Prevention Measures, Polices and Practices and Agencies for Combating Corruption

Article 5th and Article 6th of UNAC establish that each State-Party shall create bodies in charge of preventing corruption besides formulating and applying polices against corruption that promote the society's participation and reflect the principles of the Rule of Law, the proper management of the public assets, integrity, transparency and the duty of accountability. Through the International Law, on adhering to UNAC, Brazil, through the Union, undertook such commitments. Brazil is a Federative State, which means that the State power is shared among several political institutions endowed with autonomy and competences established by the Constitution. That means that the compliance with this obligation is not solely dependent of the Union's volition, which is divided among the States and Municipalities.

With regard to the Union, the Executive Branch has the Office of the Comptroller General, CGU, established by Law No.10.638 of MAY 28, 2003, which is an agency with the competency of internal control, public audit, corrective and disciplinary measures, corruption prevention and
combat, as well as acting as an agency of ombudsman’s activities and federal public management transparency. The CGU inspects and detects frauds and deviations in the use of the federal public money, and is also in charge of developing mechanisms for prevention against corruption. With this purpose, the CGU performs events intended of incenting social participation and control in combating corruption such as, the 1st National Conference on Transparency and Social Control - 1st CONSOCIAL, instituted by presidential Decree of December 8, 2010, which had the participation of approximately 150 thousand citizens in its preparatory phase held from July 2011 to April 2012. These citizens were represented by one thousand and 200 delegates in its national meeting held in Brasília in May 2012.

In the scope of external control, the Union count on the Audit Court, which is an agency established by Art. 71 of the Constitution as an institution in charge of assisting the National Congress in the evaluation and control of budget execution by the public Administration. In this role the TCU audits the hiring of public services and works as well as expenses made by the agencies of the three branches of the Federal Public Administration, detecting incoherencies in the accountability and deviations in the use of the federal public money. In its role of an auditing agency, the TCU holds the power to prevent the progression of works and services that do not comply with the legal guidelines, as well as holding the parties administratively accountable for irregular expenses. Additionally, the audits performed by the TCU
are intended to evaluate the public management performance and results.

Besides the CGU and the TCU, the Union counts on the Office of the Prosecutor General (MPF), which is an autonomous agency endowed with constitutional competency of holding accountable the responsible parties for acts of corruption and deviation of public money under the civil, administrative and criminal law code. In this role, it is MPF's competency investigating both in the penal and civil level, acts of corruption and bad management of public assets. Although MPF's role is predominately repressive, MPF's joint action with CGU and TCU has resulted in important contributions to public assets' management and the population's awareness in combating corruption. For this purpose, MPF constantly performs Public Hearings with the participation of the society and experts in different areas, aiming at establishing and adopting measures intended to prevent deviation of public money and acts of corruption such as, drawing up a budget model for public works intended to prevent overbilling, and, consequently, diversion of public funds. Additionally, MPF has authority to release recommendations aiming to alter or cease harmful practices to public coffers and require higher transparency and publicity of public management acts, implying the accountability of the public officials identified as the responsible parties for such acts.

Among the three agencies of the federal government, the MPF and the TCU have autonomy guaranteed by the Constitutional provisions, which attributes
independence acting to their members. As for the CGU, it is the agency directly linked to the Presidency of the Republic, which confers autonomy in relation to the other agencies of the Federal Public Administration. Despite that, it is possible to detect in the recent Brazilian history, attempts to hinder the actions of these agencies through projects of amendments of the Brazilian legislation or weakening in the budget allotment of these agencies. Such attempts have been repealed by pressure from the society and the non-governmental organizations.

The acting of these agencies in preventing and combating corruption is coordinated through the National Strategy for Combating Corruption and Money Laundering (ENCCLA).

ENCCLA consists of articulating the agencies from the three branches of the Republic, the Office of the Prosecutor General and the Offices of the Attorneys General as well as the public society that act, even indirectly, in preventing corruption and money laundering. Among the agencies composing it, are not only the agencies from the three branches, such as the Senate, the Office of the Prosecutor General, Judiciary Branch, CGU and TCU, but also intelligence agencies, such as ABIN, and institutions that compose and inspect the financial system, such as the Securities Commission (Comissao de Valores Mobiliarios CVM), Financial Control Board (Conselho de Controle de Atividades Financeiras- COAF), Complementary Pension Regulator (Superintendencia Nacional de Previdencia Complementar-PREVIC), SUSEP, Central Bank (Banco Central do Brasil-BACEN) as representatives of more varied associations, such as the Brazilian Federation of Banks.
ENCCLA is responsible for outlining action strategies, inspecting strategies' execution through its roughly 60 members as well as evaluating the success of implemented measures.

