Effective policies and legal strategies for fighting political corruption in the funding of political parties and election campaigns in Brazil: empowering the ordinary citizen, preventing conflicts of interest reaching congressional investigations

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Acronyms

<table>
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<tr>
<th>Acronym</th>
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<tr>
<td>ACHR</td>
<td>American Convention of Human Rights</td>
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<td>CSO</td>
<td>Civil Society Organization</td>
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<td>OAS</td>
<td>Organization of American States</td>
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<td>OECD</td>
<td>Organization for Economic Development and Development</td>
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<td>PT</td>
<td>Workers’ Party</td>
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<td>PTB</td>
<td>Brazilian Labor Party</td>
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Foreword

This paper aims in its introduction to explore the idea of ‘open politics’ as a useful tool to empower the ordinary citizen and combat political corruption in Brazil’s closed machine-like structure of political parties, mainly drawing on Paul Hilder’s mapping of re-energized ‘open parties.’ My main point here is that if citizens are encouraged to participate in the activities of political parties, political corruption can be dealt with participatory, smooth self-regulation mechanisms without resort to unpopular, hierarchical, one-size-fits-all solution of setting up congressional investigations with high-risk shortcomings to parliament’s day-to-day responsibilities. Thus, thoughtful approaches to parliamentary procedures, the perception and experience of political corruption by the society at large, legal and policy reforms aimed at reducing corruption and promoting citizens’ participation in political life will be interwoven throughout my analysis in this paper. Essentially, I question whether political parties are willing to reinvent themselves in a way that matches transformations of society, technology, and personal identity (mainly a fixation with charismatic leadership).

In chapter 2, I attempt to unravel Brazil’s access to information and political finance reform as promising policy and legal areas for enhancing transparency and accountability issues associated with the funding of political parties and election campaigns in the country. Moreover, a central aspect of this exploration is the interrogation of the role that law plays in regulating political corruption in everyday life, and, in turn, the impact of everyday practices on the law itself. Indeed, after the latest wave of corruption crisis in Brazil new legislation governing access to information was passed in an effort to spur more accountable and transparent forthcoming elections.

Further in chapter 3, I discuss the implications of practical measures for consultation and participation of society in fighting corruption. I suggest a common framework that allows ordinary citizens and civil society organizations (CSOs) to play an active role in policy-making alongside institutional frameworks (mainly the creation of effective
whistleblower protections). I intend to demonstrate that CSOs should find ways to turn people’s understanding into legitimate evidence, and of combining community wisdom with expert evidence.

Finally, my concluding remarks aim to sketch recommendations in connection with preventive measures for fighting political corruption (mainly scandals linked to the financing of political parties and election campaigns) by increasing transparency and accountability. To this end, I will draw the reader’s attention to the importance of providing access to government-held information and whistle-blower protection so that such preventive measures will counter conflicts of interest as well as unhelpful and time-consuming congressional investigations into corruption claims.

Introduction:
The Notion of Endemic Corruption Scandals around Brazilian Political Parties

Not only in Brazil but everywhere, public trust in political parties has withered. “By the mid-1960s political parties seemed to have exhausted their capacity to represent the aspirations of their constituencies, becoming hierarchical, bureaucratic and involved in a mediocratic chase for power.”¹ More than that, the financing of political parties and election campaigns has become a key issue in the debate about the functioning of democracy throughout the world. By the way, from early 2005 onwards Brazil has been involved in a serious political crisis which is associated with alleged illegal funding of the ruling Workers Party (PT) alongside a monthly government-led cash-for-votes practices for passing laws in the country’s parliament.

It is noteworthy that in a political system with a large number of small parties in Congress and no party loyalty for voting, it is not the first time a ruling party’s leadership has resorted to paying for the election campaigns of allies to ensure enough votes to pass legislation. Likewise the use of undeclared electoral funds has been normal practice across the political spectrum in Brazil. As an illustration of that, in late 2004 the parliamentary inquiry’s report called Banestado (a scandal-hit provincial bank) identified more than 90 politicians involved in tax evasion and money laundry seemingly related to illegal electoral funding.

¹ Chandhoke (2005) 5.
In any case, lately many different congressional commissions were set up to discover the facts about the most recent corruption claims. However, at the same time, public opinion has perceived that lawmakers were not making effective use of congressional hearings in order to tackle the problem. Indeed no convincing explanations were given to the ordinary citizen so far. Moreover, some political analysts even pointed out that long delays in the proceedings of congressional hearings were politically motivated (“blind eye turned”) and strategically placed to have an impact on forthcoming presidential elections.

