

Doing Business in Brazil after Operation Car Wash

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[Former US] President Theodore Roosevelt delivered a strong speech before the United States Congress in 1903, that was [designed] to address the problem of corruption. I really believe that we in Brazil – not as a judge or as a prosecutor but the Brazilian people – could use his words in the same way. Roosevelt said, ‘The exposure and punishment of public corruption is an honour to a nation, not a disgrace. The shame lies in toleration, not in correction. No city or state, still less the nation, can be injured by the enforcement of law.’

Judge Sergio Moro, presentation to INSEAD, June 4th, 2018

Perhaps no other country in the emerging world has gone so far in rooting out the scourge of corruption, and all via the rule of law. Just as the prosecution of Chilean dictator Augusto Pinochet marked a turning point for human rights lawyers, so too might this Latin American anti-corruption purge. Brazil’s judges and prosecutors deserve all the credit.

Financial Times, April 5th, 2018¹

As early as 2014, a federal police superintendent in Brazil began mulling over what to call what was eventually codenamed Operation “*Lava Jato*” (Car Wash),² one of largest anti-corruption investigations in the world, and the subject of a Netflix original series launched in March 2018.³ Operation Car Wash brought to light the shady relationships between government contractors, political campaign agencies and high-profile politicians in what were known as ‘pay-for-play’ schemes (Exhibit 1) – bribes and campaign contributions paid by major corporations to government officials and political parties in exchange for lucrative government contracts which were over-invoiced to ‘cover the costs’. A number of state-owned companies such as Petrobras, the national oil company (over US\$88.8 billion in revenues in 2017)⁴ were part of a system of institutionalized corruption whereby corporate executives overpaid an average of 3% for contracts that were awarded on the basis of their political ties (Exhibit 2).

Operation Car Wash reached unprecedented proportions, uncovering ‘backstage’ agreements struck by public officials involving billions of dollars (Petrobras alone was estimated to have paid

1 Lula’s prosecution shows nobody is above the law. Financial Times, April 5, 2018

<https://www.ft.com/content/97201fa4-38d0-11e8-8b98-2f31af407cc8>

2 According to Rodrigo Chemim in his book, *Mãos Limpas e Lava Jato: A Corrupção Se Olha no Espelho* (p.94) the investigation led police to several companies that used it to launder money. When officers realised the size of the crimes and the profile of those involved, the petrol station Torre in Brasília was under investigation. Most petrol stations offer car wash services, but the amount of money being laundered was much larger, hence the name chosen was Operação Lava Jato (or Operation Jet Wash). It later became Operation Car Wash.

3 The Mechanism, directed by José Padilha (the director of *Narcos*, *Robocop* and *Elite Squad*) is a fictional drama based on actual events that took place during the course of Operation Car Wash. It premiered on March 28, 2018 and was selected by Transparency International among “The 5 Best Netflix Series about Corruption (That Aren’t House of Cards).” *Voices for Transparency*, 23 Mar. 2018, [voices.transparency.org/the-5-best-netflix-series-about-corruption-that-arent-house-of-cards-5ef2a2def63](https://www.transparency.org/the-5-best-netflix-series-about-corruption-that-arent-house-of-cards-5ef2a2def63)

4 Statista, <https://www.statista.com/statistics/279719/revenue-of-petrobras/>, Accessed on June 16, 2018

out over US\$2 billion). By March 2018, 123 defendants had been convicted, with cumulative prison sentences amounting to 1,861 years, and over US\$1 billion had been frozen or returned to government coffers.⁵

A key protagonist in Operation Car Wash was Federal Judge Sérgio Moro. He was subsequently named among the ‘World’s Greatest Leaders’ by *Fortune*, the ‘100 Most Influential People’ by *Time* and the ‘Fifty Most Influential’ list by *Bloomberg Magazine* (see Exhibit 3). Moro convicted, amongst others, former president Luis Inácio Lula da Silva (one of the most popular politicians in Latin America), a former speaker of the House of Representatives, two former ministers of state and a former governor of Rio de Janeiro (the state with the second-highest GDP). Operation Car Wash extended beyond the political elite and resulted in the imprisonment of some of Brazil’s most powerful businessmen. The symbolic importance of this was not lost on Brazilians, who at last allowed themselves to hope that no one was above the law.

Many companies investigated in Operation Car Wash faced serious financial problems and negotiated plea bargains with federal prosecutors. Odebrecht, UTC and OAS (among the largest construction companies in Latin America) made plea bargains with the federal governments of Brazil, the US and Switzerland amounting to over US\$6 billion.⁶ Others had to substantially restructure (or create) compliance functions. Bruno Brandão of Transparency International Brazil described it as “a revolution happening in [Brazil] in this area of transparency, anti-corruption and compliance. There are still profound uncertainties, but what is happening here is an historic moment.”⁷ Marcos Troyjo, director of BRICLab at Columbia University, agreed:

*The movement to combat corruption in Brazil can be a model for paradigm change in both emerging countries and mature economies. Many in other Latin American nations have voiced their wish that something similar to Lava Jato would also revolutionize the way of doing business in their countries.*⁸

As of 2018, Operation Car Wash was starting to have repercussions in other Latin American countries, including the resignation in March 2018 of Peru’s president, Pedro Pablo Kuczynski, who was accused of taking bribes from Odebrecht when he was a cabinet minister.⁹ Others

5 Ministério Público Federal – “Caso Lava Jato.” A Lava Jato Em Números No Paraná - Caso Lava Jato. N.p., 24 Jan. 2018. Web. 30 Jan. 2018, <http://www.mpf.mp.br/para-o-cidadao/caso-lava-jato/atuacao-na-la-instancia/parana/resultado>.

6 Chade, Jamill. “Odebrecht Negocia Maior Acordo De Leniência Do Mundo Com EUA, Suíça e Brasil - Política.” Estadão, 9 Nov. 2016, <https://politica.estadao.com.br/noticias/geral,odebrecht-negocia-maior-acordo-de-leniencia-do-mundo-com-eua-suica-e-brasil,10000087121>.

7 Dom Phillips. “‘Car Wash’ Launches Revolution in Transparency and Compliance.” Financial Times, FT.com, 15 May 2017, www.ft.com/content/885536a6-30ae-11e7-9555-23ef563ecf9a.

8 Marcos Troyjo, Brazil’s fight against corruption sets a good example to the world, Financial Times, August 17, 2017.

9 Rocharun, Marcelo, and Nicholas Casey. “Peru’s President Offers Resignation Over Vote-Buying Scandal.” The New York Times, 21 Mar. 2018, www.nytimes.com/2018/03/21/world/americas/peru-kuczynski-resigns.html.

involved in scandals were Colombian president Juan Manuel Santos and Venezuelan president Nicolas Maduro.¹⁰

One of the world's largest emerging markets (Exhibits 4a & 4b), Brazil is its ninth largest economy, has a population of 208 million and GDP of US\$1.8 trillion.¹¹ However, it still remains difficult to do business in Brazil, which in 2018 was ranked 125 of 190 by the World Bank (Exhibit 10).¹² Despite Operation Car Wash, Brazil ranked 96 out of 175 in Transparency International's Corruption Perception Index in 2017.¹³ (Exhibits 5 & 6)

Although it brought hope to ordinary Brazilians, questions remained for local business leaders as well as foreign investors. Would Operation Car Wash make it easier to do business in Brazil in the future? Would its legacy be a more efficient and transparent business environment and lower the so-called "Brazil cost"? Or would the political establishment react by undermining anti-corruption laws and ensure that the legal and cultural changes driven by Operation Car Wash would be short-lived? Judge Moro outlined the scale of the challenge:

*I really believe that this case gives Brazil a great opportunity to change the environment of corruption. I know that something very important is going on in Brazil but you need to see the bright side. Of course, all these cases involving high-level corruption, widespread corruption are shameful for the country, but we are doing our homework. We are working hard – and it comes with some costs, personal costs also – to improve the rule of law in Brazil. And this is good for everyone, not only for Brazilians themselves but for the whole world.*¹⁴

Brazil: A Brief Political History

Unlike most countries in Latin America, Brazil was colonized by the Portugal, in the 16th century.¹⁵ Like other colonial powers, the Portuguese were primarily looking for natural resources and opportunities to export to European markets. Colonization strategies were almost always based on the concentration of land ownership. This and the emphasis on export crops were major obstacles to the establishment of a long-lasting democracy.¹⁶

10 Claire Felter, and Rocio Cara Labrador, "Brazil's Corruption Fallout." Council on Foreign Relations, 11 Jan. 2018, www.cfr.org/backgrounder/brazils-corruption-fallout.

11 The Economist Pocket World in Figures, 2018 edition.

12 World Bank Group. Doing Business in Brazil – World Bank Group. 3 Apr. 2018, www.doingbusiness.org/data/exploreeconomies/brazil

13 Transparency International. "Brazil." Transparency International – The Global Anti-Corruption Coalition, 3 Apr. 2018, www.transparency.org/country/BRA.

14 Judge Sergio Moro interview to Felipe Monteiro for INSEAD Knowledge, June 4, 2018

15 "A Brief History of Brazil." The New York Times. The New York Times, 01 Jan. 2006. Web. 28 Jan. 2018. http://www.nytimes.com/fodors/top/features/travel/destinations/centralandsouthamerica/brazil/riodejaneiro/fdrs_feat_129_9.html?pagewanted=1&n=Top%2FFeatures%2FTravel%2FDestinations%2FCentral%2BAnd%2BSouth%2BAmerica%2FBrazil%2FRio%2Bde%2BJaneiro.

16 Skidmore, Thomas E. "Brazil: Five centuries of change." OUP Catalogue (2009).

The Napoleonic Wars radically changed the course of Brazilian history. When French troops invaded Portugal in 1807, Crown Prince João VI fled to Brazil, where he set up an alternative capital in Salvador, Bahia, moving a few months later to Rio de Janeiro (Exhibit 4a). After the defeat of Napoleon, the Portuguese court returned to Europe, leaving behind João's son Pedro, who declared independence in 1822.