The federal model is repeated, to some extent, in the State and Municipal level, which count on State Audit Courts and, in some cities, such as Rio de Janeiro and Sao Paulo, Municipal Audit Courts whose assignments are identical to the TCU's, but limited to the State and Municipal inspection. The States also have Offices of District Attorneys (State Public Ministry) performing assignments, within the territory scope of each federate, that are similar to the ones of the Office of the Prosecutor General. The CGU model, however, is only mirrored, for while, in few cities, such as Sao Paulo, which is the biggest of the country. The Offices of the District Attorneys and representatives of State Judges, also compose ENCCLA, thus coordinating the prevention and combat against nasty corruption in the States and Cities with that performed in the federal level.

Among the activities performed by the nominated agencies is the propagation in the media of educational campaigns aiming to raise the population's awareness of its role in fighting corruption. Thus, Public Ministry's entities launched in 2008, the campaign "What do you have to do with corruption?", which is repeated every year and in 2010, it had the motto "Filthy past promotes no future. Have a Clean Vote" and sought to demonstrate the role and responsibility the civil society has in combating
corruption when participating in the election process (http://www.cnmp.mp.br/portal/images/stories/cpcom/bancosdeideias/campanhasexternas/corrupcao/release-de-lancamento.pdf). More recently, the CGU, through social media, performed the campaign "Small Corruption Acts- Say No", seeking to arise the Brazilian people's awareness of the fact that small illicit or anti-ethical acts performed daily by each citizen, such as, stealing the cable TV sign, end up reverberating on a larger scale on the public officials' conduct.

**Measures, Policies and Inspection Practices of Funding of Election Campaigns and Political Parties.**

The only source of direct public subsidies to political parties aiming at funding its maintenance and electoral expenses foreseen in the Brazilian legislation is the Special Fund for Financial Assistance to Political Parties. The intention of this fund is allowing political parties and candidates to be less dependent of private resources, thus, reducing the economic power influence on the campaigns and balancing the electoral disputes. Despite being established in 1965, only through the enactment of the Law of Political Parties (LPP)-Law n° 9.096 of September 19, 1995, when it was established that the budgetary allotments of the Union would compose the revenue of the fund jointly with electoral fines and allowed donations, the Fund could be employed in its institutional purposes. Today, LPP stipulates that the money risen by the
fund shall be distributed in a rate of 5% among the parties registered in the Superior Electoral Court, and 95% among parties with representation in the House of Representatives, proportionally to the number of votes obtained in the previous election. That means that the parties having more representatives tend to obtain a larger revenue than the small parties.

The other forms of direct public funding are prohibited by the LPP, which in its Art.31 prohibits donations from foreign government or entities; authorities from public agencies, except the allotments of partisan funds; autarchies, public companies or public utilities, private-public organizations, and foundations instituted by law and for whose resources government agencies or entities compete; and professional associations and trade unions.

With regard to indirect public funding, the Brazilian legislation does not foresee the grant of fiscal benefits, such as exemptions, deductions or fiscal credits on private donations from legal entities or individuals, allowing, however, fiscal compensation through free access to the media, such as, radio and television, by parties and candidates in the form established by law. The law also foresees the use of public schools or Legislative houses for performing political-party meetings.

In relation to private funding of the parties and campaigns, up to 1993, there were not any important obstacles opposing resources originated from individual donors, whose donations were stipulated by the parties themselves. It was only from 1993 on that limits were
established for individual donors. With the enactment of the Law of Political Parties, which has had several amendments since its promulgation in 1995, it was established that individuals would only be allowed to offer 10% of their yearly gross income, while legal entities were limited to 2% of the respective yearly operational gross revenue. The responsibility for establishing limits to the use by candidates of their own resources remained belonging to the parties. The model employed may generate distortions once it allows the electors and companies with higher revenues to make donations in values higher than the remaining population, thus enabling them to exert greater influence on candidates and their policies, to detriment of most of the Brazilian population.

