicalities, the key issue leading to the success of anti-corruption efforts is strong political will that is expressed not only by committed support, but also through the provision of sufficient resources, moral behaviour across all organisational units, transparency and integrity in human resources selections, and most importantly, integrity at levels of the political trajectory.

The disbandment of the Scorpions following President Zuma's elevation to power has led to a debate coupled with protracted court cases that reached the Constitutional Court demanding an 'independent anti-corruption entity' emulating the Scorpions (Glenister 2011). In South Africa, as exemplified in the National Development Plan (NPC 2011:401), the belief is that a single agency is inadequate in fighting corruption because of the fear of political capture and loss of independence, while the multiple agency system is more operational because it does not face interference due to existing checks and balances. There has been criticism, however, that the Plan has avoided participation or dialogue with civil society, key stakeholders and role players in the process of drafting the new policy document (Manion 2004:40). The National Development Plan openly admitted that the country is facing high levels of corruption that undermine the rule of law and stall development and that "the performance of state systems of accountability has been uneven enabling corruption to thrive" (NPC 2011:402). These findings confirmed reports of the Public Service Commission in 2011, that the mandates of the anti-corruption agencies overlap, and had become ineffective, resulting in the need for central coordination in order to increase effectiveness (Public Service Commission 2011:3–4). The report further proposed new corruption classifications that included mismanagement of government funds, procurement and appointment irregularities, housing fraud, abuse of government resources, mismanagement of government funds, unethical and criminal behaviour, as well as housing and social grant fraud (PSC 2011:14–15). It is important to note here that the highly diversified classification of corruption has been a common challenge for a large number of countries (Gathii 2009:25–27; EACC 2010; OECD 2012).

Following the PSC classification, the Department of Public Service and Administration (DPSA) 're-classified' corruption manifestations that included abuse of power, nepotism,

extortion, favouritism, embezzlement, abuse of privileged information, fraud, conflict of interest, insider trading and bribery (DPSA 2002:12). It can be understood then that the 'very specific mandates' of agencies developed problems related to the broadness of their mandate as opposed to the above classifications. This reality can be epitomised by the case of the Special Investigating Unit (SIU) whose mandate is so wide that it overlaps not only with that of other agencies but also with that of both the Asset Forfeiture Unit and the Public Protector (Stevenson 2011:12). Such problems are exacerbated by lack of synergy, coordination and cooperation amongst the agencies.

In such a situation, then, the belief that each agency is unique in its planning and implementation of mandates is but a hallucination because of the confusing overlaps in their operations (PSC 2011:21). This is because the existing co-ordination mechanisms have been of limited use in both systems, functions and operations (PSC 2011:23). The chronic political interference in the leadership, operations, planning and implementation of the designated duties is a harsh reality especially in terms of 'national priority crimes' and is reminiscent of the case of the 'Scorpions', the Directorate of Special Operations (DSO), a highly respected unit that supplemented the anti-corruption operations of existing anti-corruption agencies (News24 2008:4; Redpath 2009). The history of the Scorpions is instrumental in the success against corruption as it combined all aspects of detection, analysis and prosecutions through its multi-dimensional operations (Montesh 2007), with a 95% successful prosecution rate (Redpath 2004:12; NPA 2005). It was one of the key victims of political interference due to their successes in high-profile political cases, involving the present President of the country who was not charged (Kanyegirire 2008).

The organisation's death warrant was signed and sealed in the ruling party's elective conference in Polokwane, where an overwhelming majority of the delegates voted for its immediate disbandment (ANC 2007). They were replaced by the Hawks, that since 1998 has been torn by political interference, factionalism, unstable leadership, illegal promotions and appointments, arbitrary actions and promotions all covered by senior politicians (Bateman & Grootes 2015).

