

CONDITIONING FACTORS OF AML IMPLEMENTATION IN BRAZIL

Conditioning Factors of Anti-Money Laundering Implementation in Brazil

A Dissertation

Submitted to

College of Public Affairs

University of Baltimore

in partial fulfillment of the requirements for the degree

of

Doctor of Public Administration

By

Luiz Octavio Coimbra

School of Public and International Affairs

University of Baltimore

Baltimore, Maryland

January 2022

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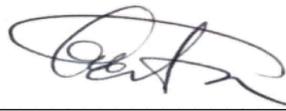
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Nusta Carranza-Ko, Ph.D.

Dissertation Committee Chair



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Melvin de la Cruz, Ph.D.

Committee member



---

Ivan Sascha Sheehan, Ph.D.

Committee member

School of Public and International Affairs

University of Baltimore

Baltimore, Maryland

January 2022

To

Pai Gilberto de Bombogira

(Gilberto Dutra dos Santos, in memoriam)

My father.

## ACKNOWLEDGEMENTS

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## ABSTRACT

## Conditioning Factors of Anti-Money Laundering Implementation in Brazil

Luiz Octavio Coimbra

This is a case study on the factors that influence the implementation in Brazil of a transnational legal order against money laundering (AML TLO). The research uses qualitative and quantitative evidence, guided by a process tracing qualitative method. It documents the nature and consistency of conditioning factors such as international pressure, domestic politics, and agency networks, and considers the validity of the assessment of the influence of these conditioning factors on the patterns of implementation. The longitudinal approach to implementation of the AML regime in Brazil encompasses three distinct periods, from initial implementation (1995 - 2002), full implementation (2002 - 2015), and regression with respect to AML implementation after 2016. The dissertation presents, for the first time in Brazilian studies, an assessment of AML TLO implementation across three outcome levels (i.e., compliance with laws, agencies' operations, and judicial output). The findings of this work point to the need to deter AML regression and rebuild the regime, providing for correction of former mistakes.

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### **Conditioning Factors of Anti-Money Laundering Implementation in Brazil**

Justice built a system of protection between itself and the punishment it imposes, theorizes Michel Foucault, in his work *Discipline and Punish: The Birth of Prison*. To him, the system is built because "there is no glory in punishing" but it only works because "it is ugly to be punishable" (Foucault, 1995, p. 10). Reflecting upon the crime of money laundering in relation to these concepts established by Foucault, the criminalization of money laundering involves the building of a whole system of public policies dedicated to prevention and punishment. To apply those policies, governments and multilateral organizations developed a new regime – the Transnational Legal Order that aims to criminalize money laundering, fight organized crime, and ensure the regular functioning of the global financial system. This regime includes laws, policies, specialized courts, networks of financial units, public safety taskforces, and a system for overseeing institutions, such as banks, and professionals, such as accountants and lawyers. Foucault (1995) provides an explanation on why the justice system is built, but what if the system he mentions was implemented in a place where it is not ugly to punish or to be punishable?

This is a dissertation on the implementation in Brazil of the Anti-Money Laundering (AML) regime. It draws on an intensive study of adoption of the AML Transnational Legal Order (TLO) and its implementation, aimed at increasing understanding of the processes of implementation of the AML TLO in Brazil.<sup>1</sup> The certainty that AML implementation in Brazil is conditioned by specific factors and that those factors determined the depth and breadth of the implementation of the AML TLO are foundational assumptions. Implementation, here, is not a linear process in which adoption of a single policy, for instance, results in the State complying with the policy. Rather, implementation involves a dynamic process in which a State with policies that mirror AML TLO may at times act in compliance or in non-compliance with those policies. This study focuses on the factors that influence the dynamics of AML TLO implementation, such as: the role of the United States as a political stakeholder in Brazil; the changes in laws, norms, and agencies stimulated by domestic political interests; and a

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<sup>1</sup> Anti-Money Laundering Transnational Legal Order is hereafter cited in the text as AML TLO.

network of public agencies focusing on AML policy implementation. Some of these conditioning variables may push the State in the direction of increased implementation and, in other instances, induce the State not to comply with implemented policies.

Each of these three main factors that impact implementation – international pressure, domestic political interests, and the network within governmental institutions with civil society and the private sector– will be examined in this dissertation. Namely, this study provides an assessment of implementation of the AML regime in a country where the ethical parlance -- fighting crime -- associated with it suffered (mis)appropriation and political instrumentalization by local, regional, and international agencies. Ultimately, the findings of the study also raise questions as to whether implementation of the multilateral order was the right strategy to advance the objectives cited by the AML TLO of tackling organized crime and enhancing financial system stability.

### **Debates in AML**

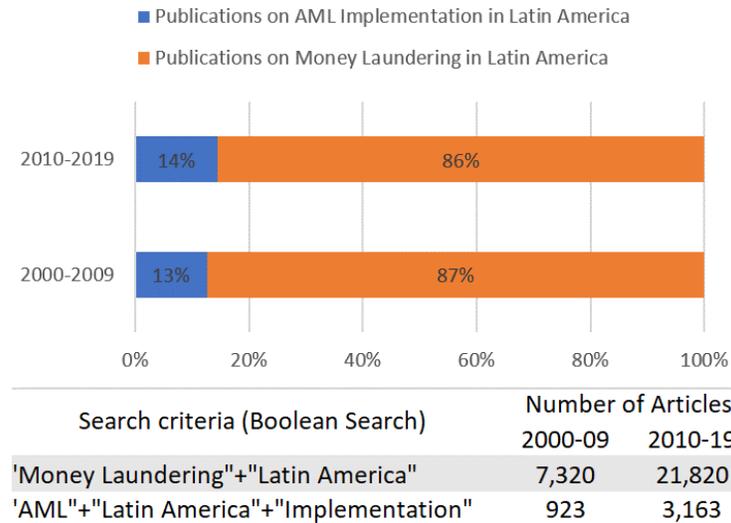
This section presents an overview of recent works on AML and implementation of the AML TLO. A significant portion of the literature on money laundering focuses on national legislation compliance, meaning the extent to which domestic legislation complies with the TLO; money laundering estimates; actors and activities; and financial risk-based reports. Comparatively fewer studies have examined implementation and evaluation of policies. The broader debates in the literature regarding AML TLO implementation fall into two categories: summaries of potential evidence to assess AML TLO implementation; and studies comparing AML TLO with the implementation literature. Figure 1: Research Word Cloud presents a visual representation of the most frequent words found within the literature included in the Reference section.

### ***Evidence in AML implementation studies***

Although money laundering is a widely reported criminal practice, very few studies have assessed AML TLO implementation. The lack of studies on implementation is even more pronounced if we consider that most journal articles on AML regime implementation merely focus on legal compliance between national laws and multilateral treaties. Figure 2 provides a comparison between the number of publications on Latin America that study money laundering and the publications that focus more specifically on



*Figure 2 Publications on ML & AML Implementation in Latin America*



Source: Google Scholar search engine. Searched by the author on December 14, 2020.

AML regime implementation in the region. In the past two decades of academic output, as shown in Figure 2, the studies on implementation never exceeded 14% of the total number of publications on money laundering. The following paragraphs will highlight arguments put forward in this smaller group of studies, the indicators they use to measure implementation, and the strategies they discuss that have a bearing on our work.

To evaluate implementation, Halliday et al. (2014) propose studying the indicators involved in the establishment, funding, and staffing of agencies, and the way those agencies and programs operate, including assessment of frequency of activities, such as the production of suspicious transaction reports (STRs) by Financial Intelligence Units (FIUs). They also suggest studying the frequency with which crimes are investigated and prosecuted, the volume of assets frozen and confiscated, research into predicate offenses, and actions taken by the private sector regarding AML (Halliday et al., 2014, p.13). Another article (Verhage, 2017) provides a similar list of sources and indicators on implementation, such as: information kept by the judicial system (e.g., convictions statistics); victimization surveys; policy reports (e.g., studies by multilateral organizations, think tanks, the private sector, and NGOs); and information from

supervisory authorities (e.g., Financial Intelligence Units' data). Each of these indicators, however, are known to have measuring problems, posing challenges to the validity of academic works. For instance, the dark figure in financial crime administrative data is high, victimization surveys are limited, and policy studies are dependent on the data provided by governments.

Unfortunately, even after decades of the advance of AML TLO "data are relatively unimportant in policy development and implementation" (Levi et al., 2018, p. 307). Scholarship confirms that AML TLO preventive and enforcement outputs are difficult to measure (Alvazzi del Frate & van Kesteren, 2004; Reuter, 2012; Soudjin, 2015; Halliday et al., 2014, 2019 and 2020; Nitsch, 2015). Verhage (2017) alerts us that "it is scarcely credible that, after 20 years of AML, it remains impossible to make an impact assessment of the progress being made (in AML implementation)." (p. 486)

Despite the socio-political, economic, and cultural impact of money laundering, academics and practitioners agree that the implementation of the AML TLO has not yet been properly evaluated. The only exceptions are the legal specialists that study formal implementation, researching the compliance of national laws with the multilateral legal system. To them, implementation can be inferred from the mere existence of national laws that mirror the AML TLO (Halliday et al., 2014, 2019 & 2020; Deleanu, 2017; Nance, 2018; Raweh et al., 2017; Verhage, 2017; Levi et al., 2018). While recognizing the existence of limitations to the use of these sources, however, the indicators cited by Halliday et al. (2014) and Verhage (2017) provide meaningful and measurable information regarding the implementation outputs such as the work of agencies, and short-term outcomes that are relevant to assessing the Brazilian case.

### ***Research on AML implementation in Latin América and Brazil***

The first studies on money laundering in Latin America and the Caribbean appeared in the late 1970s, in the United States, focusing on AML policies as an instrument to fight illegal drugs in the region. Those studies were characterized by an anti-drug rationality with the understanding that AML policies should be applied to fight drug traffickers, as part of the United States war on drugs. Since those early years, however, following the increase in international drug trafficking and the empowerment of organized crime in the region, research related to money laundering has increased

dramatically. Nevertheless, as previously noted, implementation of the AML regime was scarcely discussed in academic publications.

To better understand how the academic literature coincided with the passage of international standards and foundational legal instruments on AML TLO or how international norms developments converged with academic studies, I will briefly sketch out the treaty-contexts here. During a short period, between 1988 and 1999, an international movement led by the United States gave birth to the main instruments of the AML TLO. On December 20, 1988, the United Nations General Assembly adopted a first multilateral treaty mandating the criminalization of money laundering: the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, also known as the Vienna Convention.

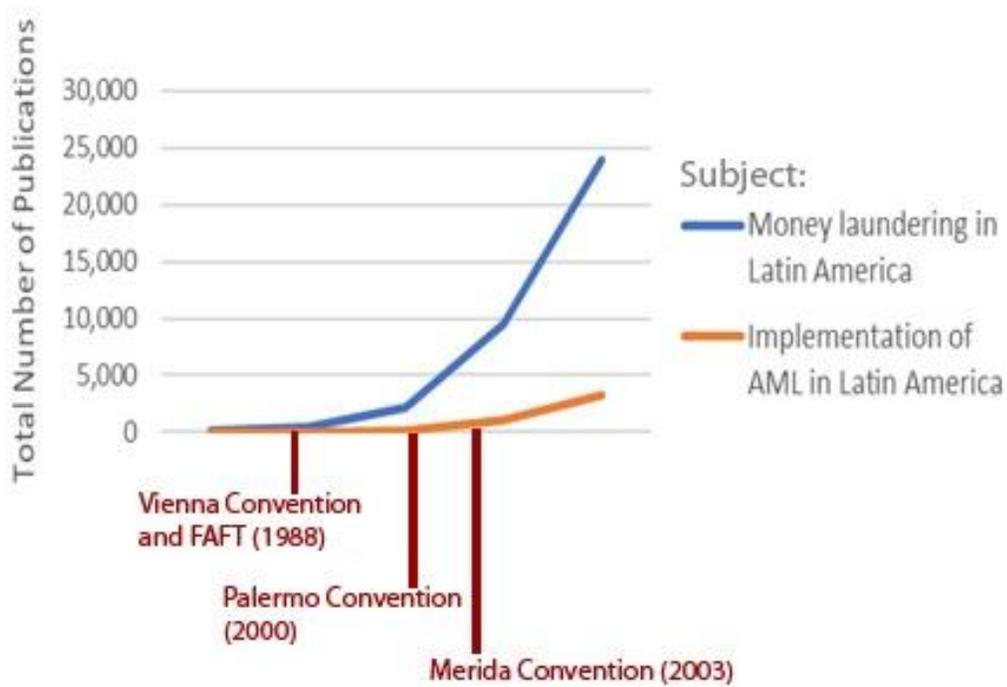
The Convention is a binding instrument that criminalizes money laundering, but only when associated with drug trafficking (United Nations, 1988). On July 16, 1989, during the 15th G7 Summit -- a group of developed countries -- held in Paris, France, created the Financial Action Task Force – FATF, to propose standards and evaluate countries aiming to achieve control of illicit flows of money. FATF 40 Recommendations are the main standards for the work of the financial intelligence units in the FATF member countries (Financial Action Task Force [FATF], 2021). In 2000, in Italy, the United Nations adopted its main treaty on organized crime: the Palermo Convention. The new multilateral treaty strengthened the legally binding multilateral mandates against money laundering. It instituted a comprehensive regulatory and supervisory regime, facilitated cooperation and the exchange of information, and promoted the establishment of financial intelligence units in the countries.

The Palermo Convention<sup>2</sup> extended the criminalization of money laundering to any serious criminal offense, in addition to the predicate crime of drug trafficking required by the 1988 Vienna Convention. In fact, the Convention adopted in Palermo was the first multilateral treaty to mention the words "money laundering" and corruption and promote the operations of the financial intelligence units (FIUs). It also included

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<sup>2</sup> The United Nations Convention against Transnational Organized Crime and the Protocols Thereto, known as the Palermo Convention, is an international treaty that was adopted by the UN General Assembly on November 15, 2000, and enacted in Brazil in 2004. As of July 2018, one hundred and ninety countries had already signed the treaty.