Fast-forward to 1889, and the establishment of a republican government marked by the "*política do café com leite*" (politics of coffee with milk), a reference to the strong influence of the coffee and dairy industries.¹⁷ From then on until 1930, politicians linked to coffee-growing oligarchs in São Paulo and to ranchers in Minas Gerais would alternate in the presidency. The economy developed thanks to investor protection, which was enforced not by the government but the by-laws of big corporations. Early industrialization was financed by the issue of stocks and bonds.¹⁸

Disenchanted with the accumulation of power by the oligarchs, the military rebelled. Under General Getúlio Vargas (from Rio Grande do Sul), the army overthrew the old regime and installed him as dictator in 1937. His nationalistic agenda encouraged the emergence of state corporations such as Petrobras, Vale do Rio Doce and Banco Nacional de Desenvolvimento Social (BNDES - national bank for social development).¹⁹ Rigid labour laws were enacted that remained on the statute books for decades (until 2017 working from home was not recognized as legitimate work).²⁰ Notwithstanding efforts to diversify the economy, Brazil remained largely dependent on exports. When coffee prices collapsed on international markets, an economic recession led to political turmoil. Vargas' regime ended in tragedy – he committed suicide in 1954.

After a brief period of democratic rule there was a (bloodless) coup in 1964. In the context of the Cold War, the perceived alignment of a left-leaning president with the Soviet bloc ultimately led to a right-wing takeover.²¹ The military takeover met little public resistance, in part because the democratic process had never had strong roots but also because the national debt had ballooned and inflation had increased 400%.²² It was in this period that the pernicious relationship between corporations and the government was accentuated.²³

Economically speaking, the years of dictatorship (1964-85) were characterised by (1) attempts to control inflation, (2) fostering of national industries (often with subsidized government loans) and (3) government financing of large infrastructure. This strengthened the ties between the public

17 Meade, Teresa A. "Society and Politics in The First Republic." A Brief History of Brazil. New York: Checkmark Books, 2010. 123-24, print.

18 Musacchio, Aldo, "Brazil Under Lula: Off the Yellow BRIC Road." Harvard Business School Case 707-031, January 2007, (revised March 2008).

19 L1628. Web. 28 Jan. 2018. http://www.planalto.gov.br/ccivil_03/leis/1950-1969/L1628.htm.

20 "Reforma Valida Uso Da Tecnologia No Trabalho Em Casa, Mas Há Lacunas - Notícias." Tecnologia. Web. 01 Feb. 2018. <https://tecnologia.uol.com.br/noticias/redacao/2017/11/11/reforma-valida-uso-da-tecnologia-no-trabalho-em-casa-mas-ha-lacunas.htm>.

21 "CIA: Current Intelligence Weekly." CIA . Web. https://www.cia.gov/library/readingroom/docs/DOC_0000585685.pdf.

22 Daemmerich, Arthur A., and Aldo Musacchio. "Brazil: Leading the BRICs?" Harvard Business School Case 711-024, February 2011 (revised August 2011).

23 <https://history.libraries.wsu.edu/fall2016-unangst/2016/12/15/20427>.

sector and industrial groups, creating opportunities to over-invoice for infrastructure projects (so-called “pay-for-play” schemes). Scandals involving bribery of public officials multiplied.²⁴

The regime followed the playbook of most undemocratic governments: it eliminated most political parties. There were reports of kidnapping and torturing of political dissidents.²⁵ Luis Inácio (Lula) da Silva was among those arrested. Dilma Rousseff (his successor as president) was arrested and tortured for alleged involvement in anti-regime terrorist attacks. She was part of the Revolutionary Movement of 8th October that was responsible in 1969 for kidnapping the US Ambassador to Brazil, Charles Burke Elbrick, but was not personally implicated.²⁶

A period of prosperity known as the “Brazilian Miracle” eventually ended in disaster. By 1982 inflation was rising exponentially and the government had suspended its international debt repayments.²⁷ If the “Brazilian Miracle” had lent legitimacy to the undemocratic government, the recession that followed erased most of its support. In 1985, the military government collapsed and a transition to an indirectly elected government ensued.

It was 1989 when Fernando Collor was elected president during the first direct elections since the end of the dictatorship (his main opponent, Lula, would himself become president in 2002). The political system had changed but the structural problems that lead to the collapse of the old regime remained the same: hyperinflation, massive debt and the inability to honour foreign debt obligations. Social indicators painted a dire picture of society. Under Collor, 35% of the population was considered poor and the Gini coefficient hit a record high of 0.6.²⁸ The end of his presidency was marked by widespread protests and ultimately his impeachment by congress on charges of corruption in 1992.²⁹

Vice-president Itamar Franco took over. He hired Fernando Henrique Cardoso as finance minister, a sociologist who assembled a cadre of experienced economists who developed the *Plano Real*, aimed at balancing the budget, controlling inflation and transitioning to a new currency (the real) pegged to the US dollar. There was widespread support for the *Plano Real* and inflation fell from 2,500% in 1993 to 16% in 1996.³⁰

Cardoso ran for president in 1994 and won easily against Lula. His first term was marked by the strengthening of the *Plano Real*, privatization of state-owned companies and implementation of

24 Schreiber, Mariana. “Pagamento de propinas por empreiteiras se consolidou durante ditadura, diz historiador.” BBC, 16 Dec. 2016 <http://www.bbc.com/portuguese/brasil-38337544>.

25 Uchoa, Pablo. “Remembering Brazil’s decades of military repression.” BBC, 31 March 2014 <http://www.bbc.com/news/world-latin-america-26713772>.

26 Romero, Simon. “Leader’s Torture in the ‘70s Stirs Ghosts in Brazil.” The New York Times. The New York Times, 04 Aug. 2012. Web. 01 Feb. 2018, <http://www.nytimes.com/2012/08/05/world/americas/president-rousseffs-decades-old-torture-detailed.html>.

27 Tullio, Giuseppe, and Marcio Ronci. “Brazilian inflation from 1980 to 1993: causes, consequences and dynamics.” Journal of Latin American Studies 28.3 (1996): 635-666.

28 Fundação Getúlio Vargas, CPS, “Poverty, Inequality and Stability: The Second Real.

29 <https://www.nytimes.com/1992/08/25/world/brazil-inquiry-finds-grounds-to-impeach-president.html>

30 Sergei Soares, “Distribuição de Renda no Brasil de 1976 a 2004. Com ênfase no período entre 2001 e 2004,” Instituto Brasileiro de Pesquisa Econômica Aplicada (IPEA), Brasília, 2006.

social programmes. His second term (1999-2002) was marked by fiscal, foreign exchange and monetary changes.³¹ When his first term ended, inflation stood at 1.6%. By 2002 it was over 12%.³² A mere 26% of the population rated his government positively (36% rated it negatively).³³

In 2002, at his fourth attempt, Lula won the presidential election on a traditional leftist platform, with a promise to shrink the gap between rich and poor, improve government services and strengthen worker's rights. He toned down his radical rhetoric, trimmed his guerrilla-like beard and donned a business suit. The Workers Party (PT) campaign was more mainstream, appealing to a population largely composed of economically left-leaning but socially right-leaning voters. Regarded by many Brazilians as untainted by the corruption-laden political system, Lula was seen as a white knight who would radically change the status quo, with campaign speeches that promised to eradicate corruption from the country's political landscape.³⁴

Notwithstanding his moderate stance, most were surprised by his support for the *Plano Real's* conservative macroeconomic policies. Interest rates were maintained at 26% as an inflation-curbing measure.³⁵ Minister of Finance, Antonio Palocci, indexed the country's sovereign debt to the *real*.³⁶

Lula focused on boosting Brazil's profile internationally and expanding social programmes at home. A leading figure in the creation of G-20 along with China and India, he was personally involved in lobbying for the 2014 FIFA World Cup and the Olympic Games in 2016. According to one commentator, "Lula was lauded for policies and programmes that accelerated national growth, kept inflation and debt in check, reduced poverty and inequality, and greatly expanded the middle class."³⁷ Social programmes were expanded and the minimum wage was aggressively increased. The *Bolsa Familia* (a monthly grant to households in poverty) reached one third of Brazilians and the minimum wage rose 50% above the rate of inflation, reaching R\$510/month.³⁸

31 Oliveira, Gesner, and Frederico Turolla. "Política econômica do segundo governo FHC: mudança em condições adversas." *Tempo social* 15.2 (2003): 195-217.

32 Inflação e Dívida Pública Explodiram No Brasil Ao Final Da Ditadura Militar, www.r7.com/r7/media/2014/20140331-info-ditadura/20140331-info-ditadura.html

33 Fernando Rodrigues. Popularidade Do Governo Lula No Início Se Equipara Às De Collor e De FH. Uol, 2002, www1.uol.com.br/fernandorodrigues/030130/

34 Abramo, Claudio, "Lula e a corrupcao", Transparencia Brasil. <https://www.transparencia.org.br/docs/astrojildo.pdf>

35 Musacchio, Aldo, "Brazil Under Lula: Off the Yellow BRIC Road." Harvard Business School Case 707-031, January 2007, (revised March 2008).

36 "BBC Mundo | AMERICA LATINA | Lula, Seis Meses De Gobierno." BBC News. BBC, 01 July 2003. Web. 30 Jan. 2018. http://news.bbc.co.uk/1/hi/spanish/latin_america/newsid_3036000/3036344.stm.

37 Peter Hakim, "Commentary: Here's What Really Went Wrong with Brazil's Economy." Reuters, 02 June 2016. Web. 23 Mar. 2018. <https://www.reuters.com/article/us-latinamerica-brazil-economy-commentar/commentary-heres-what-really-went-wrong-with-brazils-economy-idUSKCN0YH08D>.

38 Peixoto, Fabricia. "Aumento Do Mínimo Na Era Lula Levou Contas Ao 'limite', Dizem Economistas - BBC Brasil." BBC News. BBC, 28 Dec. 2010. Web. 01 Feb. 2018. http://www.bbc.com/portuguese/noticias/2010/12/101227_eralula_gastos.