As a result of these events, the general feeling among Brazilian people is that “the whole political system is geared to ‘stealing’ public money, and to guarantee immunity”. By the way, this paper draws on, and seeks to connect and explore further, the linkages between an effective legal framework, both regulatory and institutional, for curbing political corruption² (mainly scandals linked to the financing of political parties) and the engagement of civil society in getting institutions right based on values of integrity, equity, transparency and accountability.

For further visual information on the perception and experience of corruption—especially paying closer attention to the priorities for eliminating corruption linked to political parties worldwide—, see the following graph 1 which shows some findings led by the Global Corruption Barometer 2003.³

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² The necessarily reductive term “political corruption” is borrowed from Transparency International's scholarship and means the abuse of entrusted power by political leaders for private gain, with the objective of increasing power or wealth; it also may take the form of “trading in influence” or granting favors that poison politics and threaten democracy. For a nice overview, see Hodess (2004).

³ This global public opinion survey was carried out in 47 countries across all continents and involved interviews in July 2002 with 40,838 people. The 47 countries were: Argentina, Austria, Bolivia, Bosnia and Herzegovina, Brazil, Britain, Bulgaria, Cameroon, Canada, China, Colombia, Costa Rica, Croatia, Denmark, Dominican Republic, Finland, Georgia, Germany, Guatemala, Hong Kong, India, Indonesia, Ireland, Israel, Italy, Japan, Luxembourg, Macedonia, Malaysia, Mexico, Netherlands, Nigeria, Norway, Pakistan, Panama, Peru, Poland, Portugal, Romania, Russia, South Africa, South Korea, Spain, Sweden, Switzerland, Turkey and the United States.
Graph 1
Priorities for Eliminating Corruption*

* Respondents were asked: ‘If you had a magic wand and you could eliminate corruption from one of the following institutions, what would your first choice be?’

As for the effective implementation of important policy measures regarding accountability and transparency in “doing politics”, if Brazil’s politicians seek to clean their tarnished image, they will have to undertake new routes towards what we should call “open politics”. In other words, Brazilian political parties must invite citizens into new and open processes of deliberation and participation that serve to include rather than exclude the ordinary voter from the rather specialized processes of decision-making. Similarly and according with Chandhoke’s view, “it is for these reasons that the attempt of the Greek politician George Papandreou to transform the nature of his Pasok party comes as a much-needed, welcome intervention into the entire debate on the crisis of representative democracy.”

“What we would like to do as a party,” suggests Papandreou “is to develop a culture of debate, dialogue, and critical understanding of issues, where people can set priorities and are not simply told by the experts or their leaders what is right and wrong for them.”

Apart from acknowledging the foundational element of free elections for a functional democracy, this paper is an attempt to analyze the role of civil society organizations in a claim for some form of social

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4 Chandhoke (2005) 5.
change in the exercise of their monitoring function vis-à-vis corruption scandals in party finance and election campaigns. In this regard, desirable measures to strengthen political accountability would include access to information laws, elements of direct democracy (such as referenda on major public projects), or other regular, legally recognized opportunities for participation by citizens or intermediary groups.

But, why not firstly address the root causes of the failure of current political parties? Indeed by not doing so, parties are running the risk of being made scapegoats for what went wrong. “In the wake of social and economic transformations wrought by globalization,” Chandhoke suggests that “traditional class and social cleavages have given way to new identities which can veer between the local and the global at the same time.”6 Taking up Chandhoke’s point, it can be said that if parties do not tap these new problems, needs and their accompanying fears, not surprisingly they will be in a state of collapse and presumably involved in opportunism and corruption claims. Following the heart of this debate, Paul Hilder comes up with four insights over the issue of reforming political mobilization within parties:

- Open up process of decision-making within parties, thereby transforming closed and highly bureaucratized machines into democratic institutions.
- Ensure parties are constantly in touch with the rather illusive public “voice” through referendums on crucial issues, or by providing arenas for public participation–such as the celebrated “participative budgeting” pioneered in Brazilian city of Porto Alegre.
- Link parties so that they listen to the many forums of opinion-making and opinion-breaking that exist today, from localized town-hall meetings to websites.
- Moving parties away from the domination of charismatic leaders and towards procedures that respect public arguments.7

Drawing on Hilder’s ideas, although a vision of the political party for an age of “open politics” may face an autocratic counter trend, scandals over endemic corruption pose unprecedented challenges beyond both party membership and the election process. Therefore, possibly open parties will draw on the forces and relationships which are charted below.

Indeed political corruption (mainly illegal funding and “trading in influence” in Congress) can be controlled adequately not only through joint efforts aimed at raising the level of transparency of government action, but also and primarily granting voters free access to information about financing of political parties before candidates are to stand in the election. Unfortunately, Brazilian political system neither provides for effective corruption control nor satisfactory pre-emptive measure against non-accountable candidacy with regard to candidates’ approved financial statements (i.e. any sort of financial check prior to the election day). As a matter of fact, individual candidates are only supposed to disclose their accounts (sources of electoral funding) after elections come to an end (that is, \textit{a posteriori}).