Figure 3. Latin American Publications on AML & AML Implementation, 1968-2019



Source: research on Google Scholar, September 9, 2020

standards for developing measurable indicators for assessing the implementation of an AML regime (United Nations, 2000). In 2003, another multilateral treaty, the United Nations Convention against Corruption, also known as the Merida Convention, introduced a full chapter (Article 14) on measures to prevent money-laundering (United Nations, 2003). The two curves presented in Figure 3 show the impact of the development of the foundational legal instruments and standards of the multilateral AML regime and reveal that the number of publications on regime implementation did not increase as fast as the number of publications on the general issue of money laundering. They register a steep increase in the number of publications on money laundering in Latin America after the adoption of the Palermo Convention, but a slow increase in the number of publications on AML regime implementation in the region.

The three main global treaties on money laundering mentioned above -- the Conventions of Vienna, Palermo, and Merida -- and the FAFT process adopted procedures for producing Mutual Evaluation Reports (MERs) to assess AML

implementation -- a potentially important bibliographic source for the study of AML regime implementation. One regional instrument, the 1996 Inter-American Convention against Corruption also presents a mutual evaluation instrument: the Follow-Up Mechanism for the Implementation of the Inter-American Convention against Corruption (known by its Spanish acronym MESICIC). Unfortunately, the mutual evaluation reports (MERs) produced by the multilateral agencies usually present scattered and non-comparable information (FATF, 2000 and 2010; Organization of American States General Secretariat [OAS/GS], 2020). Data from the Brazilian FATF reports (Brazil, 2000, 2003, and 2010)<sup>3</sup> for example, provide an overview of detected cases of money laundering and corruption, including cases that were never brought before the judicial system. Rose (2019), however, reminds us that the reports provided by mutual evaluation mechanisms produced nothing more than "a desk review of self-assessment against a check list." (Rose, 2019, p. 533).

Since the early 2000s, an impressive array of AML initiatives has been implemented in Latin American and the Caribbean countries, based on multilateral prescriptions that combined preventive measures, enforcement measures, and international standards. Implementation of the AML regime mobilized public agencies at the national level (e.g., federal police and judicial institutions), private organizations (e.g., banks, casinos, insurance, and security companies), and professions (e.g., lawyers, notaries, dealers in high-value goods). The first decade of the 2000s also saw increased commitment by governments and international organizations to mutual evaluations of AML implementation. Academic production regarding implementation, however, did not follow suit. While regional governments were busy implementing their versions of an AML regime and practicing with mutual evaluations, academic journals mostly disregarded the subject of AML implementation, with very few exceptions (Araújo, 2012; Machado, 2012; Trotta & Ferreira, 2013; Oliveira et al., 2017; Florêncio Filho & Zanon, 2018; Tourinho, 2018; Silva, 2020; Staffen, 2020).

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<sup>3</sup> Of the three FAFT Reports on Brazil mentioned (2000, 2003 and 2010), just the third one, from 2010, is a mutual evaluation report. The two initial reports, 2000 and 2003, were prepared with information provided by the Brazilian government, answering a questionnaire, without participation from other member countries as evaluators. FAFT is expected to produce a second multilateral evaluation report on Brazil after an on-site visit scheduled for 2022.

Brazil was no exception in Latin America. The AML regime evolved rapidly after 1998. Law 9,613/1998 on money laundering enlarged the list of predicate crimes, including not only drug-trafficking, but also terrorism, arms trafficking, extortion, corruption of public servants, and crimes against the financial system (Brasil Presidência da República, 1998). Appendix A, at the end of this dissertation, presents a chronology of norms, policies, agencies, and activities since the enactment in Brazil of the Vienna Convention, in 1991. The chronology shows the origins of implementation, registers the frantic process of implementation of the AML regime in Brazil from 1998 until 2016, and the unexpected turn of events that followed. Notwithstanding the very active process of implementation in those years, only a small number of studies discuss AML regime implementation in Brazil, with the few exceptions focusing on compliance between national laws and multilateral mandates.

After more than twenty years of active implementation, the effectiveness of the AML TLO in Brazil is still the subject of incomplete and inconclusive debate, even though the regime attracted a lot of attention (Fleischer, 1997; Arantes, 2003; Araujo, 2012; Machado, 2012; Trotta & Ferreira, 2013; Oliveira et al., 2017; Florêncio Filho & Zanon, 2018; Tourinho, 2018; Silva, 2020; Staffen, 2020). In the case of Brazilian AML regime implementation, criminologists, economists, sociologists, and public administration specialists "seems to have missed the boat with regard to what remains a niche in ... research." (Verhage, 2017, p. 478). By examining Brazil's AML TLO implementation and discussing its' conditioning factors, our research seeks to contribute to this literature.

### **Treaties and Standards on AML TLO**

The Anti-Money Laundering Transnational Legal Order (AML TLO) is a collection of laws, standards, and policies, along with prevention and enforcement measures, to deter money laundering. The AML TLO, as inscribed in the mandates and standards from the Palermo Convention, Merida Convention, and the Financial Action Task Force (FATF) Forty Recommendations, served as basis for the development of national laws and policies. The building of the AML regime in the country resulted from a long process of meetings, led by government and multilateral organizations, sometimes

with academic and civil society participation. Appendix A, at the end of this dissertation, includes the most important Brazilian AML laws, norms, standards, policies, agencies, and activities. Mandates from the multilateral agreements are legally binding and should be considered "hard law" by the courts. Model laws, non-binding mandates, and FAFT recommendations are "soft law", or moral standards based on principles. All components of the AML TLO, binding or non-binding, include core principles. (Anis, 2011; Betti, 2003; Soriano, 2014; Thony, 1996; Zúñiga, 2013.)

The hard-law power of the Palermo Convention and the Merida Convention and the soft-law suggestions of FATF Forty Recommendations<sup>4</sup> constitute the heart of the AML TLO. The United Nations Palermo Convention -- a legally binding global anti-organized crime treaty -- is the most comprehensive legal component of the AML TLO, presenting mandates for prevention (e.g., FIUs) and enforcement (e.g., criminalization of money laundering). Brazil signed the Convention in 2000 but waited for four years before ratifying, in 2004. Palermo Convention mandates consolidated previous multilateral instruments regarding financial institutions and illicit drugs and advanced the fight against organized crime. The Convention says that it is an "effective tool and the necessary legal framework for international cooperation in combating ... criminal activities as money-laundering." (United Nations, 2000, Palermo Convention preamble). The AML principles -- from the Palermo and Merida Conventions, and FATF Forty Recommendations -- served as the primary source for the adoption of the AML national legislation and policy design. This process was accomplished with global, regional, national, and sub-national meetings, led by government and multilateral organizations, sometimes with academic and civil society participation, such as the ENCCLA<sup>5</sup> annual meetings.

The United Nations conventions and the FATF recommendations outline several measurable outputs of implementation. The Palermo Convention mandates the

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<sup>4</sup> The Financial Action Task Force (FATF) issues guidance (called Recommendations) to be implemented by its member countries. These guidelines provide standards on money laundering to be applied to financial institutions, law enforcement, criminal justice, and international cooperation.

<sup>5</sup> The *Estratégia Nacional de Combate à Corrupção e à Lavagem de Dinheiro* (ENCCLA) (National Strategy for Combating Corruption and Money Laundering), created in 2003, is the main national network for AML implementation in Brazil, including agencies of the executive, legislative and judiciary at the federal, state, and municipal levels, as well as, in some cases, civil society and the private sector, for the formulation of public policies and implementation of activities.

"criminalization of the laundering of proceeds of crime" (title of article 6) and says that state parties shall institute a regulatory and supervisory regime for banks, cooperate and exchange information, promote new investigation techniques, "and consider the establishment of a financial intelligence unit to serve as a national center (on) money-laundering." (Article 7, 1. [b]). The United Nations Merida Convention against corruption also imposes measurable measures to prevent money laundering such as the "ability to cooperate and exchange information (on money laundering) at the national and international levels" (United Nations 2002, Article 14 1. [b]); and the FATF recommendations include express recommendation for the countries "not to invoke laws that require financial institutions to maintain secrecy or confidentiality as a ground for refusing to provide co-operation." These three examples, on criminalization, exchange of information, and financial secrecy, from the Palermo Convention, the Merida Convention and FATF Forty Recommendations, required the enactment of laws, norms, policies, agencies, and activities in Brazil that provide evidence of AML implementation. Given that evidence, the assessment of AML TLO implementation in Brazil and the factors that influenced it should not be limited to the study of legal and regulatory compliance. In fact, the frequency of enforcement activities, the use of special investigation techniques, the volume of financial seizures, plea bargains, international and national cooperation, Financial Intelligence Units' actions, events, and exchange of information are also indicators that provide evidence of conditions influencing AML implementation.

This research seeks to use this evidence to show what Brazil (government, private sector, civil society) did regarding AML implementation, how the AML regime was implemented, and whom it served. To capture the breadth of implementation, I assessed compliance with laws and norms -- checking for the presence of the standards provided by the transnational order in Brazilian legislation. To capture the depth of implementation, I studied the activities of agencies such as the Brazilian FIU (COAF) frequency of suspicious activities reports (SARs), and COAFs' annual budget. I also studied, to capture depth of implementation, criminal justice outputs related to money-laundering, such as how many times Brazilian police, prosecutors, and courts have been able to get those involved in money-laundering investigated, indicted, prosecuted, and convicted, including penalties imposed and confiscations. Those indicators are part of a

list of rule-based indicators, indicators from surveillance agency (COAF), indicators regarding the operations of enforcement agencies, indicators of risk and other proxies, such as people's perceptions and composite indicators. Those indicators, no doubt, can show the intensity of local implementation of the United Nations Palermo and Mérida Conventions, and FATF standards.

### **The problem**

In 2019, *Revista Veja*, a major Brazilian news magazine, announced that Brazil was "the world champion in money laundering" (Cunha, 2019). In a country where almost everybody loves soccer, being a world champion is usually reason enough for celebration. The *Veja* article used the findings of the 2018 Kroll's Global Report on Fraud & Risk to provide evidence of championship status that should have caused embarrassment and regrets. Kroll -- a risk management, and corporate investigations company -- found in its Global Report on Fraud & Risk that the practice of money laundering was witnessed in 23% of Brazilian companies -- a number 44% higher than the global average (Kroll Institute for Good Governance, 2019).

The findings of the Kroll's Report highlight this contrast between the glory of a world soccer champion and the potential shame from living in country that was ranked, in 2019, as the most unequal in the world (The World Bank, 2021),<sup>6</sup> where criminals murdered 560,000 people between 2009 and 2019 (Cerqueira, 2021) and laundered at least US\$280 billion between 2007 and 2017 (Global Financial Integrity [GFI], 2020).

In Brazil, as in most Latin American countries, money laundering is everywhere. Traffickers of drugs, weapons, and cigarettes; bank and cargo robbers; illegal gamblers, and poachers -- all need to get rid of any signs of dirty money to strengthen their businesses. In addition, corrupt politicians, and civil servants launder money to taint elections. Members of the middle-class launder money when they negotiate the purchase of properties with funds deposited in a tax haven. Medical doctors, lawyers, or accountants -- who receive payments in banknotes to avoid taxes -- dream of having a summer house in the mountains or, in a more recent trend, will divert their illegal money

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<sup>6</sup> With a GINI Index of 53.4 in 2019, Brazil is the most unequal country in the world among countries that provided data after 2017.

to buy Portuguese citizenship. International trade, hotels, restaurants, and churches provide opportunities for money laundering. At the other end of the social spectrum, even street guards participate in money laundering by investing in illegally built apartments, in areas occupied by urban militias.

Historically embedded ("structural") factors influenced the takeoff of money laundering in Brazil. During the last years of the military dictatorship (1964-1985), the expansion of organized crime, especially drug trafficking, the fiscal and institutional crisis, inflation, and the increase in the informal labor market created a situation that facilitated the laundering of money, making it socially accepted behavior. Also worth noting is the low level of accountability regarding money laundering in the country (Silva, 2006). The corruption scheme known as operation *Banestado* is a case in point. It revealed that from 1991 to 1996 unidentified Brazilians wired US\$147 billion overseas (in 2021 dollars)<sup>7</sup> using a financial service known as *CC-5* accounts. The total for the whole life of the racket -- between 1991 and 2002 -- amounted to US\$270 billion (in 2021 dollars). Brazilian Federal Police and the Public Prosecutors' office estimated that smuggling, narcotics trafficking, and under-invoicing activities were responsible for US\$17 billion (in 2021 dollars) of money laundered per year toward the end of the 1990s (CJF, 2002).

In 2016, the Brazilian Central Bank modestly estimated the total of money laundered in the country to be around US\$23 billion per year (in 2021 dollars) (Valente, 2016).<sup>8</sup> There is a consensus in academic circles, however, that politically reported data are usually biased and, in this specific case, presenting manipulated -- lower than expected -- numbers for yearly money laundering totals, to send a message to Brazilian citizens that their Central Bank has the problem under control.

Projections by international bodies of money laundering in Brazil vary; the most pessimistic says that money laundering in Brazil is equivalent to 3.5% of the Gross Domestic Product (GDP), approximately US\$64 billion in 2019. (Conselho da Justiça

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<sup>7</sup> Conversion to 2021 US\$ dollars through the Website US Inflation Calculator: <https://www.usinflationcalculator.com/>

<sup>8</sup> Interview with the Director of Citizenship of the Brazilian Central Bank, Isaac Sidney Ferreira, published by *O Globo* newspaper on November 17, 2016. Conversion from Brazilian Real to US dollars used the daily rate published by *Online Currency Converter* at the following URL: <https://freecurrencyrates.com/en/exchange-rate-history/USD-BRL/2016>

Federal [CJF], 2002). By way of comparison, in 2015, the United States government estimated that US\$ 300 billion was laundered annually in the US (Terry & Robles, 2018). Based on examples of mis-invoicing in international trade, Zdanowicz (2009) found that nearly \$400 billion (US\$510 billion dollars in 2021) was moved into the US via over-valued exports and under-valued imports. In another investigation, the United States government found that the Wachovia bank had processed at least US\$378.3 billion from Mexico's drug gangs, between 2004 and 2007 (The Guardian, 2011). The Mexican Financial Intelligence Unit reported that drug cartels and other illicit actors laundered an estimated US\$50 billion in 2019 (Martínez-Fernández & Yansura, 2020). A structural-linear model study on money laundering in Colombia -- a Brazilian neighbor similarly challenged by organized crime -- estimates that the volume of money laundered in that country reached US\$30 billion (8% of real GDP) by 2013, an amount equivalent to US\$35 billion in 2021 (Villa, Misas, & Loayza, 2016, p. 47). In 2008, the government of Peru – another country pestered by the illicit drug business and organized crime – estimated that US\$2.1 billion (2.7 billion in 2021) of illicit funds were laundered in the country annually (Terry & Robles, 2018, p. 631).

