

International Anti-Corruption Court Now!

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Brazil is impacted by the rapid way in which the House of Representatives approved, as well as by the content of some changes proposed by Bill No. 2,505/2021 (original No. 10,887/2018), which modified Law No. 8,429, of 06/02/1992 (Administrative Improbity Law), transformed into law No. 14,230, of October 25, 2021.

I have always defended the creation of an International Anti-Corruption Court to combat corruption, which is systemic in the country. This crime has become a global problem because many leaders and their supporters, in all branches (Executive, Legislative and Judiciary), have found it easy to perpetrate it, devastating human rights, public health, international peace and security.

Corruption is stunting economies and causing many to try to migrate to developed countries, mainly because hopelessness has triumphed, notably when some judges prove to be a key factor in maintaining the *status quo*. See the following example. A judge in Argentina has been accused of leading a corruption network that included lawyers and a former customs officer. And this is not an isolated case involving federal judges in corruption schemes.¹

According to the *United States-based Cyrus R. Vance Center for International Justice*, in Latin America, Brazil is in fourth place in the ranking on corruption, behind, in order, Chile, Argentina, Peru, followed by Colombia and Mexico. In other words, Argentina, mired in several scandals, would be better evaluated than Brazil.² The country fell 10 positions in the International Transparency Index. It was the country's first drop in the index after 5 years. Brazil ranked in 2023 104th among the 180 nations and territories evaluated.³

In China, major corruption would be involved in the privatization of land and state-owned companies. In theory, the land continues to belong to the state, but in practice, being able to use it for several decades produces equivalent effects as being the holder of the property. The practice of allocating land to real estate companies, mines to private entrepreneurs and state land to private investors generated in that country (and in post-Soviet Russia, although with differences) huge money transfers. These are often tortuous, illegal and designed to enrich certain businesspeople, and are decided by high-ranking officials of the Chinese Communist Party – CCP who, according to studies, have remained untouched by Xi Jinping's anti-corruption campaigns.⁴

Corruption is, in fact, a rapidly growing evil, with the poorest as its biggest victims. Such a crime would be like a pandemic: it is here to stay and requires every effort to reduce it to a minimum. It is, however, an unnecessary evil, with the World Bank estimating that 1 trillion dollars are unduly paid in bribes per year.⁵

¹ Insight Crime website. [Corruption Plagues Argentina's Justice System](#), published on May 18, 2021.

² Mexico News Daily website, [Mexico scores poorly on anti-corruption assessment](#), published on May 18, 2021.

³ International Transparency Index. [International Transparency website](#), published on January 30, 2024.

⁴ INTROVIGNE, Massimo. [Bitter Winter website. Corruption in China: Worse Under Xi Jinping](#), published on May 5, 2021.

⁵ MCCAWE, Henry. Fair Observer website. [Corruption, an Unnecessary Evil](#), published on May 5, 2021.

Kleptocracy does not flourish because of the absence of laws, but because kleptocrats control public administration in a broad sense, including the administration of justice, in the countries in which they exercise leadership, causing entire nations to be victimized. Therefore, it is urgent to create a mechanism that holds everyone accountable. On June 2, 2021, G7 Foreign Ministers declared that they “recognize that corruption is an urgent global challenge.”⁶

On June 3, 2021, the American President Joe Biden issued a Memorandum establishing the fight against corruption as a core U.S. national security interest. He stated: “Corruption erodes public trust; hinders effective governance; distorts fair markets; weakens development efforts; contributes to national fragility, extremism and migration and provides authoritarian leaders with a means to undermine democracy around the world.”⁷

In fact, the aforementioned president, then as vice president of the United States during the Barack Obama administration, led the fight against corruption and kleptocracy, and vowed, upon assuming the presidency, to make this his focus, his priority. Created a mandatory beneficial owner registration in the National Defense Authorization Act, inhibiting the anonymous registration of shell companies⁸, as well as including regulation of cryptocurrencies to reduce the secrecy of offshore operations. Thus, the⁹ Corporate Transparency Act adopted by the US Congress in 2021 came into force in January 1st, 2024.¹⁰

Cryptocurrency can facilitate corruption due to the fact that it is characterized by decentralization, allowing peer-to-peer transactions, independently and without supervision from third parties (called blockchain technology).