On the whole, there is no mid-term “checkpoint” for any auditing authority in Brazil. In this regard, the drawback of relying on such a liberal system has contributed to the perpetuation of loosen links between political parties and their candidates, who are increasingly dependent on private donors. In my own view, there will always be room for improvement in Brazil’s legal system that allows society
to have access to information, inasmuch as legal policies do not accommodate parties and their respective candidates on an equal footing with regard to accountability standards. For instance, yet the rules do not require that the accounts of political parties and their expense linked to election campaigns must be electronically collected and submitted to auditing authorities (public oversight bodies) as it is the case for individual candidates. Ironically, the electoral justice system does not allow individuals (independent candidates) to stand for elections without having proof of full membership in a formally registered party.

A Legal Framework with a View to Access to Information and Transparency Mechanisms: Demand for Disclosure

Even though laws governing electoral matters (mainly the Electoral Code 4737/65, Electoral Law 9504/97, Political Parties System Act 9096/95 and Law 9840/99 against Electoral Corruption) stress accountability and transparency in connection with electoral funding, there is a huge gap between a de jure framework and the reality. As Michael W. Collier puts it “Although the OAS and OECD conventions are important milestones in the fight against corruption, the gulf between these commitments and meaningful changes at home is wide. No country in the Western hemisphere has fully complied with the OAS convention’s main requirements, and progress has been slow.”

As I have said earlier in chapter 1, the effective exercise of the right of access to information helps combat corruption, which is one of the factors that can seriously damage the stability of democratic governments in the countries of our hemisphere. Greater normative clarity and detail have yet to be put in place so that a more critical approach to the integration of human rights values into democratic experience can be enhanced.

As an illustration of painstakingly efforts which have been made to improve transparency and accountability, Brazilian Supreme Electoral Court (TSE) succeeded in tapping the gap between access to information laws and political corruption, closing loopholes in the foregoing legislation. The TSE successfully introduced a new requirement for candidates to submit their accounts before its auditing bodies, i.e. from the 2002 elections onwards, candidates are now required to electronically file their financial records up to 30 days

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8 Collier (2001).
after the election day. Following that, it can be said that finally the TSE is more efficiently keeping track of the money candidates spend on their election campaigns and therefore is able to share this information with the society at large. Before this legal policy was adopted, corrupt practices were more commonplace since the corrupt had many ways to hide from courageous whistle-blowers, pressure groups and journalists. Unfortunately, political parties are not similarly required to electronically file their own accounts thus far. Under the circumstances, political parties’ statements are still presented on paper, making it virtually impossible to aggregate the data and cross-reference information on parties and their donors. As a result and up till now, the TSE cannot process and properly disclose an in-depth picture of electoral funds nationwide.

Indeed, the possibility of introducing e-government strategies as regards the expense of election campaigns as well as checks on tax evasion and money laundering can shed some light on the problem of political corruption in Brazil. By doing so, electronically designed enforcement and supervision of regulatory measures will certainly bring about effectiveness at the expense of politically motivated congressional investigations.

As for the Brazilian rules on financing political parties and on election campaigns, indeed it can be said that the country’s political system combines public and private funding. It should also be acknowledged that membership fees, traditional and non-controversial sources of finance, are not sufficient to face the ever-increasing expenditure of political competition. However, public funding barely accounts for 10% of total costs which parties will have to cover when trying to gain visibility and obtain political support for their ideas throughout election campaigns. Therefore, candidates are for the most part dependent on private funds. Consequently private donors are very prone to ask politicians for personal or policy favors after the candidate is in power.

Following this, not surprisingly one may decipher that there is no diversity of income linked to financing of election campaigns in Brazil. A TI Brazil survey found that the majority of candidates running for law-makers in 2002 nationwide elections were fully dependent on just one single donor. In fact, that same year only one out of ten

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9 The data was collected in 2002 general elections by Transparency International Brazil. For more information on the survey see www.transparencia.org.br/.
candidates was able to diversify his/her sources of finance in order not to concentrate more than 20 per cent of electoral funding on a single donor. What’s more, as for private financing regulations there is no legal ban on donations made by firms which provide goods or services to the public administration sector. Only state enterprises and enterprises under state control, offshore funds and trade unions are prohibited from financing political parties and election campaigns.