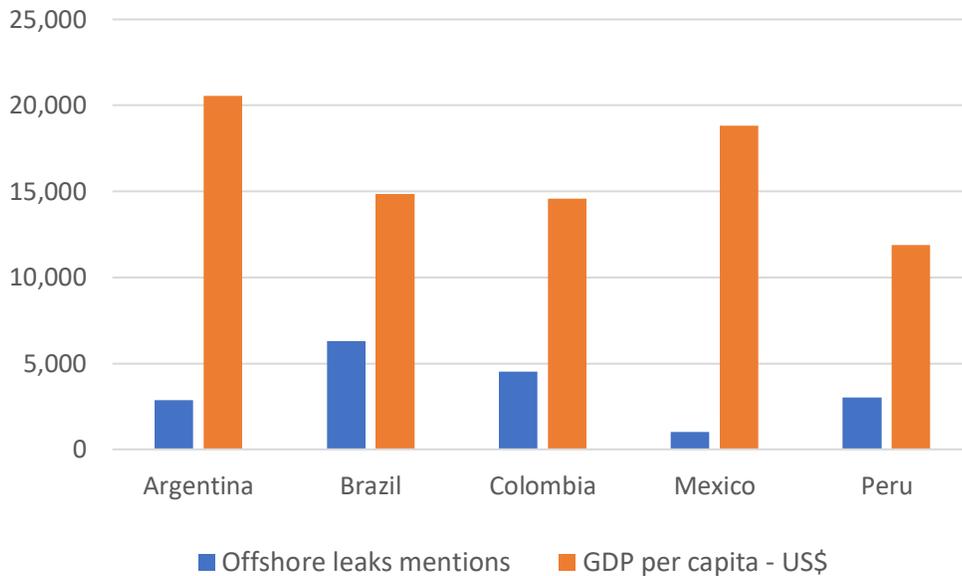
Comparing the volume of money laundered in Latin American countries undoubtedly throws light on the problem. Together with Brazil, Colombia, Mexico, and Peru are victims of organized crime -- which is the initial justification for fighting money laundering. Data on these countries provided by the ICIJ Offshore Leaks Database<sup>9</sup> is illustrative of the use of offshore jurisdictions. Historically, offshore financial centers provide low taxation, moderate supervision, and financial secrecy, serving "the purposes of money laundering in a most complex economical and financial environment" (Koligkionis, 2017, p.363). Figure 4 shows the use of offshores jurisdictions by citizens of five Latin American countries, and each country's gross domestic product per capita based on purchasing power parity, or GDP per capita (PPP).

Compared with Argentinians, Colombians, Mexicans, and Peruvians, Brazilians are the ones with most mentions within the list of offshore entities that are part of the

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<sup>9</sup> The International Consortium of Investigative Journalists (ICIJ) Offshore Leaks Database contains information on more than 785,000 offshore entities that are part of the Paradise Papers, the Panama Papers, the Offshore Leaks, and the Bahamas Leaks investigations (ICIJ, 2021). The information is available on the Web, at the following URL: <https://offshoreleaks.icij.org/pages/about>

*Figure 4. Offshore presence and GDP per capita in 5 Latin American countries, 2020*



Source: The International Consortium of Investigative Journalists (ICIJ) Offshore Leaks Database (Offshore leaks mentions) and The World Bank (GDP PPP per capita in 2020). GDP PPP per capita is based on purchasing power parity. Data collected and organized by the author.

Note: Offshore leaks mentions refers to the total of offshore entities, officers, intermediaries, and addresses mentioned in the database regarding each country.

Paradise Papers, Panama Papers, Offshore Leaks, and Bahamas Leaks investigations (ICIJ, 2021). Brazilians have twice the number of mentions (6,279) of Argentinians (2,852) and Peruvians (2,997). When compared with the GDP PPP per capita -- a metric that compares different countries' currencies through a "basket of goods" approach and provides a picture of a country's overall standard of living -- Brazil shows a smaller GDP PPP per capita (or lower standard of living) than Argentina and Mexico but has sixty-five percent more mentions in the Offshore Leaks Database than Argentina and Mexico together (3,846 mentions).

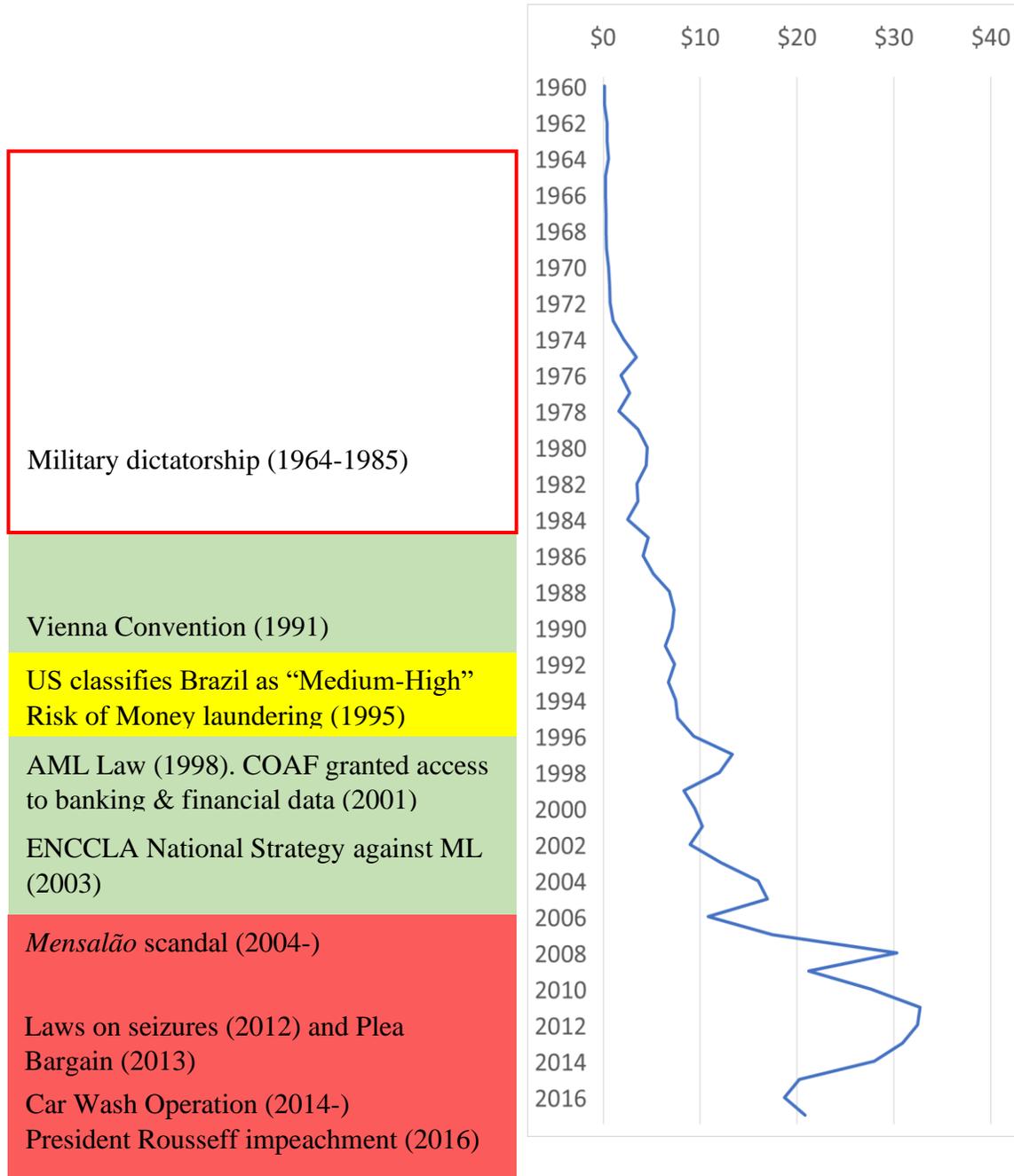
The Washington D.C.-based think tank Global Financial Integrity organization (GFI) collected data from 150 developing countries and estimated that a total of 1 trillion dollars of illicit financial flows was sent abroad by those countries in 2011 (US\$ 1.22

trillion in 2021 equivalent dollars) (GFI, 2013). Another report published by GFI finds an estimated US\$1.6 trillion in potential trade mis-invoicing among 134 developing countries, "of which US\$835 billion occurred between developing countries and 36 advanced economies" (GFI, 2021b, p.1).

Mis-invoicing results in massive revenue losses, facilitating illicit financial flows. GFI considers that illicit financial flows can be used as a proxy for international money laundering. Since the 1990s, globalization of banking and offshore jurisdictions made the laundering of illicit money far more efficient, turning illicit financial flows into criminals' preferred way of laundering money (Oliveira, L., 2012; OECD, 2014; Cassara, 2020; GFI, 2021a). Measured by their illicit financial flows, developing countries' money laundering exceeds US\$1.22 trillion a year. Reuter (2012) agrees that illicit financial flows from developing countries are substantial: "even if the correct figure is only 1/10th of GFI estimates" (p. 484). Regarding Brazil, Figure 5 shows the annual totals of illicit financial flows and AML TLO from 1960 through 2017. Three hundred and eighty-five billion dollars is the total (updated to 2021 dollars) of Brazilian illicit financial flows, measured between the enactment of the AML law, in 1989, and 2017. Between 2008 and 2016, illicit financial flows in Brazil averaged more than US\$30 billion per year. Figure 5 shows the steady increase in illicit financial flow that started during the dictatorship, and never receded, not even during the period of more intense implementation of the anti-money laundering transnational legal order in the country, in the 2010s.

The World Bank definition for Illicit Financial Flows refers to "money that is illegally earned, transferred, or used that crosses borders" (The World Bank, 2021, p. 1). The Financial Action Task Force (2006) mentions three broad strategies of hiding and laundering illicit funds: the (very inconvenient) smuggling of bulk cash from one country to another; the use of financial institutions; and the transfer of value via trade-based money laundering. In a recent book, John Cassara -- a former US government intelligence officer and money laundering expert -- estimates that 80 % of the world's illicit money flow stems from trade-based laundering, making it the largest money laundering methodology in the world (Cassara, 2020). Fortunately, this illicit cross-border movement of capital and money, associated with illegal activities, can be measured.

Figure 5. Brazil illicit financial flows 1960-2016 (US\$ Billion)



Source: Global Financial Integrity 2014 (data for the years 1960-2007) & 2020 (data for the years 2008-2017). Information compiled and organized by the author.

### *Conditioning factors of AML TLO implementation*

This section introduces the discussion on the nature and consistency of the main conditioning factors that influenced implementation during the 1990-2020 period in Brazil. From previous works that have examined implementation of the anti-money laundering transnational legal order worldwide, a group of factors emerges as having the most influence in determining the outcome of compliance. Table 1 presents a list of stakeholders and factors that, scholars have argued, influence the outcome of AML implementation. For the sake of clarity, these factors are organized according to their geographic origins (local enabling factors and global enabling factors), and direction (deterrents or facilitators).

*Table 1. AML implementation: stakeholders, and potential influences*

Pressure		High	Medium	Low
Local Enabling Factors	Facilitator	Electoral dividends with anti-corruption discourse Network governance and institutional strengthening	Government use of AML to protect peers and prosecute adversaries Interest in the government administration to fight organized crime	AML policies, including the recovering of assets has the potential to produce a healthy impact on development. Media, private sector, and civil society consensus on "follow-the-money" investigation strategies
	Barrier	Nationalistic vision of sovereignty and anti-globalism claims. AML comprehensiveness and punitiveness.	Constitutional privacy versus "know-your-customer rules" Banks and other businesses profit reduction	Information Technology (IT) Limitations
Global Enabling Factors	Facilitator	United States and multilateral system political influence in Brazil	Potential deterrence to Transnational Organized Crime Financial strengthening of global banking Multilateral agencies standards and evaluations	Contribution to global wellbeing, fighting "bad" actions International network of civil society Multilateral development banks compliance (sometimes punitive) policies
	Barrier		International anti-globalization political activism	

Table prepared by the Author, with factors of influence mentioned in the academic literature (in journal articles included in the References section).

From this extensive list of possible factors, for the case study of Brazil, I selected the most outstanding factors and placed them in three main categories: 1) "global influence," mainly led by bilateral US international diplomacy, but with ramifications through other countries, multilateral agencies, banks, and international civil society; 2) "domestic political interests," which means the interests of political actors, including electoral utility calculations and instrumentalization of the AML regime to get rid of political opponents; and 3) "domestic dynamics of agencies' networks," I was also interested in the international and domestic civil society advocacy, prioritizing the ethical component of AML policies and the fight against organized crime.

The global influence exercised by the United States in the building of the AML TLO, further analyzed in Chapter 2, is recognized by specialists who witnessed the process (Halliday et al., 2020; Machado, 2012; Maya & Lovón, 2019). The hard-power and soft-power exercised by the government of the United States, its proselytism on behalf of the AML TLO, and its coordination with other countries, multilateral organizations, inter-governmental development banks, NGOs, and the private sector made US foreign policy the most powerful international factor influencing implementation of the AML regime in Brazil.

The United States government pushed for implementation of an AML regime in Brazil during the 1994 Miami Summit of the Americas. US President Clinton proposed to Brazilian President Franco and elected President Cardoso a concerted strategy to fight money laundering (Rossi, 1994). Four years later, Cardoso's government enacted the AML law (No. 9,613) that expanded the list of predicate crimes to money laundering, created the Brazilian FIU (COAF), and established the Department for Combating Illicit Financial Assets in the Central Bank. Those feats were attributed by the Brazilian judiciary to "joint efforts by the international community" (*Conselho de Justiça Federal*, 2002, p. 33). The Federal Justice Council did not name who, in the "international community" were the influencers. I have no doubt, based on the evidence presented in Chapter 2, that the United States was the country most actively and effectively pushing for the implementation of an AML regime in Brazil. OECD countries, United Nation agencies, such as the United Nations Office on Drugs and Crime (UNODC), and regional agencies, such as the Organization of American States (OAS), were acting in

coordination, under the leadership of the United States. (Halliday et al., 2020; Machado, 2012; Maika & Lovon, 2019; Estrada & Bourcier, 2021). The country that dominated the game was the country with the biggest economy and the most powerful diplomacy: the same country that catered to private sector interests and provided NGOs -- through USAID -- with the financial resources needed to develop projects aligned with implementation of the AML regime.