Notwithstanding Brazil's economic success, the Worker's Party government faced a major corruption scandal known as *Mensalão* (Big Monthly Allowance Scheme) in 2005 when it was revealed that it paid R\$30,000 per month to congressmen who supported its legislative agenda. The money came from fake contracts signed by state-owned companies.³⁹ Various politicians were convicted, including the influential José Dirceu, Lula's former chief of staff. Analysts tended to say that Brazilians were likely to accept "*rouba mas faz*" ("steals but gets the job done")⁴⁰ – i.e., that as long as the economy was doing well, voters did not hold politicians accountable. Lula had endorsed 18 congress members who received *Mensalão* payments, but emerged relatively unscathed from the scandal. Brazil's economic growth and a favourable political climate gave him sufficient clout to name Dilma Rousseff, a relatively unknown and inexperienced public servant, as his successor in 2011. Prior to becoming president, Dilma was appointed Minister of Energy (2003-2005) by Lula, which gave her the power to nominate members of the Petrobras board.⁴¹

When Lula left office in January 2011, Brazil was regarded as an up-and-coming economic powerhouse. A year earlier, the cover of *The Economist* had trumpeted "Brazil Takes Off" (Exhibit 7),⁴² comparing it favourably with the other BRIC countries: "Unlike China, it is a democracy. Unlike India, it has no insurgents, no ethnic and religious conflicts nor hostile neighbours. Unlike Russia, it exports more than oil and arms, and treats foreign investors with respect." There was a growing consensus among politicians and economists that Brazil was headed in the right direction.

Lula left office with 90% approval ratings. US President Barack Obama had referred to him as the "most popular politician on Earth".⁴³ During the Lula and Dilma years, Brazil relied heavily on commodity exports, mostly destined for China and India. By 2012, Brazilian exports had grown to US\$256 billion (up from US\$118 billion in 2005) and made up 14% of Brazil's GDP. Brazil's agricultural sector grew greatly in the 2000s thanks to the rise in demand from the other BRIC countries. Its exports to China quadrupled between 2000 and 2010.⁴⁴ As the world's leading exporter of soy, sugar, meat, coffee and tobacco, its economy was barely affected by the 2008-09 global financial crisis.

39 "What Is Brazil's 'mensalão'?" *The Economist*. 18 Nov. 2013. Web. 01 Feb. 2018, <https://www.economist.com/blogs/economist-explains/2013/11/economist-explains-14>.

40 Balán, Manuel. "Surviving Corruption in Brazil: Lula's and Dilma's Success Despite Corruption Allegations, and Its Consequences." *Journal of Politics in Latin America* 6.3 (2014): 67-93.

41 Barrionuevo, Alexei. "Leading Brazil, Facing Unfinished Tasks." *The New York Times*. The New York Times, 30 Oct. 2010. Web. 6 Jun. 2018, <https://www.nytimes.com/2010/10/31/world/americas/31brazil.html>.

42 "Brazil Takes off." *The Economist*, 14 Nov. 2009. Web. 30 Jan. 2018. <http://www.economist.com/node/14845197>.

43 Lopes, Marina, and Anthony Faiola. "Brazil's Ex-President Lula, Once the World's 'Most Popular Politician,' Surrenders to Face Prison Time." *The Washington Post*, WP Company, 7 Apr. 2018, www.washingtonpost.com/world/the_americas/former-brazilian-president-lula-says-he-will-surrender-to-police-after-days-long-standoff/2018/04/07/fe0a2e28-3a72-11e8-af3c-2123715f78df_story.html?utm_term=.a97471918f17

44 Pereira, Carlos, and Joao Augusto de Castro Neves, "Brazil and China: South-South Partnership or North-South Competition?" Brookings Institution, 2011

However, as China's growth slowed and global commodity prices declined, so did Brazilian exports – from US\$256 billion in 2012, an all-time high, to US\$183 billion in 2017.⁴⁵ During the boom years, the Lula administration had invested in social welfare programmes such as the *Bolsa Familia*, but had failed to reform the education system. Reuters commented:

*Lavish subsidy programmes for corporations needed to be reined in. Bloated government payrolls needed to be shrunk, and the rapid growth of social programs tamped down. Exceptionally generous pension programs needed to be reformed.*⁴⁶

In 2011, when Congress was elected, Dilma had the support of 11 parties with a total of 373 out of 513 representatives and 62 out of 81 senators. By early 2012 she had lost the support of one party (with 56 deputies and six senators). The number of PT members in Congress fell from 88 in 2010 to 70 in 2014.⁴⁷ As corruption allegations mounted around state-run oil firm Petrobras, Dilma was elected only months after the scandal broke.⁴⁸ A popular candidate killed in a plane crash two months before the elections, a director of the state-run oil firm accusing PT politicians of corruption and various protests against the government, were just some of the “lowlights” of the 2014 elections.

Although re-elected, Dilma's position was fragile and she faced increasing political pressure. In December 2015, Eduardo Cunha (speaker of the House of Representatives), approved a petition to debate her impeachment for criminal administrative misconduct and for failing to act on the Petrobras scandal. In August 2016, she was removed from office following a 61-20 vote in the Senate.⁴⁹

Far from being the end of the drama for politicians and the Workers Party (PT), Operation Car Wash had now amassed enough evidence to incriminate and ultimately incarcerate a number of political protagonists, culminating with the imprisonment of former President Lula in April 2018 (see Exhibit 8).

45 “Brazil Trade Summary.” Brazil | Trade Summary | 2000 | WITS | Text. N.p., n.d. Web. 30 Jan. 2018. <https://wits.worldbank.org/CountryProfile/en/Country/BRA/Year/2000/Summarytext>.

46 “Commentary: Here's What Really Went Wrong with Brazil's Economy.” Reuters. Thomson Reuters, 02 June 2016. Web. 23 Mar. 2018. <https://www.reuters.com/article/us-latinamerica-brazil-economy-commentar/commentary-heres-what-really-went-wrong-with-brazils-economy-idUSKCN0YH08D>.

47 Renan Ramalho, and Felipe Néri. “DESAFIOS: Dilma Terá De Recompôr Base No Congresso Para Governar.” Eleições 2014, 26 Oct. 2014, g1.globo.com/politica/eleicoes/2014/noticia/2014/10/desafios-dilma-tera-de-recompôr-base-no-congresso-para-governar.html

48 *Ibid.*

49 Romero, Simon. “Dilma Rousseff Is Ousted as Brazil's President in Impeachment Vote.” The New York Times. The New York Times, 31 Aug. 2016. Web. 30 Jan. 2018, <https://www.nytimes.com/2016/09/01/world/americas/brazil-dilma-rousseff-impeached-removed-president.html>.

Operation Car Wash and Judge Sergio Moro

“Barbie”, “Ugly”, “Dwarf” and “Amigo” – while these might sound like characters from a movie, in fact they were nicknames given to powerful politicians, including Lula, involved in one of the world’s biggest corruption scandals. They were used to hide the identities of people in the highest echelons of the political establishment by Odebrecht, the largest government contractor in Brazil. Following Operation Car Wash, which began in March 2014, Lula was identified by investigators as the “Amigo” (Friend) in Odebrecht’s spreadsheets.⁵⁰

The investigation revealed the extent to which corruption had become institutionalized in Brazil. It made public the inner workings of a well-oiled scheme based on the payment of bribes and undeclared campaign contributions by large corporations to government officials and the parties that constituted the government’s support base (across the ideological spectrum).

When Judge Moro subsequently asked defendants why they had paid bribes, he was shocked to hear their justification:

*They said they paid bribes because it was the rule of the game: ‘That’s the way you do business in Brazil, or at least with Petrobras.’ This was very disturbing. The evidence supports this kind of statement because we are not talking about one corruption crime, we are talking about a criminal scheme that lasted for at least 10 years. And the large size of bribes and the character of the corruption was very disturbing. This systemic corruption brings a lot of problems to the country.*⁵¹

The so-called “game” consisted of government contractors over-invoicing government-controlled agencies or companies (mainly Petrobras) for their work on infrastructure projects – as a form of bribery of officials (or the parties that appointed them) who helped them win government tenders. Petrobras’ former⁵² CEO, Pedro Parente, insisted: “The company was a victim of this criminal scheme — at no moment was it a beneficiary.”⁵³ For example, when the stadiums built in Brazil for the 2014 World Cup ended up costing 66% more than anticipated, all the evidence pointed to over-invoicing as the main cause.^{54 55} Corruption was so widespread that some bribes had no direct relationship with specific government projects. Unlike a classic *quid pro quo*, where companies

50 Joe Leahy. “Odebrecht Testimonies Detail Extent of Corruption in Brazil.” Financial Times, www.ft.com/content/e38e50d8-28f3-11e7-9ec8-168383da43b7

51 Judge Sergio Moro, in a presentation to INSEAD, June 4th, 2018

52 Petrobras CEO Pedro Parente resigned on June 1st, 2018. Fortune reported “Pedro Parente resigned as Petrobras chief executive officer, leaving the helm of the state-controlled oil company he helped revive as a nationwide strike against fuel prices unleashed criticism against his free-market policies.” <http://fortune.com/2018/06/01/petrobras-ceo-resigns-pedro-parente/>, accessed on June 16, 2018

53 *Ibid.*

54 Daniel Favero Direto De Porto Alegre. “Estádios Da Copa De 2014 Custam 66% Mais Do Que Previsto Em 2010.” Terra. N.p., 27 Nov. 2013. Web. 30 Jan. 2018. <https://www.terra.com.br/esportes/futebol/copa-2014/estadios-da-copa-de-2014-custam-66-mais-do-que-previsto-em-2010.ba93a40ba2492410VgnVCM10000098cceb0aRCRD.html>

55 Guimarães, Rodrigo Reignier Chemim. Maos Limpas E Lava Jato: A Corrupção Se Olha No Espelho. Porto Alegre, Rio Grande Do Sul, Brazil: Citadel Grupo Editorial, 2017, print.

paid after winning a contract, they were paid up front – putting officials “on the payroll” for when help was needed in the future, as a form of “insurance” in case future projects faced bureaucratic obstacles.