ACCOUNTABILITY- LEGISLATION ON ELECTORAL EXPENSES

Although the political parties and the candidates are imposed by the legislation the duty of accountability on costs and expenses to the Electoral Justice, it does not impose any absolute limit for global expenses of parties or each candidate during the campaigns. Through the Election Code, it is the parties' responsibility to set the maximum value of the candidates' expenses and the total amount spent by the party, except if up to June 10 of each election year, a specific law is enacted regulating the matter, which is an unprecedented event up to the present. Despite that, the practice of "slush funds" or resources received by campaigns and not officially booked is
notorious. The casuistry demonstrates that most times, the money not booked has illicit origin and, many times, it arises from deviations of the public coffers or the organized crime.

In Brazil, at least since 1965, there always have been strong control by the State on political parties, with the Law of Political Parties since 1965 imposing the accountability of parties and their committees at the end of each campaign and its submission to inspection by the inter-partisan committees, which were responsible for inspecting and publishing the results of such inspection. According to the present law, the parties must annually report to the Electoral Court through submission of balance sheets. In election years, as regulated by Law no 9.504/97, in its current wording, the candidates or their respective committees must report to the Electoral Court within two months subsequently the elections. During the election period, this obligation is extended to political parties, which are obliged to send monthly balance sheets in the four months prior to elections and in the subsequent two months. The inspection of accounts, as in all election process is the Electoral Court's responsibility, which according to Art. 34 of the LPP, inspects the party's bookkeeping and accountability and the electoral campaign expenses, attesting its conformity to the legal parameters established in the LPP and Law no 9.504/97.

In 2002, with Resolution 20.987 of 2002, the accountability started to adopt the electronic format through the System of Accountability of the Electoral Campaign by TSE, which allowed the electors to consult, on
the Internet, detailed information on budgets and expenses of candidates, parties and financial committees. This duty of releasing data on the internet was an object of many amendments, with the most recent brought with the new wording provided by Law 12.891 of 2013, to § 4 of Article 28 of Law 9.504/97, which imposed on political parties, coalitions, and candidates the duty of releasing, on the course of the election campaign, through the global computer network, a report discriminating funds in money or estimated in money that they received for election campaign financing and the expenses they made. The indications of the names of donors and the values donated, however, only became due in the final accountability. These statistics are provided by the TSE on its website, specifically in the address http://www.tse.jus.br/noticiastse/boletim/estatisticas-das-contas-de-candidatos-em-2012-estao-disponiveis-no-portal-do-tse.

Law n° 10.683/2003 (which provides on the organization of the Federative Presidency of Republic of Brazil) states in its Article 1st, § 3, subsection I that the Comptroller General of the Union composes the Presidency of the Republic. Article 17 of the aforementioned Law also states that "the Office of the Comptroller General is responsible for assisting directly and immediately the President of the Republic in performing his/her assignments regarding matters and arrangements that, within the Executive Branch, are related to the defense of public assets, internal control, public audits, corrective and disciplinary measures, corruption combat and prevention, ombudsman's activities, enhancing of the management transparency within the federal public administration", with a clear competency of this body to develop and implement prevention policies against corruption.

Decree 8.109/2013, in turn, promoted improvements in the structure of the Office of the Comptroller General. From its enactment, the Secretariat of Transparency and Prevention of Corruption started to exercise competency of centralizing actions of corruption prevention, which, prior to its establishment, were implemented in a decentralized way by the unities of the CGU. This new model endowed the Comptroller's Office with instruments and technical expertise in corruption prevention.

The mandate of the Secretariat of Transparency and Prevention Against Corruption (STPC) is listed in the subsections of Article 17 of the aforementioned Decree. STPC’s competencies are:

- Formulating, coordination, fostering and supporting the implementation of plans, programs, projects and rules target at corruption prevention and transparency promotion, access to information, ethical conduct, integrity and social control of the public administration;
- Stimulating and supporting the implementation of plans, programs, projects and rules targeted at preventing corruption and strengthening transparency, integrity, and ethical conduct in the private sector and its relation with the public sector;
- promoting, coordinating and fostering the execution of studies and surveys, aiming at knowledge production and diffusion in areas of corruption prevention, promotion of transparency, access to information, ethical conduct, integrity, and social control;
- promoting the articulation with agencies, entities and national and international organisms acting in the field of corruption prevention, promotion of transparency, access to information, ethical conduct, integrity, and social control;
- participating in forums or national and international organisms related to corruption combat and prevention, promotion of transparency, access to information, ethical conduct, integrity, and social control;
- managing, supervising and evaluation international cooperation programs and international commitments and conventions undertaken by the Brazilian Government inserted in matters of its competency;
Additionally, it is important to highlight that the CGU structure is also formed by the Office of the Ombudsman General (OGU), which is the unity responsible for receiving, examining and forwarding denounces, complaints, praises, suggestions and information requests regarding procedures and actions of the officials, agencies and entities of the Federal Executive Branch.

The Office of the Ombudsman General also has the competency of technically coordinating the follow-up of the Ombudsman's activities of the Federal Executive Branch, as well as interpreting the manifestations received and producing quantified indicators of the satisfaction of users regarding the public services performed within the Federal Executive Branch. The competencies to be exercised by the OGU are listed in Article 14 of Decree 8109/2013.

Finally, it is noteworthy that the fact of being inserted in the Executive Branch and having its higher head appointed by the president to fulfill his/her mandate does not affect the independence of the Office of the Comptroller General. CGU has its own budget and absolute autonomy to carry it out, respecting the general rules of transparency and accountability. The CGU's budget has been expressive enough so that the anti-corruption measures outlined by itself are implemented in its completeness. Of note, besides its budgetary and administrative autonomy, CGU counts on its own staff, which is composed by public servants selected by a public competition especially prepared for the institution and structured in careers, whose remuneration is one of the highest in the Public Sector and has stability.

Therefore, there is no sense in speaking of loss of autonomy of the Brazilian anti-corruption agency, once all the instruments guaranteeing an independent performance were conferred upon it.

1.2.

In February of this year, the Office of the Comptroller General (CGU) performed a survey to evaluate the Portal of Transparency of the Federal Government. It aims at verifying the Portal's strengths and weaknesses and mapping the social control practice, the political participation and its users' profile. The initiative — which is a result of the signature of the Agreement of Cooperation between the Foundation of the University of Brasilia and the CGU - is conducted by surveyors of the Institute of Political Science of the University of Brasilia (UnB).

The survey is composed by a questionnaire approaching the most varied themes. There are questions about the user's profile, what he/she thinks of the use of internet in the social control and transparency promotion; what the user visits and considers most important; as well as the evaluation through points, of navigation requirements, Portal information and data; among other subjects.

The participation is anonymous and lasts from 6 to 12 minutes on average. The survey will be an important input for the improvements that will be implemented in the Portal of Transparency and for the advances in theoretical knowledge on public transparency, access to information, political participation and exercise of social control in Brazil.
The Portal of Transparency of the Federal Government is an initiative of the Office of the Comptroller General, launched in November 2004 to assure good and correct application of public funds. Its objective is to increase the transparency of the public management, allowing citizens to follow the form the public money is being used and help in its inspection.

In the Portal, it is possible to find information on: fund transfers; directs expenses; social control and participation; public servants; functional real estates; forecasted revenues; daily data on budgetary execution; pages of transparency of states and municipalities, among others.

1.3.

ENCCLA (National Strategy for Combating Corruption and Money Laundering) was created in 2003, by an initiative of the Ministry of Justice, as a form to contribute to systematic combat against money laundering in the Country. It consists of articulating several agencies of the three branches of the Republic, Public Prosecutor Offices and the civil society that directly or indirectly act in corruption combat and money laundering, aiming at identifying and proposing its improvement.

Currently, about 60 agencies and entities are part of the ENCCLA, such as, Public Prosecutor Offices, Police Officers, Judiciary, agencies for control and supervision the Office of the Comptroller General — CGU, and the Audit Court - TCU, the Securities Commission — CVM, Financial Control Board (COAF), Complementary Pension Regulator (Superintendencia Nacional de Previdencia Complementar-Previc), Susep, Central Bank (Banco Central do Brasil -BACEN), Brazilian Intelligence Agency —ABIN, Brazilian Federation of Banks —FEBRABAN, etc.