Domestic political interests, to be examined in greater detail in Chapter 3 were another major influence on AML regime implementation in Brazil. In a 2020 article, long-time professors and prolific authors Halliday, Levi, and Reuter (Halliday et al, 2020) affirm that "empirical research on use of AML tools for political purpose is in its infancy" (p. 76) referring to the use of AML tools for domestic political interests. In fact, the influence of domestic political interests on AML regime implementation received less attention from scholars than the previously mentioned US pressure factor, but it was no less important to implementation of an anti-money laundering regime in Brazil -- a country where presidents, such as President Temer and President Lula, accused of money laundering, were jailed. Brazilian authorities and politicians, in the past three decades, have had a direct impact on AML implementation, most of the time by deploying two different strategies: promoting AML implementation to attract voters or using AML instruments to investigate and eliminate political foes.

Finally, in Chapter 4, I will present the third main factor influencing AML implementation in Brazil: the dynamics of local and international networks -- a group that includes NGOs, such as Transparency International, academic think tanks, professional networks, and specialists, able to act nationally and internationally. International civil society advocacy works in Brazil in coordination with bi-lateral diplomacy, multilateral agencies, local NGOs, and the media, including news and social media. These agencies, in coordination with the government, promoted standards and provided specialists and financial support that strengthened AML implementation.

The Brazilian *Estratégia Nacional de Combate à Corrupção e Lavagem de Dinheiro* (ENCCLA) had a key role in AML regime implementation in Brazil. ENCCLA was created to develop public policies to fight money laundering. It consists of a network of public agencies, public safety sector bodies, and civil society. The ENCCLA 2016

annual meeting received 60 policy proposals, approximately half of them from civil society movements,<sup>10</sup> including representatives from the *Fóruns Estaduais de Combate à Corrupção* (FOCCO) and *Redes de Controle* participating in the 2016 meeting.

### ***The Curious Case of Brazilian AML implementation***

Brazilian anti-money laundering (AML) regime implementation presents a curious, probably unique, case of regression of implementation. Its three-decade history shows implementation starting and advancing (1992-2002), a period of active and speedy implementation that brought the AML regime to maturity (2003-2015), and then a process of reversal of implementation that made the regime return to its infancy. (2016-present). The changes in legal and policy compliance, and implementation, make the Brazilian case important to examine, when considering what factors help a State pursue and comply with adopted policies.

The implementation of the AML order in Brazil formally started in 1991, with the ratification by Congress of the United Nations Vienna Convention (1988)<sup>11</sup> that criminalized the use of financial resources from drug-trafficking. The period that saw countries adopt the Vienna Convention and the inception of the Financial Action Task Force (FATF, 1989) is marked in Brazil by corruption at the federal level that "led to the development of a series of institutional reform proposals." (Praça & Taylor, 2014, p. 30).

The first step taken by the government regarding AML regime implementation, the enactment of the Vienna Convention in Brazil, in 1991, imposed a strict obligation on the country to criminalize the use of money from drug-trafficking. It had, however, a very limited impact on the finances of Brazilian drug-traffickers. It was not until seven years after the enactment of the Vienna Convention that the country adopted a specific law (AML Law 9,613) that clearly criminalized money laundering and established the Brazilian Financial Intelligence Unit (COAF, in its Portuguese acronym).

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<sup>10</sup> Information included in the *Relatório De Atividade Externa -- Evento Institucional: XIV Reunião Plenária Anual da Estratégia Nacional de Combate à Corrupção e à Lavagem de Ativos* (ENCCLA) held in the city of Natal-RN, November 28 - December 2, 2016. Available on the following URL: [https://criminal.mppr.mp.br/arquivos/File/Relatorio\\_de\\_Atividade\\_ENCCLA.pdf](https://criminal.mppr.mp.br/arquivos/File/Relatorio_de_Atividade_ENCCLA.pdf)

<sup>11</sup> The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, was adopted in Vienna in 1988 and enacted in Brazil in 1991. The Vienna Convention does not mention the words "money laundering" but it imposes, in Article 3 (1) (a), a strict obligation for each participating country to criminalize a list of activities concerning drug trafficking, including the financial use of money from drug-trafficking.

In 1998, less than three years after the creation of the Egmont Group of Financial Intelligence Units in Brussels<sup>12</sup>, AML law 9,613, regulated by Decree No. 2,799, established the Brazilian Financial Intelligence Unit (COAF) (Brasil Câmara dos Deputados, 1998). The AML Law also mandated the identification of customers ("know your customer" rule); registration and recording of financial transactions; the obligation of financial institutions to respond to COAF's requests; and the reporting of "suspicious" operations to authorities. It also removed the strict requirement that, to be criminalized, money laundering had to be associated with drug trafficking, and enlarged the list of predicate crimes that included corruption of public servants and crimes against the financial system. Decree n° 2,799 provided COAF with power to investigate and share financial information, as proposed by the FATF Forty Recommendations (Brasil Câmara dos Deputados, 1998; Brasil Presidência da República, 1998; and FATF Forty Recommendations). Between 1998 and 2002, the Brazilian government adopted eight new federal laws in direct compliance with AML TLO standards. These new laws included the enactment of the Inter-American Convention against Corruption (Caracas Convention) and enforcing COAF's unrestricted access to banking and financial operations. The new laws also enlarged the list of predicate crimes to money laundering from the original drug trafficking to include the predicate crimes of terrorism, trafficking of firearms, criminal organization, crimes against the public administration, crimes against the financial system, and crimes committed by private authorities against foreign public administrations. As an unexpected outcome, for the first time in Brazil, politicians and public authorities were to be investigated in cases of money laundering. The initial mandates of the Vienna Convention, and, more important, Law 9,613/1998, Decree n° 2,799/1998 and the standards promoted by FATF, were the hard-law and soft-law instruments that made Brazil improve compliance with the AML TLO.

After 2003, Brazil accelerated AML implementation. That period (2003-2015) is marked by the arrival of the *Partido dos Trabalhadores* (Workers' Party) in office. It was a period of policy choices that highlighted the commitment to "longstanding Workers'

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<sup>12</sup> The Egmont Group provides a platform for the exchange of intelligence to combat the financing of crime. It started with 24 national FIUs that met in 1995 in the Egmont Palace, Brussels. The Egmont Group today is an informal network of 164 Financial Intelligence Units.

Party claims to transparency." (Praça & Taylor, 2014, p.30). The enactment of the Palermo Convention via Decree 5,015, in 2003, had a significant impact on AML policies. The 2003 norm against money laundering generated, almost immediately, investigations, prosecutions, and imprisonment of political authorities, during a scandal known as the *Mensalão* case. In 2012, Law 12,683 expanded the scope of previous legislation, abolishing the list of offenses to be covered as predicate or underlying crimes and defining the crime of money laundering as the "concealment of the origin of resources arising from any crime or criminal misdemeanor" (Brazil Law 12,683, 2012). It was the preamble to the Car Wash operation (Rangel, 2012).

The Workers' Party government -- during both the Lula (2003-2010) or Rousseff (2011-2016) presidencies -- delegated the decisions regarding AML policies and agencies' actions to a network of institutions, with relative autonomy from the central government -- which partly explains why a government that developed AML TLO instruments ended up hurting its own party (for example, in the *Mensalão* and Car Wash cases). In 2004, the new government created the Brazilian National Strategy to Combat Money Laundering (ENCCLA) -- a network of agencies to coordinate institutions and their actions, including participants from government, civil society, and the private sector. Over the years, ENCCLA evolved and began to assist in the preparation and implementation of norms and policies, promoted studies, and trained AML specialists. Judges, prosecutors, police, civil society, and the private sector were acting together, empowered, and equipped to tackle money laundering.

Finally, during the third and last period addressed in this study (2016 – 2020), Brazil witnessed a regression of AML regime implementation that started after the presidential impeachment that drove PT's President Rousseff from power. The period of intense implementation that endured until 2016 was replaced by a more lenient regime. The governments of President Temer (2016-2018) and President Bolsonaro (2017 – present) responded claims by politicians who alleged or perceived that AML implementation had caused the "criminalization" of politics. In fact, politicians and high-level private sector representatives were punished and incarcerated because they had committed crimes contemplated in anti-money laundering legislation. Both President Temer and President Bolsonaro then proceeded, with Congress and members of the

Supreme Court, to inhibit the implementation of norms, policies, and activities, limiting prosecutions and releasing indicted politicians. Both presidents, Temer and Bolsonaro, and members of their families were accused of money laundering, and they reacted, pushing for changes in AML laws and regulations, the establishment of limits on COAF information sharing, the release of criminals (politicians) accused of money laundering, and the weakening of AML prevention and enforcement activities.

What factors led Brazilian society first to fully implement and then revert the AML TLO and begin dismantling laws and policies of the Brazilian AML regime? Chapters 2, 3, and 4 describe the qualitative and quantitative findings of this investigation regarding the principal factors that influenced AML TLO implementation (and "dis-implementation") in Brazil -- a story that reminds us of the Scott Fitzgerald's novel on the Curious Case of Benjamin Button: a person who is born old and ages backwards.<sup>13</sup>

### **Research Method**

The quest for a scientific method that can be applied to research regarding the factors influencing implementation of public policies against money laundering poses many challenges. After all, the subject of this research -- influences on the AML regime implementation process -- is not clearly encompassed by any political, physical, or temporal scenario. To solve this problem, the research followed a suggestion by Becker (Becker, 2009), who argues that qualitative researchers should not pre-specify methods or theory when they begin their research. Qualitative researchers, says Becker, "start out with ideas ... but once they begin, they investigate new leads; (and) apply useful theoretical ideas to the ... evidence they gather" (Becker, 2009 cited by Bartlett & Vavrus, 2017, p.9). This approach by Becker (2009) oriented this research, as theoretical ideas were adapted during the research process. Within qualitative methods, this research aimed to come up with a single-country case study with multiple observations, grouped under three conditioning factor categories, based on tracing the archival evidence that

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<sup>13</sup> Professors Hallyday, Levi and Reuter, in a 2020 book chapter (Halliday, Levi, & Reuter, 2020) entitled *The Curious Case of Money-Laundering Controls* speculates on why this worldwide punitive regulatory order against money laundering persists. In this thesis, however, what I consider curious is not the permanence of the AML TLO but the oscillations that characterized AML regime implementation and, later, its regression or dis-implementation in Brazil.

supports the case analysis. Process tracing, in this dissertation, is a tool that helped me draw descriptive inferences from a temporal sequence of events.

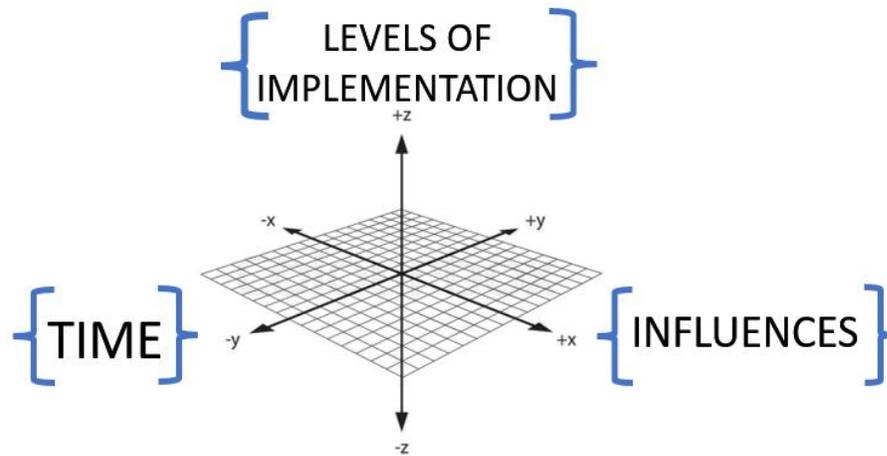
***The Individual Case-Study based on Systematic Process Tracing***

The longitudinal case-study on the building of the AML TLO in Brazil revealed the influence of various socio-political factors on Brazilian AML regime implementation. The goal was to explore those conditioning factors, using theory and case study methods, and to use new evidence to enhance knowledge of the implementation process. If the theory regarding implementation appears to have worked in Brazil, it arguably could work, at least partially, in other Latin American countries. I am aware of the external validity risks involved in doing comparative research based on just one case, but Brazil is a unique case that has experienced more than three decades of continuous AML TLO implementation without a comprehensive evaluation. It is a developing country, the size of a continent, with a highly diverse economy, that houses one-third of the population and the largest financial market in Latin America. Therefore, the study of Brazil and its conditioning factors may reflect some of the trends occurring in other neighboring states. My hope is that this study on the AML regime implementation in Brazil will open the field to also "reinterpret, and thereby improve ... data from the other countries." (King et al., 1994, p. 52)

The one-case study approach, using comparative markers, was guided by a process-tracing qualitative method. A systematic examination of evidence, considering the study research questions, was necessary to describe the factors that influenced AML TLO implementation. Although the study refers to just one case, the total number of observations were huge. I compared factors of influence across axes, perusing agencies' reports, official documents, and news media material; comparing influences from international, multilateral, and national origins; and with a third -- transversal axis -- comparing over three periods of time. A graphic representation of this tridimensional approach is presented in Figure 6.

One of the strategies used was to search for what was unexpected about implementation, and to find out to whom it mattered, iteratively comparing, contrasting, and tracing "across individuals, groups, sites, and time ... (providing) spatially -- and relationally -- informed understanding of context." (Bartlett & Vavrus, 2017, p. 8-10).

*Figure 6: The Three Axes of Study*



The graphic representation of the three axes of this study -- influences, time, and levels of implementation -- illustrates the tridimensional approach that guided this research.

The selection of a comparative process was "based on an analysis of how some situations and events influence others" (Maxwell, 2013, p. 29 cited by Bartlett & Vavrus, 2017). Rather than establishing strict political, geographic, and temporal boundaries, the research ranged across sites and scales to achieve a better grasp of what was put in practice, and how implementation had been appropriated by the stakeholders -- the Brazilian government, US diplomacy, multilateral organizations, civil society, and so on.