Unfortunately, Brazil’s legal framework does not tightly deals with a legal limit on the maximum sum of donations. Following an analogy of laws governing private donations in Latin American countries, Bruno Speck draws our attention to possible entry points for political corruption in Brazilian political life due to the lack of tight control. As a matter of fact, individual donations cannot amount to more than 10 per cent of a political party’s annual budget in Bolivia. For example, in Ecuador corporate support cannot be higher than 10 per cent of the total spending linked to election campaigns. In Argentina the law sets the spending limit of 0.5 per cent for individual donations and of 1 per cent for corporate support in relation to individual candidates’ total expense. Nevertheless, limits are exclusively set on the basis of donors’ solvency in Brazil: accordingly individual donors cannot provide more than 10 per cent of their source of income and corporate funds are welcome up to the limit of 2 per cent of a company’s profits.

Another big loophole in Electoral Law 9504/97 involves entry points for political corruption in connection with the article 27 which endorses citizens’ financial support to political parties without having to declare funds under 1000 UFIR (approximately US$461). Although this rule allows of only individuals to engage with “anonymous”, small donations (clean money) under the foregoing limit, political analysts affirm that it has been used to channel a tidy sum linked to money laundering and illegitimate funds. Indeed anti-money laundering techniques have not been proved very successful in Brazil. Although there is only weak circumstantial evidence of the relationship between criminal gangs and politicians, large-scale drugs and arms trafficking are seriously thought to be exert considerable pressure on politicians’ source of finance. The announced measures against money laundering are a somewhat belated effort to confront the growing power of organized crime in many of Brazil’s big cities. Therefore, monitoring of the use of undeclared electoral funds has yet to pay closer attention to the

10 For more detailed case study on the funding of political parties and election campaigns in Brazil see Speck (2003).
interconnection between the culture of political corruption and the murky legal framework across the political spectrum in Brazil.

Furthermore, a core tenet of the Brazilian permissive auditing system, to which I referred earlier in chapter 1, is the minimal political finance reporting requirement touching upon citizens’ donations to parties which are made in cash. Legally speaking, there is no duty to disclose the exact figure but rather an estimate for a “value added component” to parties’ cash flow. Unfortunately, estimates of campaign costs are more frequently used than accurate numbers. In this case, much of what is discussed is highly speculative, anecdotal or otherwise lacking in empiricism.

No one should deny that political corruption is a hurdle to be overcome before transparency can be achieved in public life. Following that, an easy access to valuable information, which is of public interest, plays a vital role in empowering the ordinary citizen as well as in fighting the impacts of political corruption. In this sense, the disclosure of money flows in politics and the free exercise of freedom of expression through alternative media channels (mainly investigative journalism) are necessary tools for a deeper exposure of corruption. As a result, a mix of deterrence and compliance could prevent the corrupt from being involved in criminal activity. In any case, more than just the passage of a law governing disclosure in political life, society at large must be also provided with other outlets, including the people’s court of last resort—that is, the press.11

Brazilian laws formally ensure constitutional guarantees into free access to state-held information at local and national level, as well as the action of habeas data. Article 5 of the Constitution of the Federative Republic of Brazil provides: “All persons are assured of access to information and protection for the confidentiality of their sources when necessary for the exercise of their profession.”12 There is also a provision for the concession of habeas data “to permit knowledge of personal information maintained in the records or databases of government or public agencies or to rectify data when the person concerned does not prefer to do so through informal, judicial,

11 Experts on corruption prevention tend to agree that this type of behaviour has always existed. But the recently widest possible circulation of news, ideas and opinions as well as the widest access to information by society at large has created a sense that corruption is on the increase. See Heywood (1997).

12 Constitution of the Federative Republic of Brazil, article 5, section XIV.
or administrative channels.”  Nevertheless, enforcement remains a problem. Getting the right information out of institutions is often an elusive quest.

However, the good news about people’s empowerment and “participatory monitoring” in Brazil is that a fresh joint TSE-Inland Revenue ruling has been in place since early January 2006 and it provides for cross-reference information on candidates, political parties and their donors. By the way, the newly introduced mechanism is able to provide the ordinary citizen with a number of valuable tools to engage in participative monitoring. Therefore, this type of legislation may bring about changes in policies and practices where the guiding principle will be based on the values of integrity, transparency and accountability. In fact, my concluding remarks in chapter 4 will be focused on the topical and operational relevance of the adoption of the foregoing legislation to the Brazil’s political finance system and its ramifications.

Political Corruption and Decentralization: less Charismatic Leaders, more Power for Deep and Participatory Democracy

Even though hidden or secret methods of funding the electoral process breed skepticism and cynicism about democratic politics in Brazil’s political system, I firmly believe that CSOs still normally perform the greatest ability to call power-holders to account, thus inching parties towards greater openness and humility. The level of tolerance towards off-budget activities is diminishing. As an illustration of it, not surprisingly alleged off-budget activities were behind the most recent corruption crisis in Brazil, which involved an alleged cash-for-votes scheme alongside illegitimate funding of political parties and election campaigns. CSOs were even involved in talks about the odds on the current president responding to a possible impeachment. It is often only civil society initiatives that make laws regulating political finance work, mainly by monitoring enforcement, analyzing party accounts and making information accessible to the general public. Indeed political corruption is an issue of concern for Brazilians and it would not be fair to say that the government’s record does not come under public scrutiny touching upon corruption claims.