According to Australian professor Ronald F. Pol from La Trobe Law School, existing regulations on combating money laundering have had little impact on illegal actions, as 99.8% of these pass freely without detection from state controls,¹¹ which demands adoption effective measures in the fight against economic crime.

High corruption exists because culturally the victims have not been taken into account. They are often forgotten and seen as available since the important thing, in the distorted view, would be to deal only with the crime and the criminal.

⁶ Integrity Initiatives International website. Declaration in Support of the Creation of an International Anti-Corruption Court. [100-plus World Leaders Call for An International Anti-Corruption Court](#), published on June 10, 2021.

⁷ BIDEN, Joe. The White House website. [Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest](#), published on June 3, 2021.

⁸ Foreign Policy, [Biden Expected to Put the World’s Kleptocrats on Notice](#), published in December 2020.

⁹ Financial Times. [Biden administration targets crypto transfers in tax crackdown plan](#), published on May 20, 2021; Bloomberg, [Biden Targets Crypto Tax Evaders in Global Data-Sharing Pitch](#), published on June 3, 2021.

¹⁰ Starting from 1 January 2024, companies operating in the United States are required to provide information on their beneficial owners to the Financial Crimes Enforcement Network, a bureau of the U.S. Department of the Treasury. The obligation is provided for in the Corporate Transparency Act adopted by the US Congress in 2021. As a rule, existing companies will have until 1 January 2025 to provide required information, while newly created entities shall report their BOI within 30 days. Although the reporting requirements relate to all corporations, limited liability companies and any other companies created by making filings with a secretary of state or a similar office, the Act envisages 23 specific types of entities exempt from the obligation. Those include governmental authorities, banks and credit unions, insurance companies, brokers and dealers in securities, or tax-exempt entities. Additionally, the Act defines a beneficial owner of a company as any individual, who directly or indirectly, exercises substantial control over a reporting company or owns or controls at least 25% of the ownership interests.

¹¹ Ledger Insights Website. [Anti money laundering has less than 1% impact on crime. At what cost?](#), published on September 25, 2020.

Jim Richards, a former director of anti-money laundering at Wells Fargo and other major banks, said that “anything that can be fixed with money is not a problem”¹² for economic and financial crime.

The intentional institutional inability to accurately address the problem is common and reinforced by a large part of the criminal elite. The pressure placed on authorities to end or reduce legal loopholes has had the opposite effect in Brazil (and in others), hence why the problem must gain a global dimension, which deals with the clash between societies truly based on the theory of the rule of law and kleptocracies or countries that facilitate crimes and the criminal environment.

In fact, many initiatives, such as, for example, the amendment of the new Code of Criminal Procedure – CPP (Bill No. 8,045/2010), are based on romantic, unrealistic or preconceived ideas, but with the pretext of speeding up and fairness in criminal proceedings, propose changes with measures that contradict society's expectations of seeing a lean, fast and effective process. They do not, in fact, address the true procedural issues that should deserve attention (repetitive and unnecessary appeals, bureaucratic persecution system, exacerbated system of nullities, etc.), significantly limiting the possibility of investigation by the Public Prosecutor's Office; changing the forum by function prerogative to make it more bureaucratic and broad, and establishing a fictitious limit on the time of preventive detention (180 days before sentencing). Furthermore, they deal with criminal jurisdiction, not providing for any possibility of ratification of the acts initially investigated by another magistrate, which reinforces the decree of nullities, as well as precautionary measures would only be possible when “absolutely indispensable” (with a high subjective margin of interpretation), create the investigation institute parallel to police investigations by the defense (Defensive Investigation), disrupting the constitutional accusatory system.¹³

On the other hand, even though we are aware of the need to enforce or execute actions during potential or real violations, with measures including arrest and freezing of assets and that reduce legal gaps, initiatives to curb corruption and money laundering are primarily directed to financial institutions and little focus on companies and individuals involved in non-financial transactions. There is no talk of a crime of private corruption or the need to report suspicious transactions by lawyers.