Section 181 of the Constitution (RSA 1996) states clearly that anti-corruption agencies ought to be subject only to the supreme law of the country and the country's legal system; they should be independent and impartial and exercise their powers and perform their duties and responsibilities without fear, favour or prejudice; all other state organs must protect and assist them in ensuring their integrity, dignity, effectiveness, impartiality and the effectiveness of such institutions through legislative and regulatory measures; that no person or state organ interferes with the operations and functions of the agencies, and that the National Assembly alone is the judge of their



accountability to the citizens and the performance of these institutions at least once per year. Irrespective of the existing structural and operational realities as well as the refinement of legislative guidelines, there have been serious problems in relation to attempts in streamlining the realities of policy and implementation of duplications of actions as well as tactics and strategies. These are an impediment to success and pose serious questions to the effectiveness and efficiency of the agencies.

This is despite the existence of numerous 'co-ordination mechanisms' epitomised in the MACC (Minimum Anti-Corruption Capacity Requirements conundrum and its compliance requirements, including the Special Anti-Corruption Unit (SACU, RSA 2010:13–14; PSC 2011:17–18). Things became even more complicated with the establishment of Multi-Agency Working Group (MAWG) dealing with corruption in procurement. The Justice Crime Prevention and Security (JCPS) Cluster whose objective is to set up task teams to fast-track investigations and prosecution and the Anti-Corruption Task Team (ACTT, RSA 2015). The case of the Hawks and its modus operandi is the most crystal clear negation of most of the characteristics of a successful anti-corruption agency model. Their decisions are not impartial or independent, as they are dictated by government politicians and operate under continuous political asphyxia. This is despite the part nullification of section 17D (1) of the South African Police Services Act which was believed as an agency to be at the mercy of the Minister of Police. This means that it is not the Minister of Police but the National Head of the Hawks, who is entitled to make the key decisions for investigations.

However, the most important aspect is the almost complete capture of the Hawks by the political establishment and the choice of leadership that followed the unceremonious exit of then Head in 2015, a leader who is known to resist political interference, and his replacement by Major General M B Ntlemenza. The Major General was described by a Pretoria High Court Judge as a person devoid of "integrity and honour". Hence, the Head of an important anti-corruption agency has been found by a court of law to be dishonest and dishonourable, but is chosen by the political leadership to be appointed to a position obligating him to act honestly, accountably, impartially and without fear against corrupt politicians and in politically-dominated cases (De Voss 2016). Such leaders are the most vulnerable to political capture.

The same situation was faced by the South African Police Services after the appointment of Lieutenant-General K Phahlane as acting National Commissioner in 2015. Before his appointment there was evidence against him related to plundering of secret funds, and illegal appointments in crime intelligence of more than 250 individuals (15 of them allegedly with criminal records). He was instrumental as a key player within the criminal justice system together with the NPA and the Hawks in a steady refusal

to investigate the evident corruption of key, bankrupt parastatals such as the South African Airways, the Passenger Rail Agency of South Africa (PRASA), Eskom, and Transnet (Thamm 2017).

THE BRAZIL MODEL

Brazil has adopted the multi-agency model, which, in truth, is almost as complicated as the South African one.

In the last three decades following the collapse of the military junta that ruled the country for many years, there have been considerable efforts to fight corruption at all levels and sectors of society (Business Anti-corruption Portal n.d). The adoption of the Federal Constitution paved the way for democratic reforms such as the rule of law, democratic freedoms, free press, civil liberties and protection of human rights, but they were not, as expected, to elevate the poorest and more vulnerable out of the clutches of inequality (International Law Enforcement Reporter 2011:1). This is despite the overtly publicised efforts of successive Ignacio Lula's governments that faced a well-known, historical, traditional, past and present multi-layered and perpetual enemy which they unfortunately embraced themselves as much as their predecessors: corruption (Levine, Yannett, de Almeida, Muzzi., Steven, and Frischtak 2013:12). Thus, the population, including the poor, the very poor and the middle classes witnessed, especially during those years, a state apparatus in 'full swing', according to the governmental propagandists, the resilience of the free, watchful media, or at least a section of it that began campaigns exposing a wide variety of combinations of grand, petty, and/or administrative corruption involving bribes, collusions, nepotism, buying and selling favours, sell out congressmen and government officials, an ex-President with a jail sentence, another one impeached and the incumbent under serious investigation for corruption. All this was aired in national broadcasts (*The Economist* 2015).