13 Ibid. section LXXII.
14 See appendix B infra.
On that account, individual citizens and CSOs are making effective use of their strength to influence policy processes around the fight against corruption. Drawing on Lasswell, we might say that the most common approach to the study of public policy disaggregates the process into a number of functional components. These can be mapped onto an idealized model of the policy cycle (see Graph 3).

**Graph 3**  
**Policy cycle**

1. Problem Definition/Agenda Setting  
2. Constructing the Policy Alternatives/Policy Formulation  
3. Choice of Solution/Selection of Preferred Policy Option  
4. Policy Design  
5. Policy Implementation and Monitoring  
6. Evaluation


For the purpose of this paper, I will concentrate on the analysis of monitoring and evaluation (maybe reformulation as well) in connection with the policy processes and CSOs acting as catalysts for change. Although CSOs will impact upon the various stages of the above policy cycle, essentially my argument is that the general public must become the driving force behind effective whistle blowing in order to help expose corruption in political life.

In fact, in my opinion the U.N. Convention against Corruption (UNCAC) is driven by the point I am trying to make as regards society at large serving as a potential whistle-blower in the prevention of and the fight against corruption—a closer look at the following articles would support my interpretation:

Article 13. Participation of Society:

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to
promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

a. Enhancing the transparency of and promoting the contribution of the public decision-making processes;

b. Ensuring that the public has effective access to information;

c. Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

d. Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption;

e. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

   i) For respect of the rights or reputations of others;

   ii) For the protection of national security or public order or of public health or morals.

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

Article 32. Protection of witnesses, experts and victims:

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

Article 33. Protection of reporting persons:

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on
reasonable grounds to the competent authorities any facts concerning
offences established in accordance with this Convention.\(^\text{15}\)

Thus, I am of the opinion that Brazil’s current corruption scandals were boosted by the lack of whistle-blower protection and the permissive recourse to politicians’ immunity along with endless, ineffective parliamentary commissions (CPI) investigating the corruption allegations. In any case, the corruption scandal was broken by Roberto Jefferson, the former leader of the government-allied Partido Trabalhista Brasileiro or the Brazilian Labor Party (PTB) and controversial whistle-blower, who denounced the money used by the PT, to bribe allied congressmen to support the government, came from overpriced contracts between state-owned companies and private businesses.

Under the circumstances the PTB whistle-blower was found to be reporting in bad faith and without showing compelling evidence of his allegations and their ramifications. Therefore, he was impeached by the congress and after that, paradoxically José Dirceu, president Lula’s chief of staff, was in the firing line over Mr. Jefferson’s accusations of mastering the whole PT bribery scheme among other corruption cases. Finally, Mr. Dirceu was also impeached in late November 2005 for breaking “parliamentary decorum.” Indeed, the whistle-blower’s expulsion from congress and the following impeachment of the one accused of wrongdoing by the first does not match with a fair policy or legal system around the prevention of and the fight against corruption.

Instead of looking for scapegoats for what went wrong, Brazil’s political system should be trying to prevent it happening again. Inasmuch as Brazil’s domestic law lags behind meeting treaty obligations as regards the UNCAC, there will still be room for improvement with regard to establishing appropriate enforcement mechanisms. At a UN panel discussion on the UNCAC in December last year, Washington’s Ambassador John Bolton asserted that, “Governments, institutions and individuals need to do more than just voice a political statement. Resolutions here in New York are only helpful if they are followed by concrete initiatives.”

\(^{15}\) See United Nations Convention against Corruption (emphasis added). In fact, Brazil has been a State Party to this U.N. treaty since 9 December of 2003 and subsequently ratified it on June 12, 2005.
The murder of Celso Daniel, mayor of Santo André from the PT, is illustrative of how effective protection from potential retaliation or intimidation for witnesses and whistle-blowers who give testimony concerning corrupt plots is very important under the UN Convention against Corruption. “Daniel was murdered in 2000 after he found out that PT members were extorting kickbacks from private businesses that supplied the town’s councils. The family says that Daniel told the PT directorate, including Lula’s private secretary Gilberto Carvalho, about what was happening in Santo André, only to be told that the money was to pay for the party’s debts. His brothers claim that Daniel threatened to denounce the practice but was murdered before he could talk to the police or the press.”\textsuperscript{16} Drawing from these examples, I embrace TI’s assessment of the adoption of anti-corruption conventions when Gillian Dell affirms that “Important as they are, the adoption of anti-corruption conventions is only a first step and only significant if there is follow-up.”