The use of process tracing methods here is, in many ways, like the framework proposed in a Ph.D. dissertation by Carranza Ko (2016). My research focused on the deviations detected from compliance with a multilateral order. A study "built from the process tracing based norms literature and policy driven perspective" (Carranza Ko, 2016, p. 10) that traces AML TLO developments and Brazilian regime compliance through legislation, policies, and agencies' actions. These perspectives were applied to a longitudinal comparative study of a country that implemented AML TLO but varied in behavior since its initial implementation three decades ago, ending up in a process of dis-implementation (regression). My use of the process tracing method was tied to the goal of providing a better understanding of the AML TLO influence on the country and of why Brazil changed its process of norms implementation, policy adoption, and agencies'

actions. As indicated by Carranza Ko (2016), this approach -- that examines political processes during AML TLO implementation -- should "disclose(s) theoretical discussions regarding social structures of norms (policies and agencies' actions) versus interest calculations that guide state behavior." (Carranza Ko, 2016, p. 3)

***Descriptive statistics: quantitative data and graphic representation***

This research also benefited from descriptive statistics (quantitative data and graphic representations) used for validation of the expected patterns regarding the conditioning factors of implementation. The use of descriptive statistics and graphical analysis aimed to facilitate the understanding of those patterns. Anti-money laundering (AML) implementation activity frequencies, for example, were used in this dissertation to assess the impact of the government of the United States, the oscillations of domestic political interest, or the pressure exerted by networks in the process of AML regime implementation. Qualitative and quantitative information was needed to ascertain causality (Fitzpatrick & al. 2004; Yin, 2015). The findings of this investigation are anchored in a systematic process- tracing (qualitative) method, fed with evidence from quasi-experiments (natural experiments) with controlled comparison groups, and graphic analysis, aimed at strengthening the reliability of findings and checking for historical bias (Shadish, Cook & Campbell, 2002).

The main methodological challenge here was not the triangulation of data -- when qualitative findings clarified quantitative data -- but the methodological blending of a quantitative (quasi-experiments and graphic representation) and a systematic process-tracing qualitative approach. To ensure rigor, I searched for redundant and credible statistical evidence, and introduced counterfactuals based on theoretical works, meta-analysis, and historical research. The expected forms of behaviors regarding the impact of factors of influence (independent variables) on the implementation of the AML regime (dependent variable) were submitted to this combination of qualitative work and natural experiments. In this text, the period when the "treatment" (e.g., political will to pursue or to limit AML implementation) was not applied was, in some instances, our natural experiment "control group". The "treatment group," in this example, was implementation after 2016, in Brazil, when domestic political interests predominated. In a less systematic way, data on money laundering proxies in other Latin American countries (e.g., use of

offshore facilities by Colombians, Mexicans, and Peruvians) were also used as a "control group".

The following is an example of the use of quantitative information and graphic representation, informed by qualitative data, to assess implementation and verify potential causality conditioned by factors of influence. In 2016, the inter-governmental Financial Action Task Force (FATF) issued a statement concerning Brazil's failure to address the "serious deficiencies" identified in its 2010 Mutual Evaluation Report (FATF, 2016). At its plenary meeting, FATF reiterated a statement on Brazil's progress to address the deficiencies identified in its 2010 Multilateral Evaluation Report (MER), referring to important issues that remained unresolved. In 2019 FATF issued another statement saying that "due to the seriousness of the deficiencies identified and the length of time since the deficiencies were first identified" it continued to view this as a membership issue. FAFT mentioned Brazil's lack of action to remedy the "deficiencies (found) in its June 2010 mutual evaluation report" (FATF, 2019).<sup>14</sup>

The FAFT Plenary, in 2019, adopted a "critical assessment" regarding the AML regime in Brazil. It is worth noting that, despite the flaws singled out in the FAFT report, Brazilian laws and policies regarding anti-money laundering were significantly strengthened after the 2000s, following the enactment in the country of multilateral mandates. It is possible, however, that instead of limiting money laundering, the complex regulatory environment created by the AML TLO just exposed the financial crimes of companies, businessmen, politicians, and public authorities. According to a survey conducted by Brazil and the US Chamber of Commerce, in 2018, 75% of respondents (mostly businessmen) mention that the number of regulations contributes to companies practicing acts of corruption (AMCHAM Brazil, 2018).<sup>15</sup>

Oliveira et al. (2017) consider the many incentives for failing to comply with the Brazilian AML order, and specifically cite the many provisions for self-regulation. Their

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<sup>14</sup> Financial Action Task Force (FATF) "Statement on Brazil" issued on February 16, 2019, available at the following URL: <http://www.fatf-gafi.org/countries/a-c/brazil/documents/brazil-statement-june-2019.html>

<sup>15</sup> Data from a survey conducted by the Brazil & US Chamber of Commerce (AMCHAM Brazil) of 184 directors and managers in compliance departments in Brazilian companies on political and electoral corruption in 2018. Results available at the following URL: <https://www.amcham.com.br/noticias/competitividade/pesquisa-amcham-66-das-empresas-nao-tem-politicas-claras-para-doacao-de-colaboradores-a-campanhas-eleitorais>

article mentions that the rules for self-regulation of the financial sector create opportunities for the interference of economic and political interests, thereby weakening the system and limiting its effectiveness. The authors describe what they call the "capture" of regulatory agencies in Brazil by the regulators, as "impartial, and technically prepared authorities, committed to the public interest can be far from reality." (Oliveira et al., 2017, p. 377).<sup>16</sup>

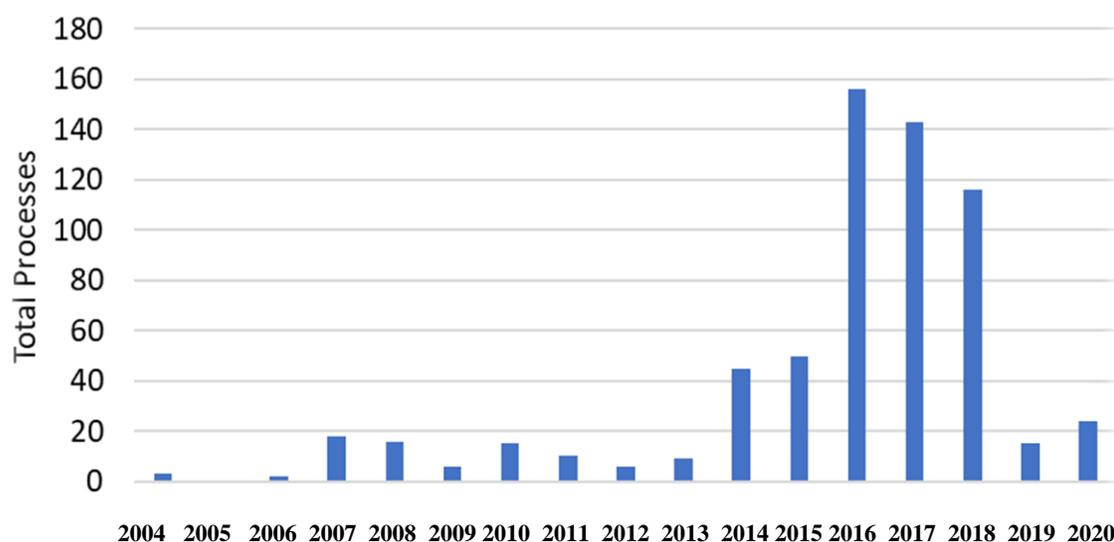
Oliveira, Agapito & Miranda present quantitative evidence of the capture of the Brazilian AML regime by regulatory agencies based on activity data from COAF and Brazilian Central Bank. The journal article uses the frequency of Suspicious Activities Reports (SARs), Egmont Group network communications, and penalties imposed to ascertain that AML regulators were captured by regulatory agents distorting the objectives of the AML TLO. Instead of fighting organized crime, AML norms and policies were being used to commit crimes. The authors found a correlation between the reduction observed in COAF activities and the legislative changes aimed at the ensuring more robust protection of individual's privacy. Unfortunately, the Oliveira et al. (2017) analysis is limited to three years of data (2012/2014). Figure 7: Brazil COAF (FIU) Sanctioning Administrative Proceeding (PAS), 2004-2020<sup>17</sup> presents, instead, the frequency (the number of sanctioning events) of 17 years of administrative processes initiated by COAF. The longer period I was able to assess shows that the Oliveira et al. (2017) assessment has its merits -- as suggested by the low level of activity of COAF administrative processes in the 2012-2014 period. However, the assessment of a longer period of administrative processes reveals that the Brazilian FIU began a period of high production of administrative processes between 2014 and 2017, not fully explained by the Oliveira et al. (2017) hypothesis of the capture of AML regime implementation by the regulatory agencies. The combination of qualitative and quantitative data can suggest the presence of conditioning factors that determine implementation. In this case, the marked increase in Sanctioning Administrative Proceeding (PAS) activities at COAF can be

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<sup>16</sup> All sources and citations in Portuguese, in this dissertation, were translated by the author, who is a Brazilian Portuguese native speaker.

<sup>17</sup> The Sanctioning Administrative Proceeding (PAS) is the supervisory instrument instituted by COAF for the purpose of ascertaining responsibilities and imposing penalties for administrative breaches of the AML Law (No. 9,613) by persons and legal entities supervised by COAF.

Figure 7. Brazil COAF Sanctioning Administrative Proceeding, 2004-2020

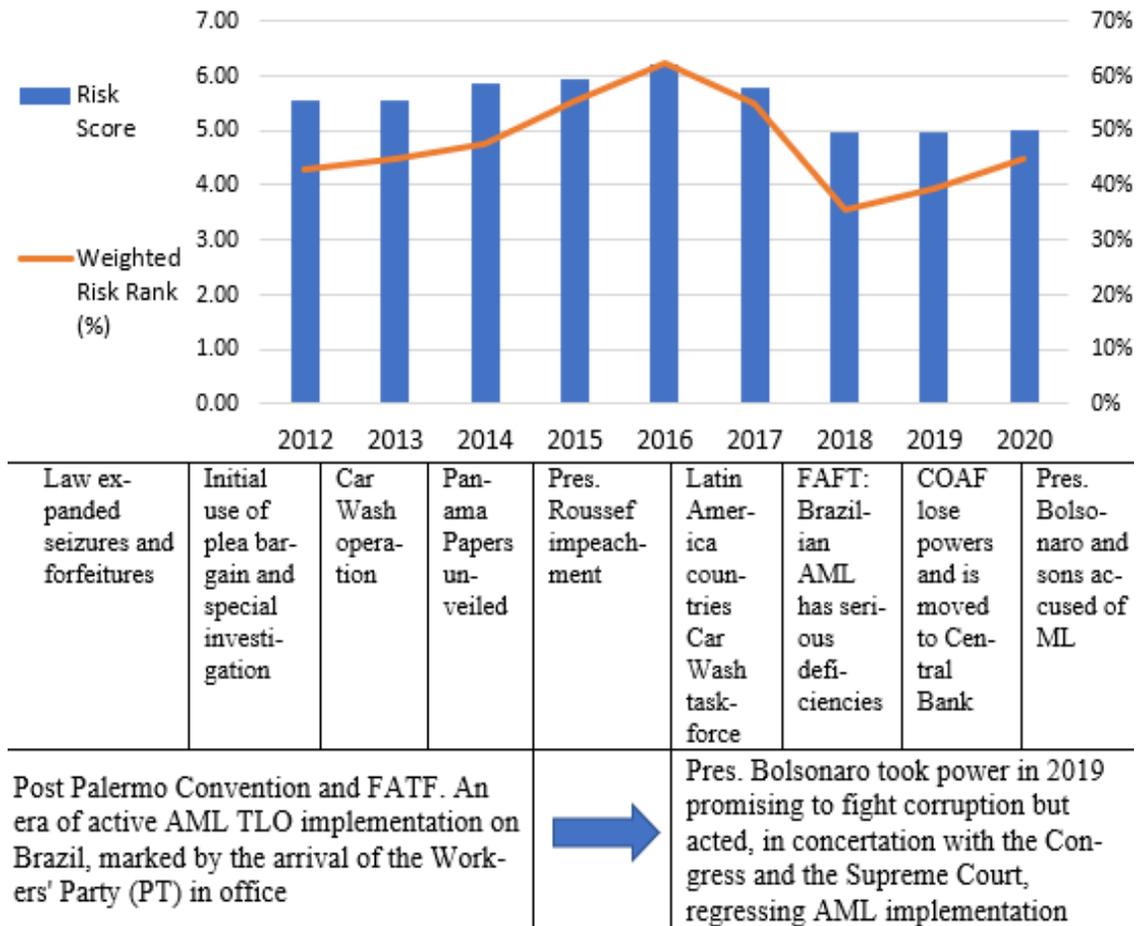


Source: COAF, 2021, with data compiled and organized by the Author.

explained not only by the capture of AML regime implementation by the regulatory agencies, but also by the determination to punish politicians accused of money laundering during the process that led to the impeachment of President Rousseff in 2016, and the conviction and incarceration of President Lula in 2018.

The longitudinal study of the AML Risk Score indicator is another example of the combined use of qualitative and quantitative approaches to establish correlations and, possibly, causal relations. The AML Risk score is a composite indicator published since 2012 by the Basel Institute on Governance -- a not-for-profit Swiss foundation -- that provides longitudinal information on a proxy for AML regime implementation (more money laundering risk equals less implementation). The data on Brazil provided by the AML Risk score between 2012 and 2020 are organized, in Figure 8, around anti-money laundering events and activities. The sequence of the enactment of laws on seizures, forfeitures, new techniques for investigations, and plea-bargains, since 2010, is followed by the Car Wash operation and the Panama Papers revelations, bringing an increase of the Brazilian AML risk score, which peaked with President Rousseff's impeachment in 2016.

Figure 8. AML Implementation, Risk Score & Weighted Rank, 2012-2020



Source: Graph prepared by the author with data from Basel Institute of Governance Basel AML Risk Index, and data from qualitative research. The risk index focuses on AML frameworks, plus corruption, transparency, and the rule of law in 203 countries. The weighted risk rank shows the relative position of Brazil within all countries. The research-led composite index is based on public sources and third-party assessments.

The Brazilian Risk score ebbed after the impeachment, only to start increasing again with the accusations against President Temer and the elections that brought President Bolsonaro to power with his government decision to halt AML implementation and weaken the AML regime. This is just one example of the findings that resulted from applying the methodological blending of the systematic process-tracing qualitative approach with quantitative techniques (quasi-experiments and graphic representation). This work aims to show the potential for the identification of correlations, and even causality, between conditioning factors and AML regime implementation in Brazil. I am

fully aware that several problems can result from this type of research. Natural experiments (outside the ideal laboratory) can provide diffuse outcomes when we deal with mediators and confounders. AML policy action, a key indicator of implementation, achieved different degrees of efficiency at different times, limiting comparative analysis. Data compatibility and availability of information were also issues of concern. To mitigate these problems, however, I used different natural experiments, with data spanning several decades. Pre-testing and post-testing in a natural experiment -- before and after AML laws and policies were adopted in Brazil -- strengthened the argument for causality between the most outstanding factors of influence and AML regime implementation.

