

## Investigations of Large-Scale Corruption Cases in the Americas: Successes and Setbacks

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Clearing up large-scale corruption cases is not a simple matter. On the contrary, it is a process that involves progress and setbacks.

Whether an investigation succeeds or fails depends on any number of circumstances and factors.

Identifying these elements requires answering the following question: Why are investigations into large-scale corrupt acts successful in some countries but not in others?

Complex investigations demand investment in several areas.

One key area is ensuring professional training for those responsible for investigations, who should be able to come up with precise answers to Quintilian's seven questions: What?, Who?, How?, Where?, Why?, When? and With the help of whom, if anyone? In addition, they must be able to conduct an interrogation, interpret the evidence in all possible dimensions, and establish connections among facts, persons, and dates. Finally, they must be able to establish the possible hypotheses as well as understand the different perspectives of the crime.

The second key area is making intense use of information technology. Having both the hardware and software for investigating criminal acts is essential for the success of the investigations.

In the course of what has become known as Operation "Car Wash" ("*Lava Jato*"), the volume of information collected in different data bases and formats (bank information, information on phone calls, telematics, wiretaps, documentary evidence, tax-related evidence, intelligence reports) required the consolidation of these data and other data found in both public and private data bases. In this way, a platform was established for cross-checking, preserving, and unifying all the elements.

Having adequate investigative tools is important for investigating far-reaching acts of corruption. One that is essential in taking action against those crimes is the institution known as *colaboração premiada*, or "plea bargaining", by which convicts can secure a reduction in their prison terms in exchange for giving information that is both truthful and material regarding criminal activities with which they are familiar.

The practice of corruption on a large scale requires an organization. Criminal organizations are hermetically sealed structures, in which *omertà* or the law of silence governs.

Becoming familiar with those structures is essential for the success of the investigation. Traditional investigative techniques have proven insufficient for such investigations.

Investigating criminal organizations requires knowing their structures, participants, hierarchy, division of labor, the types of crimes they commit, and their *modus operandi*.

Revealing and dismantling them depends on knowing their internal structures, which will only be possible when someone knowledgeable of their inner workings discloses the facts to investigators. Therefore, the importance of plea bargaining is clear.

Another key factor in fighting large-scale corruption cases is the independence and autonomy of prosecutors and judges.

Independence is secured by various guarantees, the first of which is that contracting must be by a transparent public hiring process. With regard to autonomy, after two years of holding the position, the members of the public prosecution service and the judiciary obtain lifetime tenure and may only be removed by judicial conviction for a criminal offense; nor can they be removed nor retired from proceedings assigned to them.

The autonomy of those institutions is underscored by the fact that they propose their own respective budgets and are self-administering entities.

Without functional independence and autonomy it is not possible to take on the corruption which, in Latin America, is practiced by centers of political and economic power working in collusion with one another.

In addition, international legal cooperation plays a preponderant role in fighting corruption.

Crimes of corruption can affect other countries because they can be cross-border and lead to related offenses perpetrated in other countries, such as money laundering. Investigations into such crimes benefit greatly from intense international legal cooperation. Several international treaties and conventions encourage cooperation and establish tools with the same legal configuration, making it easier to use them.

These are some of the key components for fighting corruption.

Nonetheless, the question remains: Even though these factors exist in several countries, to a greater or lesser degree, why is the intensity of anti-corruption efforts so variable?

I think the answer to this question turns on one more fundamental factor: The institutional political will to investigate and punish the perpetrators of crimes of corruption.

In Brazil's experience, I risk saying that until quite recently the oversight bodies had great difficulty discerning key figures in the nation's political and business life as criminals. First, these persons were seen as success stories, examples to be emulated. The change in that paradigm strengthened the political will to fight crimes of corruption.

Finally, I take from the Brazilian experience a reform that is necessary for investigating and punishing crimes of corruption. The central authority in the vast majority of treaties and conventions signed by Brazil is not the Office of the Attorney General (Ministério Público), which holds a monopoly over criminal prosecution.

In general, Brazil's central authority is the Ministry of Justice. This fact alone has posed obstacles to international legal cooperation. I cite as one example the formation of joint investigative teams. In the Car Wash case, it was not possible to establish any type of joint investigative team despite requests to do so from Switzerland, Argentina, Spain, and Peru, due to difficulties caused by the central authority. The explanation is obvious: several of those investigated were politicians, many of them holding positions in the Executive branch, or legislators who were members of the government's base of political support.

These are some initial considerations for the discussion.