Again referring to the UNCAC and the participation of society in the prevention of and the fight against corruption, street protests framed the contemporary political discourse throughout the nineties and citizens paraded down the avenues to protest against the then Brazil’s charismatic president Fernando Collor de Melo. After the former president was directly linked to a number of corruption cases by his brother who blew the whistle on that in a \textit{Veja} magazine interview, Collor lost the public’s trust and credible moral leadership. Brazilian people were starting to believe Collor’s government was bloated, corrupt and unresponsive. Following this, mainly CSOs—including social movements such as professional societies, trade unions, and the student movement (at that time organized under the umbrella motif \textit{caras pintadas} or painted faces)—as well as the ordinary citizen pushed hard to hold the head of government accountable for alleged criminal activities involving political corruption.

Although formally speaking Brazilian voters do not have direct access to any legal recourse to remove elected politicians from office up till now,\textsuperscript{17} Collor was impeached in 1992 by the congress and brought to the justice system on a charge of embezzlement responding first and foremost to the public pressure and their successful impact upon the various stages of the foregoing policy cycle (see \textit{supra} graph 3). Therefore, implementing legislation and changes in policies and practices calls for action by governments, individuals, CSOs, the private

\textsuperscript{16} \textit{Latin American Brazil \\& Southern Cone Report} 2005, issue 12.

\textsuperscript{17} For more detailed comparative case study on higher levels of citizens’ empowerment, ownership, and free, meaningful, and active participation throughout democracies in South America, see Nohlen (2005).
sector, international institutions and others to maintain the political will and momentum reflected in anti-corruption conventions. In fact, it does not only refer to the UNCAC but also and especially to the Inter-American Convention against Corruption in our hemisphere.18

Not surprisingly and a decade later, again the impact of the media and the public opinion proved to be an essential part of a pluralistic democracy in fighting political corruption: “Roseana Sarney, daughter of former Brazilian president José Sarney, was a presidential hopeful for the 2002 election. Yet her reputation suffered irreparable damage when her own TV channel showed federal police uncovering 1.3 million reais (US$400,000) in cash in a raid on one of her firms. Her husband and business partner ultimately admitted that the money had been earmarked to finance her campaign, in clear violation of funding regulations. The ensuing scandal forced Sarney to drop out of the presidential race in April 2002.”19

The increase in people’s participative monitoring and expectations gives rise to a new challenge: reinforcing policy and legal mechanisms to tackle the abuse of office—including reducing conflicts of interests (especially within congressional committees where investigations into corruption claims can be politically diverted to no man’s land), limiting recourse to immunity, repatriating stolen wealth, etc. In general terms, voters are unlikely to re-elect politicians found to be corrupt.

**Conclusion: Preventing the Culture of Political Corruption**

In light of recent efforts made by the TSE along with the Inland Revenue towards last-minute action to prevent political corruption ahead of this year’s election campaign in Brazil, it can be acknowledged that at least some movers and shakers are willing to bridge the gap in permissive campaign financing laws in Brazil. The joint TSE-Inland Revenue regulations were passed in early January 2006 and are aimed at recognizing the importance of an access to information regime, and of accountability as well as transparency in the funding of candidates and political parties throughout election campaigns. Although last year the congress failed to reach agreement and vote necessary reforms to the electoral system, the foregoing ruling is much-ballyhooed and hence

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18 For the linkage between whistle-blower rules and the fight against corruption in our hemisphere, see the Inter-American Convention against Corruption, Article 3.1 (Preventive Measures).

there will not be considerable opposition to its approval and consequent enactment by law-makers.

Indeed, the topical and operational relevance of this initiative mainly targeting political party and campaign finance systems is based on strengthening and stabilizing democracy according to what stands out in article 5 of the Inter-American Democratic Charter: “The strengthening of political parties and other political organizations is a priority for democracy. Special attention will be paid to the problems associated with the high cost of election campaigns and the establishment of a balanced and transparent system for their financing.”20 As a matter of fact, the new legislation will require both candidates and political parties to electronically file their financial information (accounts) and present it before electoral authorities and the Revenue every fifteen days—before the introduction of this regulation, candidates and political parties were required to report only once and for the most part after the election day. Another positive change is that from now on donations made to candidates and political parties will have to be attested on donors’ income tax form. Moreover, private donations to funding of political parties and candidates will not be allowed in cash anymore—only by check or wire transfer.