Brazil has introduced over the years anti-corruption legislation that punishes corrupt individuals and groups for a wide variety of offences, spearheaded by the Penal Code that introduced serious penalties against offenders. It deals in considerable detail with a wide variety of corrupt acts such as bribery, fraud, embezzlement of public funds, and illegal acceptance of gifts and has introduced imprisonment (between two to twelve years) and substantial fines (MAPI 2015).

The Penal Code is supplemented by the Anti-corruption Law, which states that for the first time a corporate entity or its agents could be jailed for corruption. It is an extremely tough law with less than satisfactory enforcement especially in the spheres of supply



chain management, individual or collusion-based fraud, and bribery. Such realities are exacerbated by the corruption of sections of the judiciary with many reported acts of bribery, influenced by business and political interests, bureaucracy, patronage and lack of independence (Business Anti-corruption Portal n.d).

The key anti-corruption agencies in the country are the Public Prosecutor's Office (MPF), the Federal Police Department (DPF), National Court of Accounts (TCU), and Office of the Comptroller General (CGU), from which the Public Prosecutor's Office is considered independent and autonomous, as no other anti-corruption body can perform its duties. It has its own budget and is treated and perceived as the key institution fighting corruption.

The Federal Police Department's main objectives are diverse as it deals with all types of corruption related to the public sectors, as well as smuggling, drug traffic, terrorism and environmental crimes. It is also involved in border and sea patrolling (Prado and Carson 2016:35–36).

The revitalisation of the police following the Lula Presidency was assisted by the establishment of the Office of the Comptroller General and this synergy led to a significant number of successes in the fight against criminal syndicates as well as bribery, collusion, and embezzlement in the public sector that ended up in the Court of Accounts. These successes, however, were not enough to stop corruption.

The Court of Accounts is the country's legislative watchdog that performs performance audits of a financial and budgetary nature, including assets allocation and government expenditures in terms of service delivery and accomplishments. It is an "external control" mechanism at federal level (Power, and Taylor 2011:2–3). The Office of the Comptroller General is the Brazilian internal control of the political executive, established by President Lula in 2003, supplemented by the Secretariat of Prevention of Corruption and Strategic Information, and dealing especially with internal Control; a disciplinary board; corruption prevention and transparency and the appointment of a Federal Ombudsman. The office has been instrumental in monitoring and evaluating legal and regulatory priorities associated with the efficiency of all government programmes nationally, and identifying irregularities and corrupt practices in all their variations. These actions end at the Disciplinary Board, which deals with corruption of public servants at all government layers in following a set of disciplinary measures. It is considered successful as its actions have led to the firing of over 4 000 public servants at all levels since 2003 (De Figueiredo 2015:2–3). Nothing of that sort can be found in the history of anti-corruption agencies in South Africa.

The Special Operations Division is a 'behind the scenes' division of the Internal Control Secretariat overseeing the operational actions of the Police and the Public Prosecutors,

which is in turn connected to the Observatory of Public Spending a secretive unit collecting information on corruption in public organisations. It is operative in information collection and storage and another section deals with detection, analysis and reporting. The multiple system has been supplemented by the Secretariat for Transparency and Prevention of Corruption that is involved in maintaining social control and transparency, and mainly concentrates on the international terrain and anti-corruption laws. The anti-corruption 'supplementary anti-corruption agencies' include the National Intelligence, the Federal Revenue Secretariat, the Financial Control Office, and the Central Bank (Prado *et al.* 2016:7–8).

Despite these efforts, there has been strong evidence that known grand corruption political scandals, the fraud and bribery in public procurement for example, has increased significantly through a continuous reporting of bribes, fraud and irregular payments to a number of firms with close political connections. One of the best known has been the 'Operation Car Wash' debacle involving Petrobras that led to the impeachment of ex-President Rousseff. It cost the Brazilian citizens over USD 5.3 billion (Vox 2016; *The Guardian* 2017a; Bogdan 2015). The scandals related to the 2016 Olympics are also investigated as are a large number of public health officials in the meat-exporting scandal that cost Brazil's USD 12 billion meat-exporting industry, which has recently been uncovered (Reuters, 2017). Over 130 deputies and senators were bribed by a meat processing conglomerate (*The Guardian* 2017b).