In this dissertation I used interrupted time series techniques to assess the impact of AML laws and policies or of a certain aspect of a policy (e.g., know-your customer requirements for financial institutions). This approach controlled for selection bias and strengthened the research findings. The before and after in our natural experiment was defined by qualitative research. The pre-intervention, intervention, and post intervention periods were delimited and justified using a systematic process-tracing qualitative method. The influence of a conditioning factor on AML public policies -- a dummy variable -- was also weighted with the contribution of qualitative work. In fact, the combination of quantitative and qualitative methods, the mix of evidence, and the use of graphic representation, provides this research with a unique capability: the possibility to assess patterns of behavior and check whether those patterns are behaving as expected in terms of conditioning AML TLO implementation in Brazil. This work, I believe, also suggests areas for future in-depth analysis based on a qualitative and quantitative approach.

***Regarding the third axis: historical time***

This is a comparative case study "that follows processes and phenomena over time, rather than preemptively bounding the research" (Bartlett & Vavrus, 2017, p. 11). This dissertation thus required the development of a historical narrative -- a qualitative work based on the method of theory-guided systematic process tracing, as defined by Argentinian sociologist Tulia Falletti in a 2016 article. Falletti's theory-guided process

tracing method has the potential to reveal the varying patterns of institutionalization in a sequence of connected events (Falleti, 2016).

This "intensive" research starts with the first Brazilian laws on money laundering in the 1990s and ends with the changes promoted by a movement against the AML regime, in 2020. The content of chapters 2, 3, and 4 are the result of the adoption of this theory-guided process tracing of an intensive process, where "the researcher does not include analysis of the cause, other than considering it as an initial trigger" (Falleti 2016, p. 459). The researcher, says Falleti (2016), does not need to investigate the cause or the effect of the intensive process. Intensive processes, according to Falleti (2016), are "conceptually and tightly connected sequences of events ... that originate after the initial cause and yield the effect of interest. " (p.459)

Building on Falleti's theory-guided process tracing method, the "intensive" approach of this research assessed outputs and short-term outcomes of AML regime implementation in Brazil -- through the study of conditioning factors. This variant of process tracing inductively generated theory by uncovering the mechanisms influencing implementation. As in Falleti (2016), our work used a "theory-guided" variant of process-tracing method that goes beyond a mere narrative of facts to generate and test theories. Given the macro-micro-macro aspect of this within-case analysis, the use of process tracing contributed to the identification and description of influences regarding AML TLO implementation. Additionally, the dialectical proposition -- macro-micro-macro -- captured "the unfolding of social action over time in a manner sensitive to the order in which events occur" (Aminzade, 1993, p. 108 cited by Falleti, 2016).

As a result of the application of the theory-guided systematic process-tracing method, the dissertation presents a narrative, with structured comparisons within axes, with implementation and its conditioning factors organized around a theoretically constructed sequence of events, divided into three periods of time. The time periods, as was explained in the previous section, are: 1) 1990-2002: FATF and Vienna Convention inaugural period; 2) 2003-2015: the post-Palermo Convention and active AML TLO implementation period; and 2016-2021, a period of selective reversal of AML TLO policies. This theory-guided intensive systematic process-tracing individual case-study regarding AML TLO implementation focused on a sequence of AML regime

implementation events and their conditioning factors. The theory-guided method, "applied in a deductive manner and through a series of evidence tests, " (Falleti, 2016, p. 457) not only corroborated the existence of factors conditioning AML TLO implementation, but also uncovered the forces behind the actors (i.e., agencies, politicians, governments, civil society) and their behavior that influenced implementation.

### ***Data Analysis and Validation with Process Tracing***

The study of the theoretically constructed and temporally sequential historical periods focuses on social interactions and power relations within communities and agencies, or across them. Thus, the attention devoted to social and policy actors sought to enhance understanding of how actions vary in intensity over time and influence one another. As mentioned in previous sections, we found that AML regime implementation in Brazil was determined, mainly, by a combination of three conditioning factors: international pressure; domestic political interests; and civil society advocacy. Thorough research into official documents, civil society reports, and news media articles provided the evidence on how those conditioning factors formed and changed over time. The contextual research -- mostly done in archives online -- assessed those factors in the form of social interactions and political processes, observed across levels of implementation, and across time (from 1990 until 2021). As Bartlett & Vavruswill (2017) say, "rethinking context ... makes the project one of identifying the historical and contemporary networks of actors, institutions, and policies that produce some sense of a bounded place for specific purposes" (p. 13).

The choice of a qualitative tracing method -- heavily influenced by the works of Bartlett & Vavruswill (2017), Carranza-Ko (2016) and Falleti (2016) -- provided the tools for this study to go further than the traditional "compare and contrast" logic. I argue here, following Carranza-Ko (2015), Falleti (2016), and Bartlett & Vavruswill (2017), that the evidence that was found with theory-guided systematic process tracing improved the identification and facilitated the evaluation of the degree of determination of the intervening variables influencing AML implementation. That method helped the researcher identify the conditioning factors that impacted implementation, by providing a "conceptualization of the mediating process." (Falleti, 2016, p. 460)

After assessing the list of variables found in the literature (see Table 1: AML implementation in Brazil Stakeholders and Potential Influences, p.27) and applying theory-guided systematic process tracing, the researcher observed a transition away from the international diplomatic and political pressure and civil society consensus on strategies to fight money laundering in order to deter organized crime (1990 – 2016). After 2016, those conditioning factors were supplanted by the predominance of a nationalistic vision of sovereignty, the political instrumentalization of AML policies, and the affirmation of anti-globalism claims that are related to a period of “dis-implementation” (2016-2020). We compared the strong implementation of AML TLO in the period 2003-2016 with the dismantling of AML TLO policies that marked the 2016-2021 period. FATF evaluations (e.g., Brazilian MER), news media articles, NGO reports, and administrative data (e.g., police data) provide evidence on how President Temer (2016 – 2018) and President Bolsonaro (2019 – present) oversaw, with help from the Brazilian Congress and the Supreme Court, the "dis-implementation" of the norms, policies, and activities constituting Brazil's AML regime.

The study traced implementation of the AML regime in Brazil in the period from 1990 to 2021, to see how the process unfolded, understand the roles of national and multilateral actors, and identify what factors conditioned policy implementation over time. In such an approach, comparison was used to demonstrate how different periods of time, governed by an apparently similar regime, resulted in strikingly dissimilar levels of implementation.

In summary, this research is an effort to identify and reveal the social and political forces influencing the transformative processes that characterize implementation in Brazil. I am fully aware that the use of process- tracing techniques will not provide the means to rule out alternative theories (Büthe, 2002), but the selected method was good enough to come up with a theory, with some plausible explanations regarding AML regime implementation in Brazil.

The next three chapters will document the nature and consistency of the most salient conditioning factors and assess their influence on the patterns of AML implementation in Brazil, in the period 1990 – 2020. They include descriptions and

analysis of the international influence, led by the United States; the domestic political interest for or against implementation; and the dynamics of networks. Chapter 2 assesses the international pressure for implementation that resulted from US diplomatic action, in coordination with multilateral organizations, inter-governmental developing banks, and international NGOs. Chapter 3 deals with the political pressure exerted by politicians and higher-level government authorities, when politicians acted as stakeholders of the implementation process in Brazil, letting their domestic political interests interfere with implementation. Finally, Chapter 4 presents an assessment of the networks that facilitated AML implementation, including the participation of civil society advocacy for implementation, mainly through partnership with governmental agencies.

### **The United States and the implementation of an AML regime in Brazil**

Money laundering is a concept created in the United States. Legend says that the term was originally used to denominate the practice of the Italian mafia in the US city of Chicago - who purchased "cash only laundromats" to hide (launder) the money they got from criminal activities. Later, with the vertiginous increase in money laundering from illegal activities in the second half of the 20<sup>th</sup> Century, criminals replaced laundromats with Swiss Banks, but the concept of money laundering persisted. The expression appeared in a legal document, for the first time, in the 1961 US Code, which mentioned "the laundering of monetary instruments" – or the financial transaction that represents the proceeds of some form of unlawful activity, designed to conceal or disguise "the nature, the location, the source, the ownership, or the control of the proceeds ... or to avoid a transaction reporting requirement under State or Federal law." (United States [US], 2021, par. 1956). In 1973, the Watergate scandal introduced the concept of money laundering more widely to the world.

It took two decades after the Watergate scandal, however, for the dissemination in Brazil of the expression "money laundering" (*lavagem de dinheiro* in Portuguese). Not that criminals' money was not laundered; after all, for criminals, there was always an opportunity to have "a few bucks in Switzerland,"<sup>18</sup> as many in the Brazilian elite used to say. It was with the War on Drugs, however, a time that coincided with the final years of the military dictatorship and transition to democracy in Brazil, in the 1980s and 1990s, that the United States began to promote discussion of the issue of money laundering internationally, as an instrument to fight drug trafficking, and offered active cooperation to countries seeking to implement the AML transnational legal order. The Anti-Drug Abuse Act was signed into law by US President Reagan in 1986. In the same year, the US delegation to the Organization of American States fostered the establishment of the Inter-American Drug Abuse Control Commission (OAS/CICAD) of the Organization of

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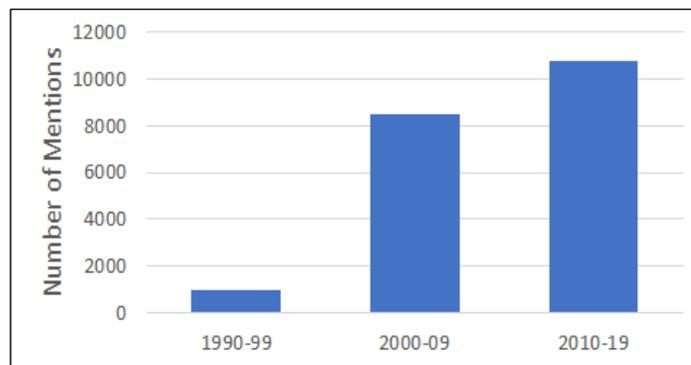
<sup>18</sup> It is not surprising that Switzerland was tagged as the iconic fiscal paradise by the Brazilian upper class. The country has a long tradition of protecting financial secrecy, facilitating the laundering of criminals' assets. The first regulation to limit the ability of a bank to share information about its clients was approved in 1713, in Geneva. Swiss bank secrecy was strengthened in the 1920s, when many European countries raised taxes to pay debts incurred during the First World War. In 1934, just before the Second World War, it became a crime for a Swiss banker to disclose financial information.

American States (OAS) as the Western Hemisphere's policy forum on all aspects of the drug problem, including money laundering.

The frequency of the usage of the term "money laundering" in connection with Brazil can be summarized in Figure 9 that presents a compilation of data from the newspaper *Folha de São Paulo* for the period 1990-2019. It shows an eightfold increase in mentions of money laundering in Brazil in the second decade of AML regime implementation (2000-2009) and an elevenfold increase if we compare the first decade with the third decade of AML TLO implementation (2010-2019). The imported concept of "money laundering" had jumped, in the 1990s, from Al Capone of Chicago to the streets (and offices) of Rio de Janeiro, São Paulo, and Brasília.

In this Chapter we will assess five specific moments of US external policy pressure for the implementation of an AML regime in Brazil. The first section refers to a network of experts and multilateral agencies, organized under the leadership of the United States – the first country to criminalize money-laundering. From 1986, when the United States enacted its Money Laundering Control Act and coordinated the establishment of the OAS Inter-American Drug Abuse Control Commission (OAS/CICAD), and throughout the 1990s, the US led this effort to install an AML regime in countries via multilateral organizations. The second section describes an unmistakable attempt at arm-twisting made by US President Clinton during the 1994

*Figure 9 Mentions of "money laundering" in Brazilian newspaper FSP, 1990 - 2019.*



Source: graph prepared by the Author, with information collected from the search engine of the Brazilian national newspaper *Folha de São Paulo* ([www.folha.uol.com.br](http://www.folha.uol.com.br))

Miami Summit of the Americas, designed to facilitate AML regime implementation in the Western Hemisphere, including Brazil. The third and fourth sections discuss views regarding implementation of the multilateral exogenous legal order that, since its inception, was accompanied by pressure from the United States. Finally, the fifth section presents an assessment of the US participation in the Car Wash operation in the 2010s -- arguably the most important outcome of AML regime implementation in Brazil.

### **US foreign policy and its network**

"The US ... is the leading AML hawk, driving much of the FATF decision-making." (Halliday et al., 2019, p. 15). This observation is shared by American Bar Foundation Research Professor Terence Halliday, Cardiff University Professor of Criminology Michael Levi, and University of Maryland Professor in the School of Public Policy Peter Reuter -- three distinguished scholars and authors who worked, in different periods, on behalf of the United States, in the elaboration and implementation of AML TLO. Ernesto Savona, Professor of Criminology at *Università Cattolica* of Milan, is another example of the partnership between US diplomacy and academic circles aimed at forging a new legal order. Savona did consultant work for the US government in the 1990s and had an opportunity to contribute to the work of the American delegations in multilateral meetings during the enactment of the AML TLO. Professor Savona witnessed the role of US delegations that "were always the largest ones, composed of diplomats, lawyers, law enforcement authorities, and other high-level experts in money laundering." (E. Savona, personal communication, May 17, 2020).

To build the new legal order, the government of the United States invited directly, or through the United Nations, professors from recognized universities in the US and Europe, to participate in the process of AML planning and implementation, helping in the discussions to draft legislation, preparation of soft-law standards, and policy design. These specialists witnessed the AML inception of the Financial Action Task Force (FATF) in July 1989 during the Group of Seven (G-7) Summit in Paris, the publication of a first FATF report "Narcotics and Money Laundering -- Assessment of the Scale of the Problem" in the same year, the issuing of FATF Forty Recommendations, the organization of the Egmont Group of Financial Intelligence Units, and the adoption of the United Nations Vienna, Palermo, and Merida conventions. Academic specialists from

distinguished universities worked, in different periods, for the United Nations, OECD, IMF, World Bank, the Organization of American States (OAS) and/or the US State Department, building the structures of the AML TLO.