Drawing from what I have said about the bribery scheme in Brazilian politics and the large amount of money involved in off-budget transactions, I suggest that watchdogs and pressure groups in general cannot forget about the supply side of political corruption and the lack of strict limitations on legal donations from the private sector. It demonstrates how both public and private sectors are part of a culture of political corruption in the country. Another evidence of an existing culture of political corruption in Brazil is the fact that accusations against the PT and its allies in congress have revealed a web of corrupt ploys, not only used by the PT but widely practiced across the political spectrum. Not surprisingly, a 2003 World Economic Forum survey found that in 89 per cent of the 102 countries surveyed (Brazil included) the direct influence of legal political donations on specific policy outcomes is moderate or high.

If we talk about the PT’s corruption scandal, one immediate question pops up: where did all the dirty money come from? According to the Latin American Brazil & Southern Cone Report, “[o]ne of the possibilities being investigated is that the money used by the PT,
to bribe allied congressmen to support the government, came from overpriced contracts between state-owned companies and private businesses. This is a widely practiced strategy employed by parties in government, which fill managerial posts in public-owned companies with political appointees. This customary practice is considered one of the main causes of corruption in Brazil."\(^{21}\)

Having said that, I assume that if there is political will to curb such an entrenched culture of political corruption, fair and effective access to public information as an exercise of the freedom of expression of the ordinary citizen must be put in place without delay. By doing so, there can be no doubt of the importance of forging closer ties between those fighting against corruption and those fighting for human rights (especially as regards laws governing access to state-held information).

In fact, a set of tools (functions or tactics in the policy process) can be pragmatically applied to tackle both political corruption and human rights violations. But how do we get there? The above-mentioned newly introduced legislation in Brazil is illustrative of how new technologies can be used to electronically collect and process fiscal information on candidates and political parties’ financial statements throughout the election campaign. The release of such official information might reveal how political corruption in connection with political finance and favors affects the whole of society and especially contributes to socioeconomic injustice. In general terms, the implementation of this type of participative monitoring will not only prevent corruption and the loss of citizens’ interest in the political life of their respective countries but also boost the ordinary citizen’s training and advocacy skills for follow-up activities involving anti-corruption laws. To put it differently, this practice would represent a sort of on-the-job training in human rights education for the public at large.

The Inter-American Court of Human Rights acknowledged that the “concept of public order in a democratic society requires the guarantee of the widest possible circulation of news, ideas and opinions as well as the widest access to information by society as a whole.”\(^{22}\) Thus, it is reasonable to infer that without public access to state-held information,

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21 See * supra* note 16.

the political benefits that flow from a climate of free expression cannot be fully realized.

As Mary Robson puts it:

From a human rights perspective, anticorruption activities and information can help identify and eliminate barriers to the enjoyment of human rights. That, in turn, would enable human rights bodies to recommend better preventive action. From the anti-corruption perspective, analyzing corruption in the light of its impact on human rights could well strengthen public understanding of the evils of corruption and lead to a stronger sense of public rejection. In addition, the use of the human rights legal machinery to raise cases of corruption as human rights violations in public fora might well bring positive results.23

As for another pragmatic justification for access to information laws, it is worth noting that some international financial institutions explain that given the role of access to information in improving the flow of information, more and more open regimes can benefit the world economy; “because better information flows can improve resource allocation, they may be able to mitigate global financial volatility and crises.”24 Moreover, it would also be very important to consider cross-reference information relating useful indicators for monitoring access to public information and the implementation of the Inter-American Convention against Corruption.

Governments have a tendency to treat access to information and transparency mechanisms as privileges, not positive rights. In other words, it is acknowledged on paper but perceived as a type of claw back clause (an exercise in futility). Indeed, it is noteworthy that this perception is and continues to be under the influence of an outdated and strict division between “negative” and “positive” rights, which could contribute to the idea that access to information is not protected under Article 13.1 of the American Convention of Human Rights.

Certainly, in article 13.1 of the ACHR, the right to freedom of expression and information: “includes the freedom to seek, receive, and impart information and ideas of all kinds regardless of frontiers,

either orally, in writing, in print, in the form of art, or through any other medium of one’s choice."

According to the Report of the Special Rapporteur for Freedom of Expression, Eduardo A. Bertoni, as requested by the OAS Permanent Council pursuant to Resolution AG/RES. 1932 (XXXIII-O-03), from the plain language of the above-mentioned article, it is clear that no interpretation would put on the refusal of the exercise of the right to seek information. “[B]ut some might argue that this does not include a positive obligation on the part of the state to provide that which is freely sought. However, given an accurate understanding of what kinds of rights are protected by the American Convention, and using the traditional means of treaty interpretation under international law, it becomes clear that access to information is indeed a human right that is protected by the American Convention.” In this sense, article 31 of the Vienna Convention on the Law of Treaties says that the ordinary meaning of the terms must be taken into account in their context, including the preamble, annexes and any agreements or instruments made “in connection with the conclusion of the treaty.” To this end, the possible interpretation of the word “seek” must be the least restrictive in accordance with the preamble and article 29 of the ACHR, which emphasize choosing the least restrictive interpretation possible and the remarkable importance of representative democracy.