The symbiotic relationship was not only made possible by a lack of public sector oversight but also a lack of interest in establishing compliance mechanisms to prevent corrupt relationships from developing.⁵⁶ Corporations whose main client was the government, played an active role in facilitating such relationships. To manage the complex web of politicians and payments, for example, Odebrecht created a Structured Operations Department (*Departamento de Operações Estruturadas*) to manage the payroll for politicians and political parties.⁵⁷

By 2018, Operation Car Wash, had reached historic proportions in depth and breadth. Judge Moro recalled:

When we started the case in 2013 you could not foresee the giant proportions that it would take. At the beginning it was a case involving the investigation of some professional money launderers... It was kind of climbing stairs because you started with small cases and the cases started to grow. So we did not start with this large case, it was step by step, one day after another.⁵⁸ He added: In a certain way this helped, because the smaller cases prepared you for the bigger ones. There are challenges in all of these cases, but the prior challenges help you be prepared for the next one. It was a kind of, you know, that video game that you have to go phase by phase.⁵⁹

With the progress of the investigations, several taboos were broken. It was the first time that a serving senator was arrested and the first time that a former president was sentenced and jailed for crimes of corruption and money-laundering (Exhibit 8). According to *The Guardian*, “Lula says the corruption charges against him are politically motivated and designed to stop him running for president again in October’s election. Despite his conviction and six separate pending corruption trials, he is leading in opinion polls. His Workers’ party (PT) described the ruling as ‘a tragic day for democracy and Brazil.’”⁶⁰

The *Financial Times* took another view: “[this] marks the sad and ignominious fall of a remarkable politician. But it also shows that nobody is above the law – a positive, even revolutionary,

56 “Falta De Compliance Dificulta a Detecção De Fraude No Brasil, Aponta Relatório Da Kroll - Economia.” Estadão, 10 Mar. 2017, <http://economia.estadao.com.br/noticias/releases-ae.falta-de-compliance-dificulta-a-deteccao-de-fraude-no-brasil-aponta-relatorio-da-kroll,70001694780>.

57 Departamento De Propina Da Odebrecht: Origem, Destino E Finalidade Do Dinheiro, Segundo as Delações.” G1. N.p., 12 Apr. 2017. Web. 30 Jan 2018, <https://g1.globo.com/politica/operacao-lava-jato/noticia/departamento-de-propina-da-odebrecht-origem-destino-e-finalidade-do-dinheiro-segundo-as-delacoes.ghtml>.

58 Judge Sérgio Moro, interviewed by Felipe Monteiro for INSEAD Knowledge, June 4, 2018

59 Judge Sergio Moro, presentation at INSEAD, June 4, 2018

60 Brazil's Lula ordered to surrender after court backs jailing, *The Guardian*, April 6, 2018, <https://www.theguardian.com/world/2018/apr/05/brazil-former-president-lula-jail-corruption-supreme-court-ruling>, accessed on June 16, 2018

development in a country racked by extreme legalism but also great illegality.”⁶¹ Federal police inspector Felipe Hayashi, head of the Financial Crimes Unit of the Car Wash taskforce, agreed: “[Car Wash investigation] reached people of the highest rank and level of responsibility. That’s something that has never happened before.”⁶²

Judge Moro emphasized that: “Corruption has no partisan colours. It is not a monopoly of political associations or specific governments. Fighting corruption should be done by the left and the right.”⁶³

Operation Car Wash was successful for several reasons, but the main one was luck. A minor money-laundering operation that started in Paraná state ended up unveiling a major corruption ring involving the giant Brazilian state oil company Petrobras. In the words of principal prosecutor Deltan Dallagnol, “the universe conspired” to ensure its success.⁶⁴ There was also an element of luck in where the investigation began and the selection of the members of the judicial and law-enforcement system that eventually led the investigation, notably Moro and Dallagnol, both based in Curitiba, who had gained experience of money-laundering schemes during another major investigation. According to Judge Moro, “The creation of the task force by the prosecutors, by the police, was very important. Even with limited resources they were able to focus on fighting grand corruption.”⁶⁵

The Operation was truly a team effort but Moro’s personal accomplishments were impressive both in quantity and quality – he convicted 113 defendants in three and a half years, and the vast majority of his decisions were upheld by the higher courts.⁶⁶ He came to embody the fight against corruption to the point where, in anti-corruption protests across Brazil in 2016, millions of people cheered his name.⁶⁷ However, he insisted that, “The fame will pass – you’re not a celebrity”⁶⁸ and that the success of Operation Car Wash stemmed from “the work of various Brazilian institutions, not only

61 Lula’s prosecution shows nobody is above the law. Financial Times, April 05, 2018
<https://www.ft.com/content/97201fa4-38d0-11e8-8b98-2f31af407cc8>

62 Luis del Valle, Exporting Corruption: Beyond Brazil’s Car Wash scandal. Al Jazeera, 10 March 2018,
<https://www.aljazeera.com/blogs/americas/2018/03/exporting-corruption-brazil-car-wash-scandal-180307110441253.html>.

63 “Corrupção não tem cores partidárias, diz juiz da Lava Jato”, Exame, April 15, 2015,
<https://exame.abril.com.br/brasil/corruptao-nao-tem-cores-partidarias-diz-juiz-da-lava-jato/>

64 Netto, Vladimir. Lava Jato: O Juiz Sergio Moro E Os Bastidores Da Operação Que Abalou O Brasil. Rio De Janeiro, RJ: Primeira Pessoa, 2016, print.

65 Judge Moro, interviewed by Felipe Monteiro for INSEAD Knowledge, June 4, 2018

66 Ministério Público Federal – “Caso Lava Jato.” A Lava Jato Em Números No Paraná - Caso Lava Jato. N.p., 24 Jan. 2018. Web. 30 Jan. 2018, <http://www.mpf.mp.br/para-o-cidadao/caso-lava-jato/atuacao-na-1a-instancia/parana/resultado>.

67 “Manifestações a favor da Lava Jato reúnem milhares de pessoas neste domingo.” O Globo, 12 Mar 2016,
<https://g1.globo.com/politica/noticia/manifestacoes-a-favor-da-lava-jato-e-contr-a-corrupcao-ocorrem-em-todo-o-pais.ghtml>

68 Judge Sergio Moro, presentation to INSEAD, June 4, 2018

the work of a single judge. There is the work of the prosecutors, policemen, other judges, judges in the appeal courts, in the superior courts, and Brazilian public opinion.”⁶⁹

International recognition was bestowed by *Fortune*, *Time Magazine* and *Bloomberg Magazine*⁷⁰ (see Exhibit 3) and he received awards from the University of Notre Dame⁷¹ and the Brazilian-American Chamber of Commerce.⁷²

Judge Moro navigated through a judicial system that was largely biased in favour of elected officials and the very rich (often one and the same thing). In Brazil, politicians and the upper class form a cast apart. While no specific religion, name, place of birth or race identifies these “Brazilian Brahmins”, preferential treatment from the judicial system is a privilege they share, mainly because the appeals process is so long that it benefits those who can afford expensive lawyers until the supreme court deliberates.⁷³ Hence, even if companies or officials were convicted of bribery by the lower courts (to gain preferential treatment during contract bidding), they were unlikely to do jail time. Lawsuits had to pass through all four levels of the judicial system, by which time the statute of limitations would have run out. A fundamental change happened when the Brazilian Supreme Court determined in 2016 “that the enforcement of a criminal sentence is to commence after a conviction has been confirmed by the first appellate court to consider the conviction”⁷⁴ Many analysts believed this was crucial to encourage powerful defendants to cooperate with justice. Judge Moro also highlighted the importance of “the use of plea agreements to disrupt complicity and secrecy between criminals and to advance investigations.”⁷⁵

That said, as of June 2018, serving politicians in Brazil could only be judged by the Supreme Court (*Supremo Tribunal Federal*), where thousands of cases were backed up for so long that the statute

69 Judge Sergio Moro, interviewed by Felipe Monteiro for INSEAD Knowledge, June 4, 2018

70 Austin, Christina. “The World’s 50 Greatest Leaders 2017.” *Fortune*, 19 Apr. 2018, fortune.com/worlds-greatest-leaders/sergio-moro-13

Businessweek. “These Are the 50 Most Influential People in the World of Finance.” *Bloomberg*, 22 Sept. 2016, www.bloomberg.com/features/2016-most-influential

Walsh, Bryan. “Sergio Moro.” *Time*, 21 Apr. 2016, time.com/collection-post/4302096/sergio-moro-2016-time-100

71 University of Notre Dame. “Brazilian Judge Sérgio Moro Receives Notre Dame Award.” *Notre Dame News*, 2 Oct. 2017, <http://news.nd.edu/news/brazilian-judge-sergio-moro-receives-notre-dame-award>.

72 “Person of the Year Awards”, The Brazilian-American Chamber of Commerce, 2017, www.brazilcham.com/person-of-the-year-awards

73 “Especialistas Se Dividem Sobre Excesso De Recursos No Sistema Penal.” *Gazeta Do Povo*, 14 Sept. 2013, www.gazetadopovo.com.br/vida-publica/especialistas-se-dividem-sobre-excesso-de-recursos-no-sistema-penal-bzjl28yx5apgyr7efozwoo47i.

74 Brazil: Supreme Court Reaffirms that Convictions Are to Be Enforced After Confirmation by Appellate Court Decision, Library of Congress, <http://www.loc.gov/law/foreign-news/article/brazil-supreme-court-reaffirms-that-convictions-are-to-be-enforced-after-confirmation-by-appellate-court-decision>, accessed on June 16, 2018

75 Moro, Sergio Fernando. Forthcoming. Preventing Systemic Corruption in Brazil. *Daedalus*, the Journal of the American Academy of Arts & Sciences, doi:10.1162/DAED

of limitations was applied. Hence many high-profile white collar crime cases were scheduled to reach the Supreme Court when it was already too late.⁷⁶

Another key factor in the success of the Operation was the lack of concerted resistance from the executive branch. While her political party was being investigated, President Rousseff initially assumed a posture that was out of character for the political establishment, thereby allowing the investigation to gather strength.⁷⁷ Ironically, it was her political ‘godfather’ (Lula) who had given the federal police more autonomy. Obligated to let the police do their job, Dilma’s enemies were able to gather critical ammunition for the impeachment proceedings in 2016.

International Comparisons

Operation Car Wash bore a striking resemblance to an investigation carried out in Italy in the 1990s: Operation *Mani Pulite* (“Clean Hands”). Although 24 years apart, both started from minor cases and reached national proportions, involving the largest political parties, well-known politicians and government officials. At the centre of the Clean Hands investigation were bribery schemes involving Italian government officials and large government contractors. Like Operation Car Wash, investigators found that large corporations were over-invoicing government contracts and passing the surplus to officials and political parties that had helped them win the contracts.⁷⁸ In both cases, the main target of over-invoicing were oil companies – in Italy ENI (Ente Nazionale Idrocarburi), in Brazil Petrobras.