Reports from those multilateral meetings also register the leadership of the US, since the early years of AML regime creation. The 1990-1991 Financial Action Task Force on Money Laundering Report -- the first FAFT report, following the adoption of the original Forty Recommendations -- is one example (FAFT, 1991). It describes how, in July 1989, in Paris, after the Heads of Government of the seven biggest capitalist countries<sup>19</sup> and the president of the Commission of the European Communities had enacted the Financial Action Task Force (FATF), more than 160 experts, law enforcement authorities, bank supervisory and regulatory agencies met systematically and worked together for six months. Within the task force, three working groups were created to deal with implementation, cooperation, and outreach. The United States assumed the presidency of the group focusing on implementation of the new transnational legal order (FAFT, 1991). The first FAFT report also mentions the active participation of US government agencies, such as the US Customs Service, that worked "to facilitate wider implementation of regulations," (FAFT 1991, p. 9)<sup>20</sup>.

The US leadership in the G-7 context, confirmed by witnesses and official reports, portrays the diplomatic actions of a country that is a key stakeholder in the process of implementing the norms, policies, and activities that make up the AML TLO. The G-7 meeting once again reaffirmed the United States' commitment to lead the work on AML implementation in July 1990, two years after the UN Vienna Convention promulgated the first international definition of money laundering, making it a criminal offense, and seeking to deprive drug dealers of their financial gains. During the 1990 G-7 meeting in Houston, Texas, the US signaled its position "to assess and facilitate the implementation

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<sup>19</sup> The Group of Seven (G7) is an inter-governmental political forum consisting of Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States. The group promote values of capitalism, political pluralism, and representative government. As of 2018, the G7 nations accounted for close to 60 percent of global net wealth. For the enactment of the AML TLO, the Commission of the European Communities and eight other countries (Sweden, Netherlands, Belgium, Luxembourg, Switzerland, Austria, Spain, and Australia) also joined the Task Force, "in order to enlarge its expertise and also to reflect the views of other countries particularly concerned by or having particular experience in the fight against money laundering, at the national or international level" (FAFT 1991, p. 4).

<sup>20</sup> The 1990 - 1991 Financial Action Task Force on Money Laundering Report was issued in Paris, on May 13, 1991.

of the (FATF) forty recommendations" (FAFT 1991, p. 4) and assured the global community that the country was determined to adopt and implement an effective AML transnational legal order.

In the 1990s, US diplomacy was actively working for AML implementation in Latin America. Under the leadership of the United States, in 1990, the General Assembly of the Organization of American States adopted a Resolution emphasizing "the need for legislation that defines as a crime all activities involving the laundering of property and proceeds related to illicit drug trafficking." (AG/RES. 1,045 [XX-0/90]). The US government sponsored and helped organize series of multilateral meetings in the region designed to strengthen the OAS Inter-American Drug Abuse Control Commission (OAS/CICAD) and facilitate implementation of the standards against money laundering promoted by CICAD's "internationally acclaimed" (US Department of State, 2000) model legislation on money laundering drafted with the supervision of the delegation of the United States and adopted by the OAS General Assembly in 1992 (OAS/CICAD, 1992; US Department of State, 2000). The model legislation drafted by the US and adopted by the OAS member countries in 1992 is a comprehensive program for AML regime implementation. The model legislation criminalizes money laundering and proposes standards for forfeiting, freezing, and seizing assets, financial institutions procedures, know-your-customer norms, recording and reporting of transactions, grounds for compliance and international cooperation. (AG/RES. 1,198 [XXII-0/92]).

Taking the lead, for the United States delegations in the OAS, meant writing drafts for legislations, leading the political dialogue, and negotiating the necessary votes for the adoption of instruments. The United States was (and still is) the main financial contributor of most multilateral agencies, such as the OAS, an important sponsor of NGOs in the Western Hemisphere, and the largest economy, able to coordinate the use of financial resources by the private sector. In sum, the richest and most powerful country in the world committed its diplomacy to achieve global implementation of AML TLO, with help from OECD countries, multilateral organizations, inter-governmental development banks, academic specialists, civil society, and the private sector. In agreement with the United States, they all contributed to drafting and implementing international standards, laws, policies, and activities. In the Western Hemisphere, AML regime implementation

was influenced by successive governments of the United States, either directly or through the OAS, the Inter-American Development Bank (IDB), the private sector, and NGOs. The United States government committed financial resources to be used towards facilitating implementation of the AML regime in all Latin American countries, except for Cuba. The active participation of diplomats of the United States in bilateral and multilateral fora for the creation and implementation of hard- and soft-law orchestrated implementation of the new global order. Through activities such as the training of specialists in the countries, international conferences, and the summoning of national authorities, the United States was able to intervene, promote, and facilitate the implementation of an AML regime in many countries, including Brazil (Thony, 1996; TRANSCRIME, 2000; Levi & Reuter, 2006; Mendroni, 2013; Tourinho, 2018).

#### **At the beginning: an arm-twisting meeting**

The implementation of the AML regime in Brazil started slowly, in 1991, with the enactment in the country of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, also known as the Vienna Convention. This multilateral treaty, heavily promoted by the US delegation to the United Nations, criminalized the use of illicit financial resources by drug-traffickers. As drug-trafficking activities generate "large financial profits," the UN treaty decided to eliminate them, mandating the countries to criminalize "the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property." (United Nations, 1988, Art. 3, [b][ii]). The Vienna Convention does not explicitly mention the term money laundering, but it promotes the implementation of AML policies to diminish the financial resources of drug traffickers, through confiscation, extradition, mutual legal assistance, controlled delivery by police, international cooperation, and training.<sup>21</sup> The enactment in Brazil of the Vienna Convention through Decree No. 154/91 (Brasil Presidencia da República, 1991) made the concealment or disguise of property by drug-traffickers a crime in Brazil, but the new norm and its mandated policies were not generally used by the courts. In fact, there is no record of a

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<sup>21</sup> Title 22 of the U.S. Code requires reports on countries that receive assistance from the US regarding compliance with the goals and objectives of the Vienna Convention, including action on issues such as financing of crime, and money laundering. (22 U.S. Code, § 2291h).

federal court ruling indicting a drug-trafficker with the additional crime of money laundering, or similar offense, in Brazil before the AML law of 1998 (Law No. 9,613/98).

In the winter of 1994, the US government organized a Summit meeting with the heads of government of the Western Hemisphere to push for a hemispheric concerted strategy to fight money laundering. US President Bill Clinton (1993-2001) proposed a continent-wide free trade agreement. From the US side, the main goals for this first Summit of the Americas<sup>22</sup> included a push for globalization through the signing of multilateral agreements aiming to modernize Latin-American and Caribbean national economies and strengthen the international economic system, with mandates and standards to be followed by countries and private entities throughout the Western Hemisphere.

The day before the opening of the Miami Summit, the then US Secretary of the Treasury, Lloyd Bentsen, published an op-ed article in the newspaper USA Today, insisting on full cooperation by the countries of the Western Hemisphere to fight tax evasion and drug-traffickers' dirty money (Bentsen, 1994). According to the US Secretary of the Treasury, "every country may have different laws and ways of enforcing the laws, but they all share a common responsibility to keep their financial system sound and free from criminal taint." (Bentsen, 1994, p. 12A). Figure 10 shows an excerpt from the newspaper *Folha de São Paulo* mentioning the interest of the delegation headed by President Clinton in negotiating the implementation of an anti-money laundering regime with Brazilian President Franco. That article from the *Folha de São Paulo* contained one of the first mentions of the expression "money laundering" (*lavagem de dinheiro*) in Brazilian media.

The United States' message in favor of the AML TLO during the 1994 Summit of the Americas was echoed in the media in Colombia, Mexico, and Brazil, the countries that -- together with the countries of the Central America Northern Triangle -- bear the burden of rampant violence practiced by drug-traffickers. President Franco, Brazil's

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<sup>22</sup> The Miami Summit of 1994 started a process of regular meetings between the heads of government of the countries of the Western Hemisphere, institutionalized into the "Summit of the Americas" process. The meetings are organized by the host country together with the Organization of American States General Secretariat (OAS/GS).

Figure 10. Newspaper headline: US wants to discuss with Brazil a law against ML

São Paulo, sexta-feira, 9 de dezembro de 1994 **FOLHA DE S. PAULO** brasil

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## **EUA querem discutir com Brasil lei contra lavagem de dinheiro**

**CLÓVIS ROSSI**  
ENVIADO ESPECIAL A MIAMI

O presidente Itamar Franco e o presidente eleito Fernando Henrique Cardoso vão enfrentar em Miami um inesperada e delicada questão, a da lavagem de dinheiro proveniente do crime organizado e/ou da evasão de impostos.

FHC desembarca hoje, às 12h35 (9h35 em Brasília), e Itamar chega meia-hora depois, para participarem da Cúpula das Américas, o encontro dos 34 chefes de governos do continente.

O tema do dinheiro sujo foi lançado ontem, em provocativo artigo do secretário do Tesouro norte-americano, Lloyd Bentsen, para o jornal "USA Today".

Source: *Folha de São Paulo*, December 9, 2004. The text announces the interest of the US to debate money laundering with Brazilian authorities during the Summit of the Americas. It is one of the first mentions of the expression "money laundering" (*lavagem de dinheiro*) in the Brazilian press.

representative at the 1994 Summit of the Americas, was the vice-president who replaced President Collor (1990-1992), the first president democratically elected after the end of the Brazilian military dictatorship and impeached on charges of corruption. The impeachment of Collor had an impact that facilitated implementation of the AML regime proposed by the US. In 1995, the US State Department classified Brazil as presenting a "medium-high" risk for money laundering activities, with "locations in which action is needed ... in order to make headway into the international money-laundering (sic)." (GAO 1996, p. 29-30). This is precisely why it focused further on pressuring Brazil. President Franco (1992 – 1994) and his successor, President Cardoso (1995 – 2002) were not interested in the free-trade zone proposed by the United States during the Miami Summit, but they were very much interested in the implementation of ethical reforms, including the fight against money laundering that was being proposed by the United

States. Hence, there was at that time a convergence of US political interests with the interests of Brazil's leaders on the ethics of the anti-money laundering regime.

### **The one-size-fits-all problem**

In the 1990s, US foreign policy for the Western Hemisphere focused mainly on strengthening the rule of law, offering technical assistance, training, awareness activities, and partnership with governments and civil society. Latin America was experimenting with representative democracy and the restoration of judicial systems after a long period of military dictatorships (e.g., in Argentina, Brazil, Chile, Peru, and Uruguay). In Central America, citizens were still dealing with implementation of the peace accords that ended civil wars and guerrilla movements, bringing stability to El Salvador, Nicaragua, Honduras, and Guatemala. To collaborate with US diplomacy efforts, many NGOs (such as Transparency International), think tanks (e.g., Inter-American Dialogue), and multilateral organizations (e.g., the OAS) answered the call and partnered with the US government to provide technical and financial assistance and specialized services. These included the application of AML TLO international standards in Central and South American countries.

Most of the multilateral agencies involved with the building of an AML TLO are based in the city of Washington, D.C. (The World Bank, IDB, and OAS); and New York (UN). The US State Department, through USAID, and US embassies, with help from these multilateral agencies and NGOs, trained judges, prosecutors, and police from Latin American and Caribbean countries, promoted model laws, and provided technical assistance, aimed at facilitating the implementation of the AML TLO in the Western Hemisphere. Additionally, the US government rewarded the complying countries with donations and sponsored local projects, signaling to governments, private sector, and civil society its interest regarding AML implementation. Elizabeth Dávid-Barrett and Ken Okamura, specialists in norm diffusion from the University of Oxford Saïd Business School provide a succinct explanation for the reasons for compliance in the Western Hemisphere: Latin-American and Caribbean governments support AML TLO because "they are concerned about their reputation with international donors and expect to be rewarded by increased aid" (2013, p. 2). In other words, the signaling theory model

applied by US foreign policy facilitated adherence to AML policies indirectly, because they were perceived as enjoying the support of the United States government.

Regarding the reasons underlying implementation of the AML regime in Brazil, Brazilian scholars found that the United States government was a determinant factor. Marcos Tourinho, a professor at the leading Brazilian school of public administration (*Getulio Vargas Foundation*), presented a study, in 2018, on the post-1990s wave of laws, norms, agencies, and activities regarding the AML regime in Brazil, on the rationale underlying its implementation. Tourinho's (2018) article indicates bilateral and multilateral pressure shaped AML implementation in Brazil. He found that bilateral support from the United States and multilateral support from intergovernmental organizations were the "critical aspects" that influenced implementation. The AML regime came about in Brazil, he says, through "legitimation, coercion, and implementation support" from the United States and multilateral organizations (Tourinho, 2018, p.1). "Legitimation," with a new legal system, "coercion" with the use of the big stick, and "implementation support" with financial resources. It is true that international donors, including not only the US but also multilateral development banks and financial agencies, pushing for AML implementation, can show their teeth (metaphorically speaking) and threaten countries with the withdrawal of financial investments and international aid, but the size of the Brazilian economy and its insertion in the global market suggest that the country could withstand even the most serious retaliations. Additionally, other examples in the region, such as the political and economic embargos that hit Cuba, Haiti, Honduras, and Venezuela, show the limitations of bilateral or multilateral punitive actions.

Tourinho (2018) describes the strategies used by US foreign policy to promote AML regime implementation in Brazil, but he does not provide an evaluation of AML policy rationale as either good or bad. Staffen (2020) agrees that the US is the main factor behind AML regime implementation in Brazil. He also points critically to "the invisible hand of Uncle Sam," and US foreign policy that is often at odds with, or opposed to, Brazilian national interest. The US international commitment to AML policies is determined, he says, by US goals of economic dominance. The AML regime, from that perspective, is just a tool to strengthen the economic dominance of the United States and

its partners, such as the OECD countries, and a menace to the national sovereignty of developing countries. Staffen's article discards any ethical reason to implement an AML regime and focuses mostly on a neo-utilitarian interpretation of the US policy driving AML regime implementation worldwide: a regime that, according to him, is focused, exclusively, on pursuing the economic and financial interests of the US government and its businesses (Staffen, 2020).