In any event, as I have said before effective mechanisms granting access to information in Brazil and everywhere require more than the passage of a law. There must be a robust implementation of the act, which ensures that people and civil society are empowered to take advantage of the law. This is where community-based organizations, unions and nongovernmental organizations are needed.

The weaknesses are not only in the law itself. Obstacles such as high illiteracy rates continue to bedevil attempts at enforcement. The process of requesting information tends to be excessively formal, which poses a challenge to citizens and government officials alike.

It is not enough that public servants and holders of information are trained in implementing the act aimed at disclosing information—the
general public must be made aware of their right to know and its considerable interdependence on other fundamental rights.28

Drawing on the observations of a BBC correspondent in Brazil, rights activists and legal professionals should realize that the use of the human rights legal apparatus to raise cases of corruption is not enough without additional political action at the cultural level. For instance,

[C]ulture of political corruption associated with disrespect for the law has, in the past, come from the very top of Brazilian society.

It was memorably summed up in a phrase attributed to President Getúlio Vargas—who ran Brazil with the backing of the military from 1930 to 1945, then as a democratically-elected leader from 1951 until his suicide in 1954.

“For my friends, anything—for my enemies, the law,” he is reported to have said, highlighting the way in which Brazilians are seen as prizing personal loyalties over other social responsibilities.29

Accordingly, in assessing effective human rights strategies towards access to information laws and political corruption it should be acknowledged the importance of three necessary and interactive processes and moments related to promoting and advancing these “evolving rights” (see graph 4 below, “The Dynamics of Human Rights Advocacy”).

28 See, e.g., Shabalala v. Attorney-General of the Transvaal (South Africa); Guerra and Others v. Italy (European Court of Human Rights); Jane Doe v. Board of Commissioners of Police for the Municipality of Toronto (Canada); Jagwanth (2002).

Thus, although I assume the interaction of all three circles above, I am of the opinion that Brazilians must concentrate their focus on both the circle on the upper right and the one at the bottom. In fact, I firmly believe that there are plenty anti-corruption regulations but no appropriate follow-up system for their enforcement neither consistent, public interest watchdog projects.

Drawing from his experience at the Carter Center, the former president of the United States, Jimmy Carter, reveals how democratic governance becomes vulnerable to a lack of access to information regime and responsive strategies with regard to political parties and election campaign finance systems:

In our experience there are two policy reforms that hold the most promise for reducing corruption and promoting citizens’ confidence in government: development of an access to information regime and reform of political party and campaign finance systems. (…) Transparency in campaign and party finance is needed to bolster public faith in democratic institutions, especially political parties and legislatures. Citizens are increasingly angry and alienated when elected representatives respond to the selfish interests of campaign donors, instead of to the general public. This trend is evident in Latin
America and the Caribbean, where poverty and inequality persist despite democracy, but public skepticism about the disproportionate influence of wealthy and corporate donors has driven campaign finance reform efforts in the United States and Canada as well.\textsuperscript{30}

In short, the impact of civil society in holding the government accountable is boosting the fight against political corruption in Brazil, mainly through media coverage and whistle-blowing. To this end, laws governing access to public-held information are flourishing alongside the corruption crisis in the country. For instance, the bill 219 of February 26, 2003 on Access to Public Information is in line with the United States Freedom of Information Act and will regulate article 5.XXIII of the Constitution. It is being examined by the National Congress and after its adoption every citizen will have the “clear” right to receive information of personal, collective, or general interest from public organs, to be rendered in the time set out by law, subject to penalties.

Finally, it seems that the ordinary citizen cannot stand corruption and its “customary state of affairs” anymore (included ineffective parliamentary commissions into corruption claims). Indeed, candidates, political parties and politicians in general are often under heavy criticism. Recently, after the exposure of congressmen’s over-time payments without going to work, CSOs succeeded at being heard in the policy debate and getting an approving vote from Congress to abolish the foregoing payments for recalls during recess. The strength of the Brazilian people’s negative reaction to this kind of bad behavior and political corruption-related affairs is proof positive that public interest watchdog initiatives (e.g. whistle-blowing) and other people-centered approaches are more conducive to “social accountability”. Ultimately, political parties and their financing system must allow the society at large to form a clear view of the institutions’ work and to decide whether it is adequately fulfilling its mandate. If it is not the case, certainly the world will not be free of political corruption.

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Appendix A
The use of images in fighting political corruption

Figure 1

Appendix B
Bridging the gap in permissive campaign financing laws in Brazil

Latest joint TSE-Inland Revenue ruling on transparency and accountability issues associated with the funding of political parties and election campaigns in Brazil