Clean Hands also had significant results. A large number of white-collar criminals were arrested. Over three years, 5,000 people were investigated and 1,000 were arrested.⁷⁹ Powerful figures such as former Prime Minister Bettino Craxi and Silvio Berlusconi were investigated. Craxi lived out his last days in Tunisia, where he fled in 1994 to avoid prison.⁸⁰ Judge Moro mentioned, speaking on a panel for the Americas Society/Council of the Americas (ASCOA), that *Mani Pulite* taught him that to overcome corruption one must break down impunity, the judicial system must work, and reform must come from the government.⁸¹

The respective operations were similar in the sense that they involved well-known politicians who received bribes from large contractors to finance their campaigns in exchange for contracts that could be over-invoiced to pay for the bribes. Both began as minor cases (involving a petrol station

76 Netto, Vladimir. *Lava Jato: O Juiz Sergio Moro E Os Bastidores Da Operação Que Abalou O Brasil*. Rio De Janeiro, RJ: Primeira Pessoa, 2016, print.

77 In August 2016, “Brazil Attorney General Rodrigo Janot requested the Supreme Court’s permission to investigate Ms. Rousseff for allegedly trying to obstruct justice by attempting to bring Mr. da Silva into her cabinet as chief of staff”. See “Brazilian Judge Allows Fresh Investigation of Suspended President Dilma Rousseff”, *The Wall Street Journal*, August 17, 2016, <https://www.wsj.com/articles/brazils-judge-allows-probe-of-suspended-president-dilma-rousseff-1471437951>, accessed on June 16, 2016

78 Chemim, Rodrigo. *Mãos Limpas e Lava Jato a Corrupção Se Olha No Espelho*. Citadel Grupo Editorial, 2017.

79 *Ibid.*

80 *Ibid.*

81 “Video: Sérgio Moro on Latin America’s Battle against Corruption.” AS/COA, 2 Mar. 2018, www.as-coa.org/watchlisten/video-s%C3%A9rgio-moro-latin-americas-battle-against-corruption

and a nursing home) that opened the door to the obscure underworld of corrupt relationships between high-level government officials and corporations. In both instances, corruption prevailed irrespective of political ideology.

However, Clean Hands had no lasting legacy – there were no new stringent laws against white-collar crime; in fact legal restrictions became more lenient.⁸² An example of Italy's inability to subsequently strengthen its anti-corruption laws and political system is the political and economic power that Silvio Berlusconi continues to wield in 2018 despite having been investigated. Although the convicted Italian billionaire is no longer at the apex of power, his centre-left party Forza Italia is the fourth largest in parliament⁸³ following the 2018 elections.

Brazil is not the only BRIC country to struggle with corruption. On Transparency International's Corruption Perception Index, Brazil ranked 96 in 2018, South Africa 71, China 77, India 81, and Russia 135 (the higher the number the more corrupt the country). In 2012, China had ranked 80, Brazil 69.⁸⁴ It seemed clear that Operation Car Wash increased perceived corruption in Brazil. Former presidents Lula and Dilma, as well as incumbent president Temer, have been deeply discredited.

In China, President Xi Jinping began a far-reaching campaign against corruption following the 2012 Congress, with an emphasis on curbing wasteful government spending. More than 100,000 people were indicted for corruption (including over 120 senior officials).⁸⁵ The government doubled its anti-corruption staff and incentivized the public to report fraudulent activities. Like Petrobras and other Brazilian companies, China's state-owned enterprises began establishing institutional compliance systems for the first time, including China Mobile, Dongfang Electric, China Merchants Bank, China Railway and China National Corporation.⁸⁶ Jinping's government announced stronger laws against commercial bribery. Companies convicted of corruption charges faced a US\$460,000 fine, as well as the risk of losing their licence.⁸⁷ In addition foreign companies doing business in China have been forced to review their compliance practices accordingly. In contrast to Operation Car Wash, one investigation in China has been conducted by the judiciary, another by the executive branch. China's president has been strengthened by the investigation, which has been approved by the party.

Vikram Khana, writing in the *Straits Times* in Singapore, summarized the change worldwide as follows:

82 Chemim, Rodrigo. *Mãos Limpas e Lava Jato a Corrupção Se Olha No Espelho*. Citadel Grupo Editorial, 2017.

83 Henley, Jon, and Antonio Voce. "Italian Elections 2018 – Full Results." *The Guardian*, Guardian News and Media, 5 Mar. 2018, www.theguardian.com/world/ng-interactive/2018/mar/05/italian-elections-2018-full-results-renzi-berlusconi.

84 2012 Corruption Perceptions Index – Results, www.transparency.org/cpi2012/results.

85 "Robber Barons, Beware." *The Economist*, The Economist Newspaper, 22 Oct. 2015, www.economist.com/news/china/21676814-crackdown-corruption-has-spread-anxiety-among-chinas-business-elite-robber-barons-beware

86 Feng, Emily. "China SOEs Move to Set up First Institutional Compliance Systems." *Financial Times*, Financial Times, 1 Jan. 2018, www.ft.com/content/0833413a-db2f-11e7-a039-c64b1c09b482

87 *Ibid*.

Companies with global operations must be mindful that they are operating in a world of high transparency and vigilance. In countries where bribery is commonplace, it may be especially tempting to go with the flow and conform to local norms or else risk losing business. But companies must balance that risk against the rising risks of being caught—which can come not only from the national enforcement agencies of multiple countries, but also from other sources—including anonymous individuals who want only to expose wrongdoing and expect nothing in return.⁸⁸

A New Way of Doing Business in Brazil?

If it is common to call Brazil the ‘land of the future’ (the title of a book by Stefan Zweig published in 1943), it is thanks to its vast natural resources (yet few natural disasters), tropical climate, huge tracts of arable land and a vast domestic market that speaks a single language. However, it still struggles to attain the living standards of a developed nation. Despite its economic growth in the 21st century, in 2016 there were 52 million Brazilians living below the poverty line, 13 million in extreme poverty, according to the Brazilian Institute of Geography and Statistics.⁸⁹ In contrast, according to the World Wealth and Income Database, the richest 1% of Brazilians have the highest incomes in the world.⁹⁰

Many attribute Brazil’s inability to capitalize on its natural resources and privileged geographic location to inefficient and corrupt government, citing deficient infrastructure and lack of basic services as proof of its inability to provide for its citizens’ needs.

While the Foreign Corrupt Practices Act (FCPA) enacted in 1977 in the United States made it “unlawful for certain classes of persons and entities to make payments to foreign government officials to assist in obtaining or retaining business,”⁹¹ there is an ongoing debate whether such laws discourage companies from investing abroad.⁹² Before investing in Brazil, foreign companies must weigh up the pros of its huge market against the existence of widespread malpractice.

Operation Car Wash marked a watershed for the population as well as the political and business establishments. Finally Brazilians could believe that no one was above the law and corruption did not pay. The money returned to public coffers (over US\$1 billion by 2018), the conviction of

88 Khanna, Vikram. “The Rising Global Tide against Bribery”, The Straits Times, 16 Jan. 2018, www.straitstimes.com/opinion/the-rising-global-tide-against-bribery.

89 Redação, Da VEJA. “IBGE: 52 Milhões De Brasileiros Estão Abaixo Da Linha Da Pobreza. ” VEJA.com. VEJA.com, 04 Jan. 2018. Web. 30 Jan. 2018, <https://veja.abril.com.br/economia/ibge-52-milhoes-de-brasileiros-estao-abaixo-da-linha-da-pobreza/>.

90 Brazil – WID - World Wealth & Income Database. N.p., n.d. Web. 30 Jan. 2018. <http://wid.world/country/brazil/>.

91 “Foreign Corrupt Practices Act.” United States Department of Justice, www.justice.gov/criminal-fraud/foreign-corrupt-practices-act

92 Graham, Brad, and Caleb Stroup. “Does anti-bribery enforcement deter foreign investment?” Applied Economics Letters 23.1 (2016): 63-67.

prominent people and the plea bargains of major conglomerates created a sense that the judicial system in Brazil was finally levelling the playing field.

This had a profound impact on the business environment: “Compliance reached a central place in Brazil’s reinvention in terms of its corporate structure,” noted Marcos Troyjo from BRICLab at Columbia University.⁹³ Judge Moro points out that beyond the increased interest in compliance:

*The business community are realizing that you cannot not go far with widespread corruption and if you accept to pay bribes all that you get is more requests for bribes. And these have a great impact on the market, not only on the government. So actually there are more concerns about integrity... You need to think about profits, you need to think about people, you need to think about the planet, but also you need to think about probity in conducting your business.*⁹⁴

Operation Car Wash forced companies to comply with the law in a way that was virtually non-existent in Brazil in 2012,⁹⁵ observed Paulo Suzart, a compliance consultant at Hage, Fonseca, Suzart & Prudencio law firm (a partner in the practice was Brazil’s former controller general):

*Compliance today is on executives’ minds as way of protecting themselves. We train top management in what are the risks to executives, what is compliance, how to introduce this into the company, how to detect criminal fraud, how to meet what the law requests.*⁹⁶

According to KPMG, in 2015 57% of 250 companies interviewed for a survey on compliance in Brazil reported they had ethics and compliance programmes and policies in place. One year later the figure had risen to 76%.⁹⁷

In 2017, in a survey of legal and financial executives in Brazil, 95% declared that compliance was the top issue for Brazilian corporations in 2017.⁹⁸ Bruno Drago, a competition and compliance partner at Demarest, a Brazilian law firm, explained:

*This concern will keep growing in the years to come. Sanctions are very tough. There is a great incentive for companies to prepare themselves. The reputational risk is even greater. I would say nine out of 10 companies say that if they have to invest in something, they will invest in compliance.*⁹⁹

93 Dom Phillips. “‘Car Wash’ Launches Revolution in Transparency and Compliance.” Financial Times, FT.com, 15 May 2017, www.ft.com/content/885536a6-30ae-11e7-9555-23ef563ecf9a.