The combat against corruption was inserted in acting themes of the Strategy from 2007 enactment, which motivated the alteration of the acronym to Enccla - with one more "c". The full name was changed to National Strategy for Combating Corruption and Money Laundering. Thus, since its enactment in 2007, the Strategy started to be co-organized by the Office of the Comptroller General (CGU) and by the Ministry of Justice.

The insertion of the theme "combat against corruption" was made from an observation of the Brazilian Audit Court, which in its annual report, released at the end of 2005, suggested the organization of a National Strategy for Combating Corruption along the lines of the National Strategy for Combating Money Laundering.

ENCCLA currently works as follows:

(1) an annual Plenary Meeting, in which all agencies participate, aiming at discussing the job performed along the previous year and deliberating the actions to be executed in the subsequent year(s); (2) several meetings of Working Groups composed by participant or invited agencies, aiming at executing actions deliberated by the Plenary Meeting; and, (3) bimonthly meetings of the Cabinet of Integrated Management — GGI, which consists of a group of 25 agencies participating in the ENCCLA with the objective of supervising the execution of actions as well as proposing the actions and recommendations to be discussed in the Plenary Meetings.
Along these years, the jobs developed by ENCCLA brought several positive results in the combat against money laundering crimes and corruption practices.

Among the main results obtained by ENCCLA, are:

- Establishment of the National Program for Education and Training for the Combat against Corruption and Money Laundering (PNLD) - up to 2012, approximately 11 thousand agents were qualified in all regions of the Country;
- Implementation of the National Registry of Clients of Financial System (CCS), under the management of the Central Bank (BACEN);
- Standardization of the form of request/answer of the breach of banking secrecy and the respective traceability and development of the System of Investigation of Banking Transactions (SIMBA), which generated celerity and economy in investigations and penal prosecutions;
- Creation of the Technology Laboratory against Money Laundering and replication of this model in the federation unities with the formation of an integrated technology network, target at the fighting against corruption and money laundering, which led to optimization of the investigations and criminal actions, simplifying the analysis of high volume data;
- Drawing of the assets syndication draft bill in order to regulate the declaration of assets and values composing the private assets of the public agency. The draft culminated with the enactment of Decree 5.483/2005, and instituted such procedure — higher control of corruption;
- Regulation of access of the agencies that control the accounting documentation of the entities hired by the public administration, culminating in the enactment of the Inter-Ministerial Administrative Rule 127/08, resulting in the fostering higher transparency and control of corruption;
- Improvement of the registry of people's entry in and exit from the national territory, with resulting modernization and higher transboundary control;
- Creation of the National System of Forfeited Assets (SNBA), managed by the Council of National Justice (CNJ) and the fostering of early sale of assets, resulting in the institute improvement, subsequently modified by Law n° 12.683/12 and Law n°12.694/12, which generated higher effectiveness in the financial flow cuts of the criminal organizations;
- Computerization of access of the Judiciary Branch to the information of the Federal Revenue, with the creation of the Information Supply System to the Judiciary Branch (INFOJUD),leading to higher celerity of the information flow;
- Establishment of the Registry of Disreputable and Suspicious Entities (CEIS), which is maintained by the Office of the Comptroller General, increasing the publicity, transparency and social control.
- Establishment of the National Registry of Entities (CNEs) managed by the Ministry of Justice, also increasing the publicity, transparency and social control.
- Creation of Specialized Police in Financial Crimes, within the Department of Federal Police, which resulted in more effectiveness in the investigation and prosecution of financial crimes;
• Structuring of the National Group for Combating Criminal Organizations, within the Offices of the Attorneys General, with the subsequent specialization of the Brazilian authorities in combating organized criminality;
• Computerization of the declarations of size and values of the entry in and exit from the country, generating higher effectiveness in the control of the transboundary movement of values;
• Creation of the electronic roll of culprits of the Federal Justice and recommendation to the CNJ for creating a roll within the State Justice, resulting a higher transparency and control;
• Definition of the Politically Exposed People (PEPs) and regulation of the obligations of the financial system regarding such those people, leading Brazil to adequate to international standards of prevention against money laundering;
• Consolidation of the a central authority for purposes of international legal cooperation, fostering a higher effectiveness in justice through the possibility of seeking proofs abroad;
• Regulation of the acquisition and utilization of pre-paid bank cards or similar cards, for prevention of illicit acts and identification of suspicious financial transactions, leading to a higher control of a sector considered vulnerable;
• Creation of the WICCLA, which is a wiki encyclopedia of combat against money laundering and corruption, containing information on updating standards used by criminals in the practice of crimes, legislation regarding the aforementioned themes, information from the database available in the agencies, among others, fostering the dissemination of knowledge;
• Drawing of the various draft bills and proposals for amendments to ongoing draft bills, on the following themes: criminal organizations, money laundering Law 12.683/12, extinction of possession (civil forfeit of assets related to illicit acts), penal prescription, intermediation of interests (lobby), banking and fiscal secrecy, administrative improbity, accountability of legal entities, among others, improving the Brazilian legal system.