There has been serious and comprehensive criticism of the anti-corruption agencies in Brazil despite their success against a number of senior politicians and a variety of public servants. These critics pinpoint the existence of a corruption gap leading to the reality of serious lack of punishment at all levels for effective punishment of corruption acts in the country that allow for perpetration of it (Praça and Taylor 2014:34–35). It was mentioned earlier that there have been successes of the agencies precisely because of joint operations of a combination of the agencies such as Public Prosecutors, the Police and the Office of the Comptroller General, but the reality is that the coordination and synergy of the agencies is really lacking and inadequate (Zaheer 2014).

The reason for this is that there is no actual coordination, cooperation, and synergy, as the operational methods take different forms, which leads to continuous competition, repetition, and lack of interaction at a number of levels. There is also evidence of information sharing as well as adequate utilisation of human capital at their disposal (Speck 2011). These deficiencies lead to a non-satisfactory outcome in the final analysis. From a structural point of view, the truth is that the number of agencies is large with few really having dedicated, 'exclusive' duties and responsibilities, meaning that the state budget increases substantially and confuses the citizens on the exact nature of duties



and responsibilities of structures and people (Lehmann 2015). The final result is that intelligence gathering is compromised, as are secrecy and operational independence. The lack of information sharing exacerbates the problems.

It has led to the primary role of the Office of the Comptroller General in the fight against corruption, assisted by the Internal Control Secretariat, a reason that has in turn led to serious budget cut that has compromised its independence and autonomy (MAPI 2015). The defective information sharing and confidentiality among agencies has led to the introduction of the Corruption Combat and Money Laundering National Strategy, which was hoped to be an additional player in the fight against corruption via an integration of planning and ultimately implementing an integrated and collaborative approach through information sharing analyses and debates regarding new, innovative legislation (Taylor 2009:155–156). Despite the efforts, there has been no success. Implementation was unsuccessful, few bills were passed and coordination and synergy have been visibly compromised.

The weakness of Information Technology systems in the agencies compromises data mining and data crossing as well as analysis and investigation imperatives related to risk management. These realities lead to the assessment that field operations in terms of external activities suffer the consequences (Taylor and Buranelli, 2007:58–59). Continuous and high-level professional training programs have never been the priority of the state political and administrative leadership, with the result that human capital lacks in advanced skills (De Figueiredo, 2015:3). While the laws exist together with an abundance of anti-corruption agencies, the present methods, plans, technology and knowledge are dispersed and poorly connected, thus facing serious limitations.

It is not an island of hope.

CONCLUSION

It needs to be said that in the two case studies presented for anticorruption agencies to be successful there are a number of premises. In both cases, the existing legislative and regulatory frameworks point to the fact that the overall performance in the fight against corruption should be better. However, political interference, lack of capacity, and the non-existence of coordination, synergy and cooperation are serious impediments.

This provides impetus to corruption at all societal levels, with serious repercussions for the most vulnerable sections of the respective populations. There is a lack of political

will that has a negative impact on the very independence of such institutions despite the existence of legal and regulatory foundations. These have been challenged in both cases by organs of civil society and the citizens of the two countries. Because of these realities, there is a lack of a coordinated effort in detecting, preventing, analysing and prosecuting corrupt individuals, groups, institutions and businesses.

The lack of synergy, coordination and cooperation in both cases is founded on the reality that there is the absence of a single coordinating body that plans, designs and implements the strategic and tactical imperatives in the fight against corruption. This reality, and despite the fact that policy in both cases guarantees independence, the existence of political and/or administrative interference is a major obstacle. Operational weaknesses, and inside corruption by the leadership and rank and file, dent performance and resources, and are serious impediments in the fight against corruption. As a result, integrated planning is absent.

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