94 Judge Sergio Moro, interviewed by Felipe Monteiro for INSEAD Knowledge, June 4, 2018

95 Dom Phillips. “‘Car Wash’ Launches Revolution in Transparency and Compliance.” Financial Times, FT.com, 15 May 2017, www.ft.com/content/885536a6-30ae-11e7-9555-23ef563ecf9a

96 *Ibid.*

97 *Ibid.*

98 Thierry Ogier, Brazil’s Lava Jato spurs change in corporate practice, survey finds. Latin Finance, January 13, 2017.

99 *Ibid.*

Petrobras has restructured its governance and compliance sectors. It has created a new independent and anonymous 24/7 hotline, an internal inquiry commission, a Petrobras Corruption and Prevention Program (Exhibit 9), an independent committee which includes a retired Chief Justice from the Supreme Court.¹⁰⁰

Odebrecht (and Braskem, a Brazilian petrochemical company partially owned by Odebrecht) pleaded guilty to charges that it provided almost US\$800 million in bribes for more than 100 projects in 12 countries. It agreed to pay a US\$3.5 billion¹⁰¹ fine and disclose details of its corrupt activities in Latin America and Africa.¹⁰²

Moro highlighted the importance of business leadership in the fight against corruption “Public power moves slowly. Private enterprises are better able to act quickly. It is necessary that [businessmen] say no to corruption”.¹⁰³

Another consequence of Operation Car Wash was it left a vacuum that allowed smaller companies (previously subcontracted by major players) to participate in more projects, according to José Martins, president of the Brazilian Chamber of the Construction Industry:¹⁰⁴

We’re changing the model so that more companies can participate. When you have more companies, you have more competition, you have more transparency and you avoid the risk that things that happened in the past could happen again.

It remains to be seen whether the influence of Car Wash in both business and politics will be felt in the long term. Emerson Melo, director and compliance leader at KPMG (who coordinated the

100 “Operation Car Wash: Information and Documents.” www.petrobras.com.br, Petrobras, www.lavajato.hotsitespetrobras.com.br/en.

101 The US Department of Justice announced on December 21, 2016 “Under their respective plea agreements, Odebrecht and Braskem are required to continue their cooperation with law enforcement, including in connection with the investigations and prosecutions of individuals responsible for the criminal conduct. Odebrecht and Braskem also agreed to adopt enhanced compliance procedures and to retain independent compliance monitors for three years. The combined total amount of United States, Brazilian and Swiss criminal and regulatory penalties paid by Braskem will be approximately \$957 million. The combined total amount of penalties imposed against Odebrecht will be at least \$2.6 billion and up to \$4.5 billion. With a combined total of at least \$3.5 billion, today’s resolutions with Odebrecht and Braskem are the largest-ever global foreign bribery resolution.”, <https://www.justice.gov/opa/pr/odebrecht-and-braskem-plead-guilty-and-agree-pay-least-35-billion-global-penalties-resolve>, accessed on June 16, 2018

102 Luis del Valle, Exporting Corruption: Beyond Brazil’s Car Wash scandal. Al Jazeera, 10 March 2018, <https://www.aljazeera.com/blogs/americas/2018/03/exporting-corruption-brazil-car-wash-scandal-180307110441253.html>.

103 Abrantes, Talita. O Custo Da Corrupção Para o Brasil, Segundo Sergio Moro. EXAME, 13 Sept. 2016, <http://exame.abril.com.br/brasil/quem-descobre-o-cadaver-nao-e-culpado-do-homicidio-diz-moro/>

104 Dom Phillips. “New Players Step into Brazil Vacuum Created by Petrobras Scandal.” FT.com, Financial Times, 20 Sept. 2017, www.ft.com/content/24537fba-7eb9-11e7-ab01-a13271d1ee9c.

compliance survey): “It is significant growth but it does not mean that we are at an ideal stage. It means we have a long way to go.”¹⁰⁵

Judge Moro also highlights that:

*It's important to say that it was discovered that not only Brazilian companies paid bribes on Petrobras contracts...some foreign companies also paid bribes there. And some of them have already recognized and they signed leniency deals with Brazilian authorities. That's the case for example of SBM from The Netherlands and Rolls Royce from the United Kingdom. So corruption is an international problem. It's not only about Brazil. What is really important is to build a clean environment for business in Brazil. Avoiding bribery being paid not only from Brazilian companies but also from foreign companies, and I really believe that with this strong case, with this strong investigation, some of Brazilian companies and also companies abroad will think twice before entering in corruption agreements in Brazil.*¹⁰⁶

Shin Jae Kiom, a compliance partner at TozziniFreire law firm, said in 2017: “We have to change the way we conduct business... It is a road that we have taken. You may have some detours, but I do not think that we will come back to the same road again.”¹⁰⁷

To have lasting effects, legislative work is needed to strengthen anti-corruption efforts. Not only does Congress need to pass stronger anti-bribery legislation, it must not roll back existing anti-corruption laws. Judge Moro recognized on several occasions that without more ‘surgical’ legislative intervention it would be difficult to capitalize on the Operation’s gains.¹⁰⁸

Indeed Brazil’s political elite has sought to neutralize anti-corruption investigations. In September 2016, for example, Congress tried to pass legislation to shield politicians from prosecution when bribes paid were used for unreported campaign contributions. In November 2016, there was an attempt to pass legislation that would allow convicted defendants in the lower courts to sue judges if their decisions were overturned by a higher court.¹⁰⁹

Land of the Future?

Hopefully, it will be possible to look back some years from now and say that Lava Jato made the national economy, the rule of law and democracy stronger in Brazil. Maybe it will be possible to say systemic corruption was overcome and that it became simply

105 Dom Phillips. “‘Car Wash’ Launches Revolution in Transparency and Compliance.” Financial Times, FT.com, 15 May 2017, www.ft.com/content/885536a6-30ae-11e7-9555-23ef563ecf9a.

106 Judge Sergio Moro presentation at INSEAD, June 4, 2018

107 Thierry Ogier, “Brazil’s Lava Jato spurs change in corporate practice, survey finds”. Latin Finance, January 13, 2017.

108 Germano Oliveira. “Sergio Moro: Ele Condenou Lula e Derrotou Os Barões Da Corrupção.” ISTOÉ, Terra, 1 Dec. 2017, <https://istoe.com.br/Ele+condenou+Lula+e+derrotou+os+bar%C3%B5es+da+corrup%C3%A7%C3%A3o>.

109 <http://www1.folha.uol.com.br/poder/2017/04/1878916-senado-aprova-lei-para-punir-abuso-de-autoridade.shtml>

*a sad memory from Brazil's past. We cannot take this result for granted, but there is some hope. At the very least, the Lava Jato cases... represent a clear break with a past of impunity and with tolerance for systemic corruption.*¹¹⁰

Despite many challenges faced during Operation Car Wash, Moro remains convinced that “The country still has the tools to succeed and that judges, prosecutors and police who believe in democracy will never give up.”¹¹¹ He insists that “In the medium and long term, these anti-corruption efforts will only improve the efficiency of our economy. You cannot turn a blind eye to this problem”.¹¹² However, he recognizes that “Brazil’s transition from a country facing ubiquitous corruption problems to a more transparent society faces many challenges.”¹¹³

Has Operation Car Wash levelled the playing field for business? Will the rule of law and transparency prevail? Will the gains from Operation Car Wash be permanent or diluted by leniency towards white-collar crime after the 2018 elections? These questions seem as big as Brazil itself.

110 Moro, Sergio Fernando. Forthcoming. Preventing Systemic Corruption in Brazil. Daedelus, Journal of the American Academy of Arts & Sciences, doi:10.1162/DAED

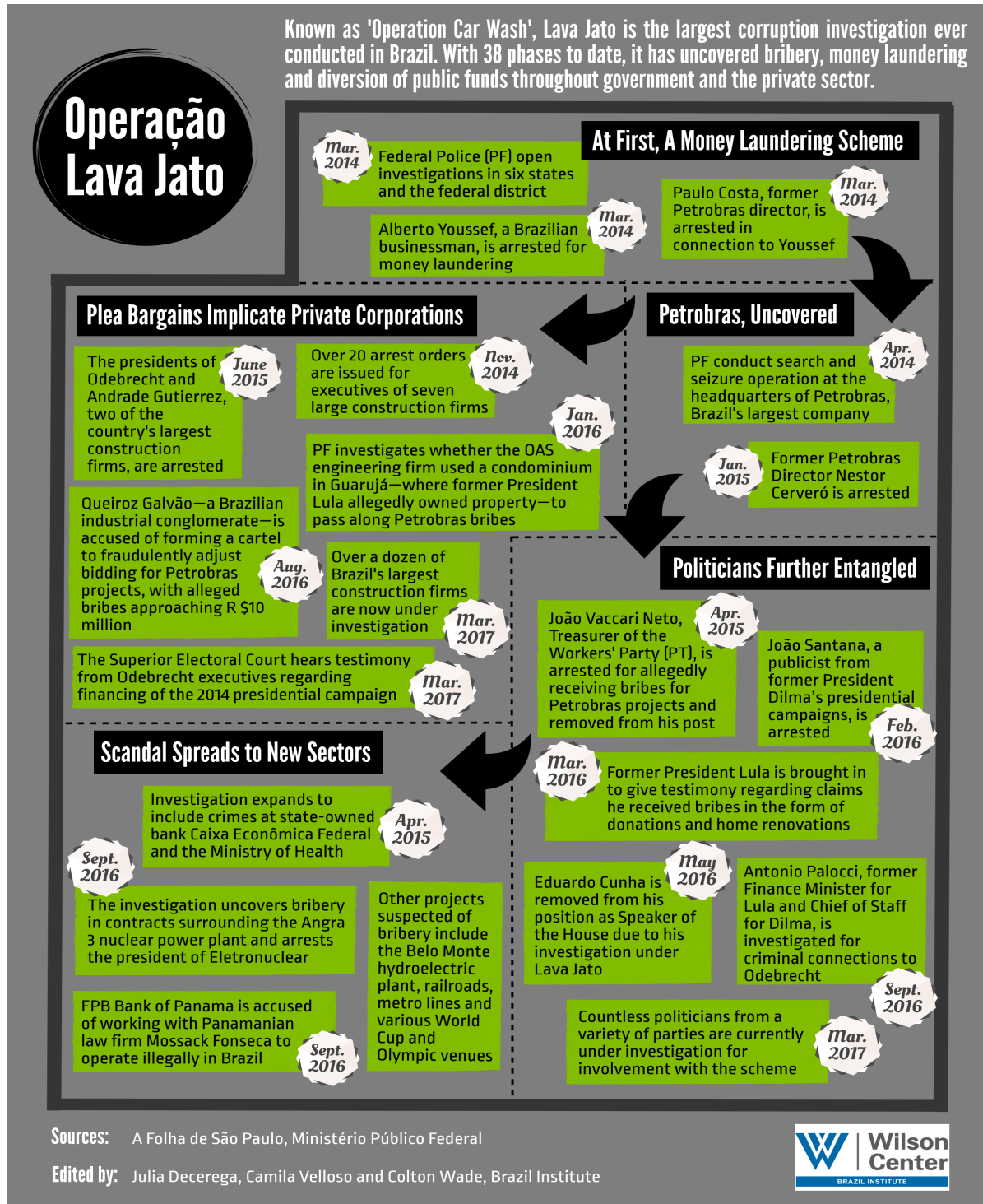
111 “Video: Sérgio Moro on Latin America’s Battle against Corruption.” AS/COA, 2 Mar. 2018, www.as-coa.org/watchlisten/video-s%C3%A9rgio-moro-latin-americas-battle-against-corruption