People in Brazil seem to have taken to the streets in vain since 2013, tired of so much scourge. They began a cognitive liberation: the people collectively realized that they have power and a voice. Most Brazilians celebrated the arrest of politicians and businesspeople because they wanted the equitable application of the Rule of Law. However, despite being more vigilant, the responses continue to be filled with cynicism, egocentrism, cronyism and self-protection.

The investigation and prosecution of corruption have been slow due to a timid and inoperative judicial system, which remains untouchable (even with the future reform of the Code of Criminal Procedure), which often enshrines a mistaken criminal doctrine, which is based on an excessive guarantee, passing message of tolerance to a certain level of ethical violation. If the fight against corruption is to be effective, this will only be possible with an effective judicial system, which does not embrace extremes. The defenders of this guarantee, conceived in the Brazilian fashion (Brazilian Criminal Doctrine, as it is unique), move away from reasonableness and end up feeding back the bankrupt procedural system, promoting constant setbacks.

¹² STONE, Peter. [How America Became the Money Laundering Capital of the World](#), published on May 7, 2021.

¹³ [Planalto website](#).

The fight against corruption requires co-production work. It is part of human rights as it deals with all of them (education, food, environment, health, security, etc.) and needs, more than urgently, international action. The prevention and effective combat of economic crime in Brazil seem to only succeed, in fact, with the creation of an International Anti-Corruption Court, which already has the support of more than 275 world leaders – including former Heads of State and of Current and former government, government and intergovernmental officials and representatives of civil society, business and religious communities – from more than 40 countries.¹⁴

A corrupt state can lead its people into the hands of deceitful extremists.

¹⁴ Declaration in Support of the Creation of an International Anti-Corruption Court: We are concerned individuals, former officials, business leaders, representatives of civil society and of government, dedicated to promoting human rights, human health, and international peace and security. We call for the creation of an International Anti-Corruption Court because: We know that Grand Corruption – the abuse of public office for private gain by a nation’s leaders (“kleptocrats”) – thrives in many countries and has devastating consequences. Kleptocrats corruptly enrich themselves from the trillions of dollars being spent to promote global public health and counter climate change. Kleptocrats are robbing their countries of funds needed to meet the 2030 Sustainable Development Goals. Grand Corruption undermines democracy as kleptocrats use their power to suppress the media and civil society, and subvert honest elections. Refugees fleeing failed states led by kleptocrats constitute international crises. Uprisings in opposition to Grand Corruption destabilize many countries and endanger international peace and security. We know that Grand Corruption is not flourishing because of a lack of laws. The 190 parties to the United Nations Convention Against Corruption (“UNCAC”) each have laws criminalizing corrupt conduct. Yet kleptocrats enjoy impunity because they control the administration of justice in the countries that they rule. Because Grand Corruption has global consequences and often cannot be combated by the countries most immediately victimized by kleptocrats, a new international institution – an International Anti-Corruption Court – is necessary and justified. Through its agreed mandate, the IACC should have jurisdiction to prosecute violations of existing domestic anti-corruption laws, or a new international counterpart to them, by kleptocrats and their collaborators, if the country the kleptocrat rules is unwilling or unable to prosecute a case itself. The IACC should have the authority to prosecute crimes committed by nationals of Member States, and by nationals of other states who commit crimes in the territory of a Member State. The IACC should be a court of last resort with the capacity to prosecute and imprison kleptocrats, and thus create opportunities for the democratic process to replace them with honest leaders. The IACC should have, in civil as well as criminal cases, the authority to recover, repatriate, and repurpose illicit assets for the victims of Grand Corruption. As an International Anti-Corruption Court is urgently needed to promote democracy and human rights, protect human life and health, and enhance international peace and security, we hereby DECLARE our support for the creation of the Court and CALL ON others to join us in this crucial common cause. (Integrity Initiatives International website. Declaration in Support of the Creation of an International Anti-Corruption Court. 100-plus World Leaders Call for An International Anti-Corruption Court, in <http://www.integrityinitiatives.org/>, published on June 10, 2021).