Currently the matter is inserted in Law 9.504/97 and amendments, particularly Laws n°s 11.300/2006, and 12.034/2009, which were inserted in the Brazilian law system aiming at refraining campaign expenses, limiting donations and conferring them more transparency, as well as imposing more strictness to irregular financial practices, among others.

Articles 17 to 27 of Law 9.504/97 refer to the collection and application of funds in election campaigns.

The candidates, political parties and financial committees must be accountable to the Electoral Justice, according to the competency level -national, state or municipal - up to the 30th subsequent day to the end of elections, as provided in arts. 28 to 32 of Law n°9.504/97.

Regarding the accountability of political parties, provisions regulating the matter are present in Law 9096/95, which provides on political parties and regulates arts. 17 and
14, § 3, subsection V of the Constitution of the Federative Republic of Brazil, mainly Articles 30 to 44, transcribed below:

11.2.

The Superior Electoral Court of Brazil (TSE) provides at its website the accountability of electoral accounts of elections occurring in the country. http://www.tse.jus.br/eleicoes/contas-eleitorais.

In the 2012 elections accountability, for instance, procedures and data related to the accountability of committees, candidates and political parties are listed.

On the page, there are also data such as:

- the registry for voluntary information on the campaign, which consists of an electronic form for the submission of voluntary information on donations or campaigns expenses;
- the national registries of candidates, legal entities (CNPJ) and campaigns' financial committees;
- the irregular accounts of the Audit Court, which consists of a list of responsible parties who had their accounts refused by the Court of Accounts;
- the rules of the electronic statement of the electoral bank accounts, aiming at disciplining the generation and sending of electronic files to the Federal Justice, containing the data on the financial transactions of the electoral accounts of candidates, financial committees and political parties, in compliance with the provisions in the TSE Resolution nº 23.736/2012;
- the System of Accountability of Electoral Accounts (SPCE), established in the TSE Resolution nº 23.376/2012, which is a program developed by the Electoral Justice to assist in the elaboration of accountability of electoral campaigns of candidates, financial committees and political parties.
- the System of Register of Financial Committee (SRCF), developed by the Electoral Justice to assist the financial committees in presenting the necessary information related to the application for the respective registry.

11.3.

Brazil has been seeking to improve its legal system with regard to the funding of campaigns. In this sense, it is relevant to mention two initiatives that called the country's attention this year, namely:

(1) Proceduring of the Senate Bill (PLS) 60/2012: The Commission of Constitution, Justice and Citizenship (CCJ) of the Senate approved, in a terminative decision in the first week of April this year, a substitute to PLS 60/2012, banning cash donations from companies, or through publicity, to candidates and political parties. The substitute alters provisions of the Election Law (Law nº9.504/1997). At first, the PLS 60/2012 was intended to prohibit only the offer of funds by companies having directors convicted in final jurisdiction of Justice with active corruption. By understanding that elections are processes with direct exclusive participation of the electors once legal entities do not have rights to
vote, the author of the substitute to the bill decided to ban any financial contribution from companies to parties and candidates. If there is no appellate review for voting by the Senate Plenary Sitting, the matter will be submitted to the House of Representatives.

(2) Trial of the Direct Unconstitutionality Action (ADIn) 4650 by the Plenary Sitting of the Federal Supreme Court: Proposed by the Federal Council of the Brazilian Bar Association (OAB), the ADIn 4650 questions rules regarding private donations for election campaigns and political parties. In the ADI, provisions regarding contributions from individuals and legal entities to campaigns provided in the Election Law (Law 9.504/1997)) and Law of Political Parties (Law 9.096/1995) are tackled. Started in December 2013, the trial was resumed in the first week of April this year.