112 Juliano Basile. “Moro Avalia Que Investigações Não Tiveram Impacto Negativo Na Economia.” Valor Econômico, 2 Mar. 2018, www.valor.com.br/politica/5358057/moro-avalia-que-investigacoes-nao-tiveram-impacto-negativo-na-economia

113 Germano Oliveira. “Sergio Moro: Ele Condenou Lula e Derrotou Os Barões Da Corrupção.” ISTOÉ, Terra, 1 Dec. 2017, <http://istoe.com.br/Ele+condenou+Lula+e+derrotou+os+bar%C3%B5es+da+corrup%C3%A7%C3%A3o>

Exhibit 1

Operation Car Wash Infographic

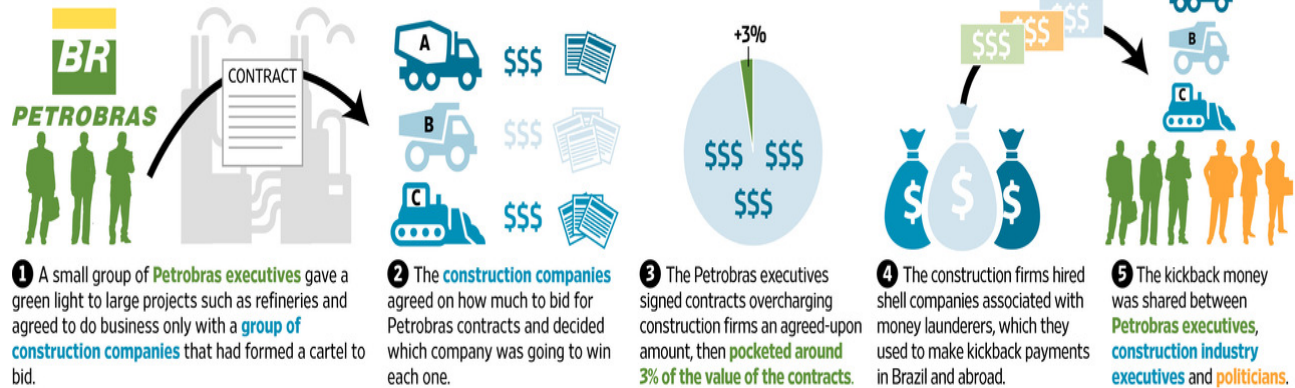


Source: The Brazil Institute at the Wilson Center

Exhibit 2

How Corruption at Petrobras Allegedly Worked

How a Corruption Scheme at Petrobras Allegedly Worked



Source: Brazilian federal prosecutors

THE WALL STREET JOURNAL.

Following the money...

This flow-chart* offers a simplified view of the 'bribery' part of Car Wash, as alleged by Brazilian prosecutors: some senior Petrobras employees steered padded contracts to selected construction companies, which channelled back bribes via middlemen, often using false consulting contracts and overseas shell companies. Not shown is the final destination of the bribes, alleged to include several political parties.

*Chart kindly made available by the Brazilian Public Prosecutor's Office (MPF); unofficial translation by Global Insight.

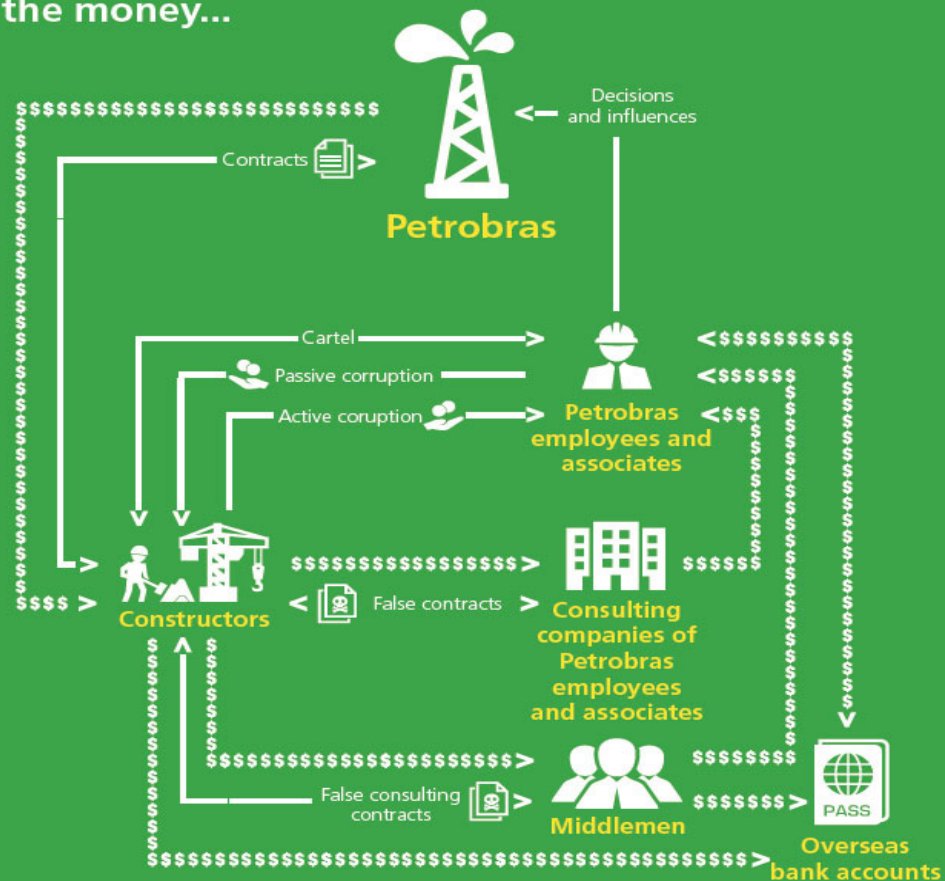
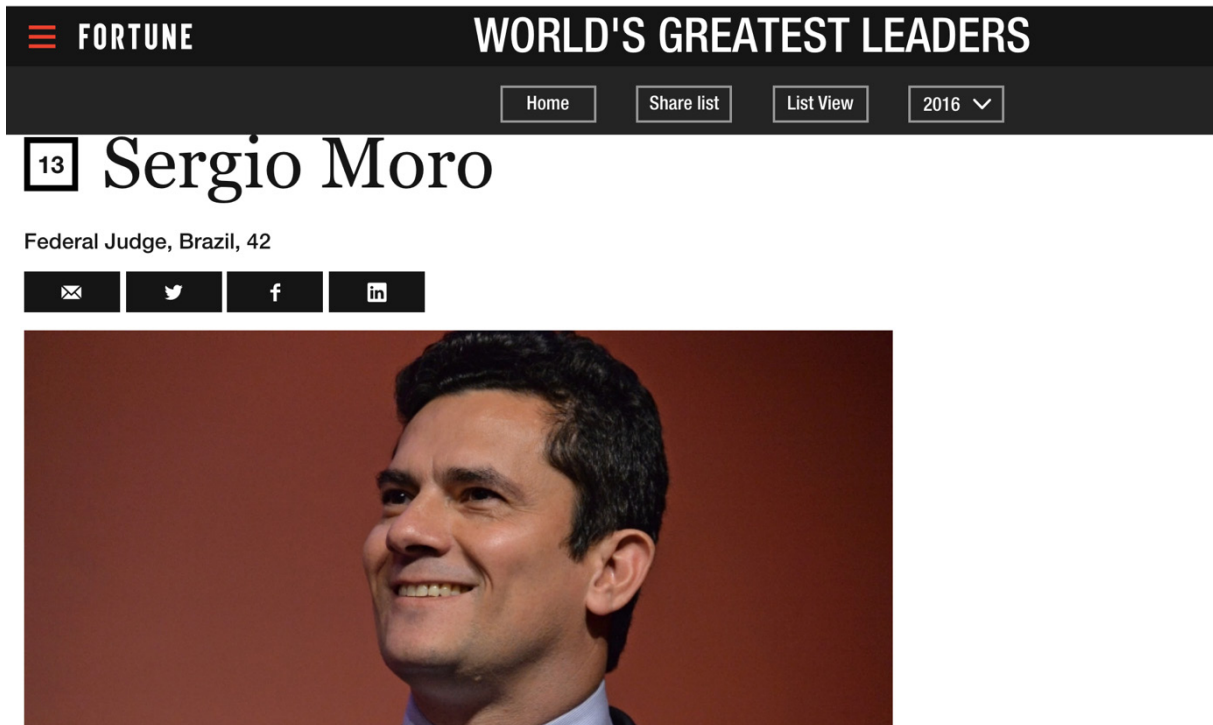


Exhibit 3
Global Recognition of Judge Moro



<http://fortune.com/worlds-greatest-leaders/2016/sergio-moro-13/>



<https://www.bloomberg.com/features/2016-most-influential/>

≡

TIME

The 100 Most Influential People

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WORLD

Sergio Moro

Bryan Walsh

April 21, 2016

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Cleaning up corruption

Brazilians call him SuperMoro, chanting his name on the streets of Rio de Janeiro as if he were a soccer star. But Sergio Moro is just a judge, albeit one prosecuting a corruption scandal so huge it could bring down a President—and perhaps change a culture of graft that has long hobbled his country's



Christine Lagarde
By Janet Yellen

John Kerry
By Bono

Angela Merkel
By Samantha Power

Donald Trump
By Renee Ellmers

Jin Liqun
By Joseph Stiglitz

Nikki Haley
By Lindsey Graham

<http://time.com/collection-post/4302096/sergio-moro-2016-time-100/>

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23

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Exhibit 4a
Map of BrazilSource: <https://www.mapsofworld.com/brazil/brazil-map.gf>

Exhibit 4b
Brazil: Key Indicators

		World Rank
Area (sq. Km)	8,516	5
Population (million people)	207.8	5
GDP (\$Tn, 2016)	1.8	7
% of total world export	1.30	23
Official reserves (\$billion, end 2016)	365	11
GDP per head	\$8,669	~90

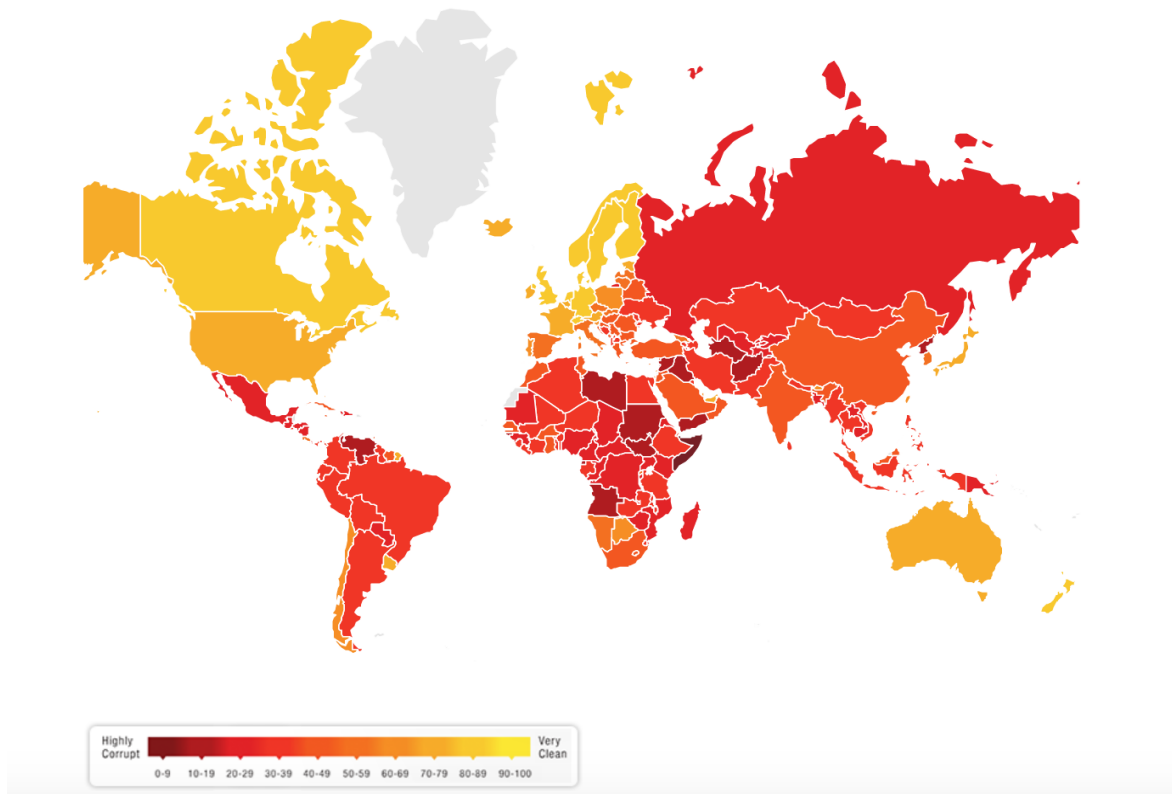
Source: The Economist Pocket World in Figures, 2018 edition

Exhibit 5
Brazil Corruption Rank 2008-17, out of 175 countries



Exhibit 6
Corruption Perception Index Worldwide 2017

CORRUPTION PERCEPTIONS INDEX 2017



Source: https://www.transparency.org/news/feature/corruption_perceptions_index_2017

Exhibit 7
Covers of The Economist



Source: <http://cdn.static-economist.com/sites/default/files/imagecache/print-cover-full/20091114issuecovUS400.jpg>



Source: https://cdn.static-economist.com/sites/default/files/20130928_CLA290.jpg

Exhibit 8

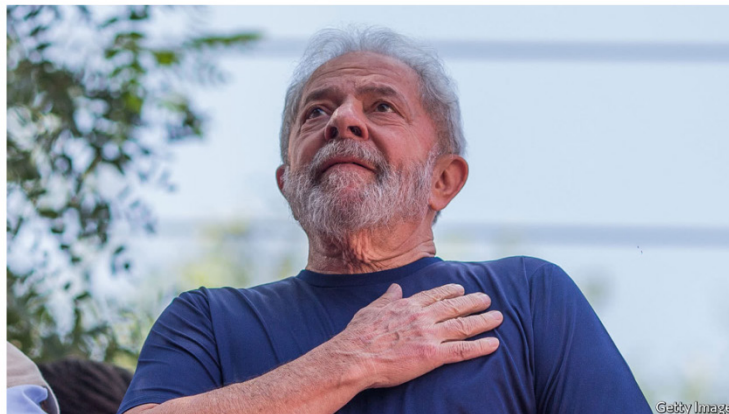
International Media Coverage of Lula's Imprisonment



Law and justice in Brazil

Lula goes to jail

Even behind bars, the former president will remain a force to be reckoned with



Source: <https://www.economist.com/news/americas/21740253-even-behind-bars-former-president-will-remain-force-be-reckoned-lula-goes-jail>



Source: https://www.washingtonpost.com/world/the_americas/brazil-anxiously-awaits-court-decision-that-could-send-lula-to-prison/2018/04/04/e355a52c-3792-11e8-af3c-2123715f78df_story.html



Source: <https://www.telegraph.co.uk/news/2018/04/08/brazils-lula-surrenders-police-begin-jail-sentence-tense-showdown/>

Exhibit 9

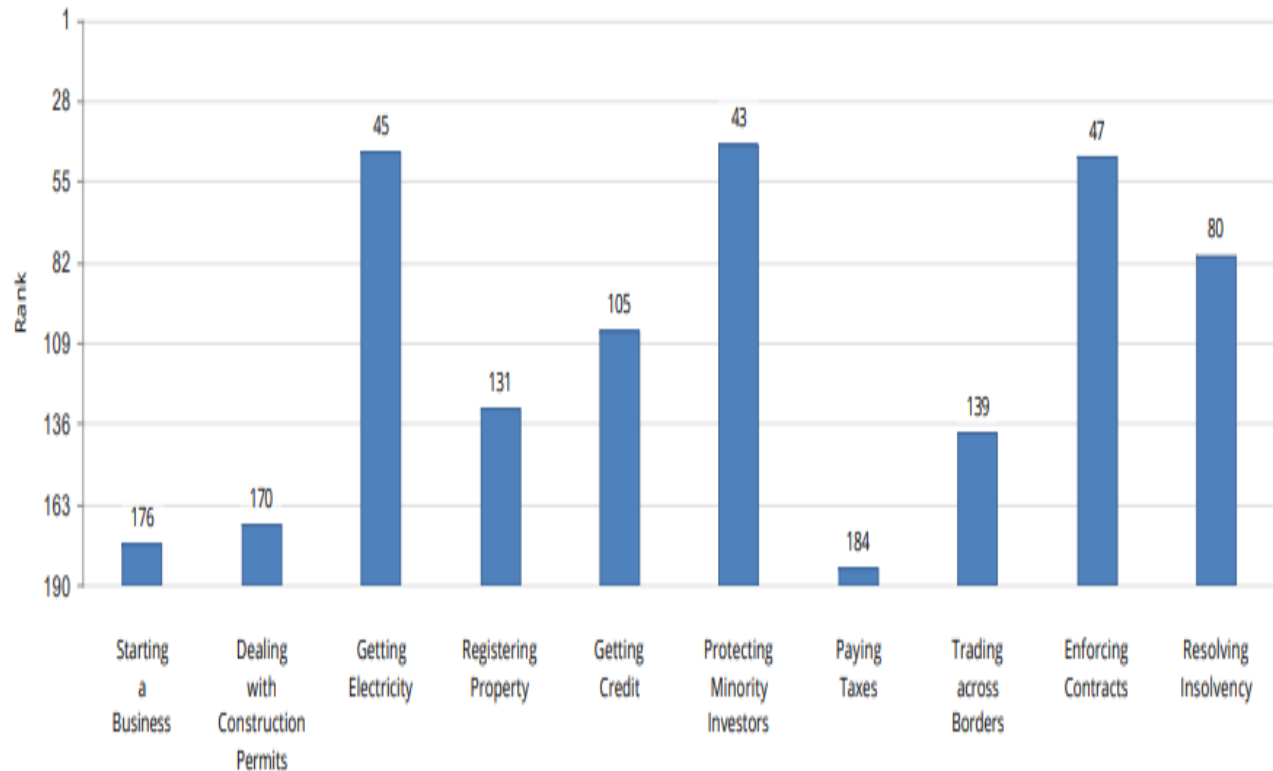
Table of Contents, Petrobras Corruption Prevention Programme

Introduction	04
1. Anti-Corruption Laws and International Commitments	05
2. Ethics Management System	06
3. Disciplinary Regime	09
4. Internal Investigations	09
5. Fraud, Corruption and Money Laundering Risk Management	10
6. Relationships with Third Parties	10
7. Analysis and Application of Penalties to a Company	13
8. Reporting Channel	14
9. Conflicts of Interest	15
10. Nepotism	16
11. Presents, Gifts and Hospitality	17
12. Support and Contributions to Political Parties	18
13. Donations	18
14. Sponsorship and Cooperation Agreements	18
15. Safeguarding of Assets	19
16. Accounting Records	20
17. Communication and Training	21
18. Compliance Competence	21
19. Compliance Agents	22
20. Prevention of Money Laundering and Terrorism Financing	22
21. Monitoring of the PCPP	23
Glossary	24

The full program can be accessed at <http://www.petrobras.com.br/en/about-us/profile/compliance-ethics-and-transparency/>

Exhibit 10
Doing Business in Brazil Rankings 2018

Rankings on Doing Business topics - Brazil



Source: Doing Business in Brazil 2018