The Brazilian Professor Márcio Ricardo Staffen<sup>23</sup> is the prototypical anti-globalist, who advocates against what he calls neo-Keynesianism, neo-interventionism, and ultra-liberalism. In the Brazilian political scenario, those terms can be associated with the political left, even though the anti-globalism and nationalistic claims may also sound reasonable to the ears of the political right. Staffen's (2020) research focuses on AML policies carried out in Brazil from 2010 to 2020 – that includes a period of intense AML regime implementation, between 2010 and 2014, and the subsequent period of AML regression. He highlights the efforts of the US government to ensure the predictability of the international financial system, minimizing opacity for foreign agents, and facilitating the transnational transit of capital. The belief that there is this permanent and all-invasive invisible hand that manipulates countries to promote US business, however, does not disqualify all his research. He investigated, mainly, the reasons that made the US engage in the construction of an AML TLO and the AML regime. Thanks to globalization, he says, the multilateral fight against money laundering has become a worldwide "new normal" blurring the line between local, national, and international interests -- a factor that led to many problems in policy implementation, such as the imposition of a "multilaterally justified" "one solution fits all" model (Staffen, 2020, p. 14).

Despite Staffen's frightening view of the invisible hand of capitalism that dominates everything, his work reminds us that implementation of the AML regime in Brazil involved many instances of mimicry in Brazil of a model promoted by the US, without due filtering. Thus, his work questions the main objectives of AML regime implementation. Instead of a regime to fight drug-traffickers, organized crime, or political corruption, the main goal of the AML regime was to assure the predictability of the

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<sup>23</sup> Dr. Márcio Ricardo Staffen, Ph.D. is a professor at a small college, the *Faculdade Meridional*, in the city of Passo Fundo, Rio Grande do Sul, Brazil.

international financial system, minimizing opacity for foreign agents, and facilitating the transnational transit of capital. That rationale explains the extraordinary interest in global AML implementation and why the United States played a prominent part in matters related to AML regime implementation in Brazil.

### **US proposes an endogenous legal tradition for Brazil**

Brazilian nationalists and anti-globalists never liked the AML TLO. For enemies of globalization, and nationalists, from any side of the political spectrum, the AML TLO is seen as a wedge to destroy national identities and promote the expansion of an international economic order, under the dominance of the United States. They claim that there is an incompatibility between the positive legal order, represented by the Brazilian Constitution, and the regime proposed by the AML TLO, based on English common law as practiced in the United States. In fact, the Brazilian legal system is based on the Roman tradition where written law prevails over custom and case law. AML norms, according to the positivists, bend the way culpability is assessed, changing the parameters that positive law requires for guilt.

The AML law of 1998, the enactment of the Palermo Convention, in 2004, the new AML law of 2012, and Law 12,850 of 2013 progressively introduced public safety policies promoted by the United States, such as the criminalization of money laundering, know-your-customer norms, use of new investigation techniques, early seizures and forfeitures, defendants' collaboration to produce evidence (plea bargains), limited bank secrecy and, to the horror of the positivist-minded legal specialists in Brazil, decreased the burden of proof required for judges to assert culpability. The introduction of this new regime, with new norms, policies, agencies, and activities, sustained by an endogenous legal system built under the influence of the United States was regarded by a group of Brazilian jurists, academics, and specialists as too exotic. On the other side, public prosecutors, police, many judges, media, civil society, and the public viewed the new legal system as a necessary and important change in Brazilian legal tradition, ushering in a better justice system, and finally creating an opportunity to punish the crimes of money-laundering and corruption, and even foster development (Guerriero, 2015).

The process of implementation in Brazil of this endogenous new regime was immediately accompanied by scandals, prosecutions, and incarceration of high-level

politicians, such as José Dirceu, a prominent civil leader during the fight against military rule and, in 2005, the chief of staff of President Lula. The *Mensalão* criminal case was referred to the Brazilian Supreme Court in 2005 after prosecutors found monthly transfers by members of the federal government to congressmen. During President Lula's first term (2013-2016), the *Mensalão* scandal stirred up the political system and tested the limits of AML prosecutions. The operation was the first opportunity for the Brazilian judicial and public safety system to use the new investigation techniques promoted by the US Federal Bureau of Investigations (FBI) and mandated by the Palermo Convention – i.e., surveillance, background checks, wiretapping, undercover infiltration, and sting tactics. In the case of *Mensalão*, scholars and legal specialists argued that politicians were found guilty without the previously required "positive" proof of knowledge (Medeiros, 2012). Brazilian AML courts required no more than "indifference" to the result of the criminal conduct to prove guilt (Brasil Supremo Tribunal Federal, 2013). When analyzing the *Mensalão* case, Brazilian Supreme Court Justice Rosa Weber confirmed the materiality of the crime of money laundering and noted that to make a judgement it was essential to apply the Anglo-Saxon doctrine (Silva M. O., 2019).

Despite the complains from constitutionalists, nationalists, and the anti-globalist movement, the new regime was implemented by the Congress that enacted new AML and anti-corruption laws, by the judicial system that established specialized courts on money laundering, and by the executive, which developed new policies and installed new agencies. Thanks to the AML regime implemented with the influence of the United States, for the first time in Brazil, politicians, high-level public servants, and businessmen were going to jail, indicted for money laundering crimes. In fact, as we learnt from the anti-globalists -- who warned that the legal system imported from the US was inadequate to the Brazilian regime -- the AML TLO brought to Brazil a new legal doctrine to assess money laundering intentionality, together with new laws, policies, and agencies -- something that was to have serious repercussions later, in the period of regression, post-2016, when laws were changed and courts started canceling indictments and commuting sentences.

### **US external policy and the Car Wash operation**

The active participation of the United States government was not limited to training professionals, improving the capacity of the judiciary, and legal proselytism. In fact, in his study involving an analysis of news media, political speeches, and qualitative interviews, Fabio Silva, a Brazilian professor at the University of Oklahoma, found that the Car Wash operation -- that resulted in the incarceration of President Lula, high-level politicians, public employees, and businessmen -- was a manifestation of United States interventionism, instead of a national movement with an ethical component of fighting for transparency, accountability, and the rule of law. In this section, I will present evidence, from scholarship and media sources, of the impact of US foreign policy on developments in the most important operation against money laundering in Brazilian history: the Car Wash operation.

The US interest in implementation of the AML TLO in Brazil gained added momentum after September 11, 2001. The terrorist attacks on New York and Washington mobilized the Bush presidency (2001-2009) to fight terrorism everywhere. The government of Brazil, however, was not willing to accept even the possibility of the existence of terrorists' cells in Brazil. In fact, the term "terrorist" is still politically charged in the country, as it was widely used during the right-wing military dictatorship to designate members of the opposition and political leftists. For that reason, the Workers' Party, after its election to government, in 2003, had many issues with the use of the term and did not answer requests from the US Government to increase counterterrorism activities, arguing that the terrorist risk was misguided and exaggerated by the Bush administration (Cambi & Ambrosio, 2017). Thus, it came as no surprise when a survey conducted by the Judiciary with federal police, in 2002, found that the inclusion of terrorism as a predicate crime to money laundering had no practical application in the Brazilian legal system (CJF, 2002, p. 76). The US influence in money-laundering matters in Brazil succeeded in implementing a regime to fight organized crime, no doubt, but the issue of money laundering associated with the crime of terrorism had yet to affect Brazil's AML regime.

In 2002, federal Judge Sergio Moro was appointed as assistant judge to Justice Rosa Weber in the Brazilian Supreme Court. He was chosen as an expert in criminal law,

money laundering, and corruption who could support Justice Weber in the judgment regarding the *Mensalão* scheme. Judge Moro, at the time, wrote: "Crimes linked to power are ... difficult to prove through direct evidence;" hence, "the greater elasticity in the acceptance of evidence by the prosecution" (Le Monde, 2021, p. 5). In 2008, the next to last year of President Bush's administration, the US embassy in Brasilia started a program funded by the State Department aiming to create a network of experts in Brazil "capable of defending American positions" (Le Monde, 2021).<sup>24</sup>

Judge Moro -- the judge that was going to be responsible for the Car Wash operation five years later -- was invited by the US State Department, and agreed, to be part of a network of specialists in Brazil. A trip to the United States was then organized by the US government and Judge Moro held meetings at the FBI and the Department of Justice. Also in 2008, Karine Moreno-Taxman, a US federal prosecutor specializing in the fight against money laundering and terrorism moved to Brazil, to work in the US Embassy in Brasilia. Ms. Moreno-Taxman was already involved with the organization of courses with Brazilian judicial authorities on money laundering investigation methods, the legal doctrine behind them, and the need to share information in a more informal way, "outside treaties or bilateral judicial cooperation agreements." (Le Monde, 2021, p.4). In 2009, Ms. Moreno-Taxman was invited to be a keynote-speaker at the annual Brazilian federal police conference. Judge Moro opened the event and introduced Ms. Moreno-Taxman to the invitees, including law enforcement, public prosecutors, and judges. "In a case of corruption," she said at the event, "it is necessary to go after the 'king' in a systematic and constant way to overthrow him." Le Monde newspaper, mentioning the event in a special journalistic investigation on the Car Wash operation, stressed that the name of President Lula was never mentioned, even if he was on everyone's mind. "No one imagined, then, that he would become the 'king' designated by Ms. Moreno-Taxman" (Le Monde, 2021 p. 5).

The influence of the United States on the implementation of anti-money laundering policies was in practice aided by the informal sharing of information between agencies and countries "outside treaties or bilateral judicial cooperation agreements," as

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<sup>24</sup> Information found in an official telegram from Clifford Sobel, the US Ambassador in Brazil, sent to US Department of State headquarters, consulted, and quoted by the French newspaper Le Monde (2021).

suggested by former US prosecutor Moreno-Taxman. The former US federal prosecutor specializing in the fight against money laundering who organized courses in the US Embassy for Brazilian judicial authorities at the end of the 2000s was a staunch and skilled promoter of this informal model of fighting money laundering without paying too much attention to the letter of treaties and promoting informal inter-agency communications and informal bilateral judicial cooperation (Le Monde, 2021). In 2013, President Rousseff (2011-2016) had put off an official visit to Washington and went, instead, to the United Nations General Assembly to accuse the US National Security Agency (NSA) of violating international law by monitoring her phone calls and spying on the state oil corporation Petrobras. The information came from revelations by former NSA contractor Edward Snowden. The situation that followed was considered by the British newspaper The Guardian as "the most serious diplomatic fallout to date" between the United States and Brazil (Borger, 2013).

In 2014, what had begun as a money laundering investigation that involved the state oil corporation Petrobras expanded into an immense operation known as Operation Car Wash (*Operação Lava Jato*). The case was presided over by Judge Moro -- the former member of the US State Department's network of specialists who, since 2012, had headed a federal court specializing in money laundering based in the city of Curitiba. The initial investigation had led to the arrest of an illegal dollar exchange operator who had an office at a car-wash facility -- hence the nickname (Silva, 2020). Based on the then recently enacted AML legislation and applying new enforcement policies, such as following the money tactics, use of wiretaps, and plea bargains, Car Wash prosecutors opened a Pandora's box. The Car Wash taskforce found that the global construction conglomerate Odebrecht, a company established in Brazil by the military dictators that functioned as a strategic spear contributing to the Brazilian government's geopolitical objectives of after re-democratization, had morphed itself into a monster that paid at least U\$788 million in bribes between 2001-2016 (Maika y Lovon, 2019).

After the owner and chief administrator of the company, Marcelo Odebrecht, was sentenced to 19 years in prison by Judge Moro, in 2017, he and other Odebrecht executives looked for sentence reduction in the new plea-bargaining law (Law No. 12,850) and were willing to provide information about the scheme. The company had a

secret branch to bribe authorities in several Latin American and African countries.<sup>25</sup> Odebrecht's bribery payments were laundered through Swiss and US banks. The investigation and tracing of illicit deposits done by the US Department of Justice revealed the scandal (Mayka y Lovon, 2019). Figure 11 presents an excerpt of a 2016 press release issued by the US Department of Justice announcing that Odebrecht and Braskem (a Petrobras affiliated) had pleaded guilty after investigation by the US Justice Department

*Figure 11: US DOJ Press Release on Car Wash operation, 2016*

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FOR IMMEDIATE RELEASE Wednesday, December 21, 2016

**Odebrecht And Braskem Plead Guilty And Agree To Pay At Least \$3.5 Billion In Global Criminal Penalties To Resolve Largest Foreign Bribery Case In History**

BROOKLYN, N.Y. – Odebrecht S.A. (Odebrecht), a global construction conglomerate based in Brazil, and Braskem S.A. (Braskem), a Brazilian petrochemical company, pleaded guilty today and agreed to pay a combined total penalty of at least \$3.5 billion to resolve charges with authorities in the United States, Brazil and Switzerland arising out of their schemes to pay hundreds of millions of dollars in bribes to government officials around the world.

Source: US Department of Justice.  
Press Release announces a US\$3.5 billion fine on companies Odebrecht and Braskem (a Petrobras affiliate), as the result of operation Car Wash.

<sup>25</sup> In a 2018 press interview, Bruno Brandão, Transparency International director for Brazil called the Odebrecht case "the most organized case of corruption in the history of capitalism." (*Revista Exame*, September 20, 2018). The corruption and money laundering scheme paid US\$788 million to political authorities in Angola, Argentina, Brazil, Colombia, Dominican Republic, Ecuador, Guatemala, México, Mozambique, Panama, Peru, and Venezuela, designed to ensure that Odebrecht and Braskem were prioritized by governments for public construction projects.

and had agreed to pay “at least \$3.5 billion in global criminal penalties to resolve charges with authorities in the United States, Brazil, and Switzerland” (DOJ, 2016).

The construction company and the oil company were found guilty of money laundering and corruption crimes, uncovered by operation Car Wash. The US Department of Justice declared it "the largest foreign bribery case in history." (US Department of Justice Press Release, 12/21/2016). Criminals had used service-based money laundering to launder illicit money originating in fraudulent construction costs and state corruption -- a common tactic used by organized crime. But to declare victory in their fight against money laundering and corruption, the *República de Curitiba* (Republic of Curitiba) -- the nickname for the taskforce of federal police, public prosecutors, and Judge Moro's court -- still needed to get the crime lord, the criminal leader, or the "king".

The "go after the king" rationality of the AML TLO, as presented by the former US prosecutor to the conference of federal police, in 2009, served Judge Moro well after he was appointed to work, in 2012, as the head of the federal court in Curitiba specializing in money laundering, that was responsible for the Car Wash trials. The exposure of the judge to United States-backed values regarding the AML TLO had a great influence on his decisions at the federal court.

Between 2014 and 2017, in the framework of operation Car Wash, Judge Moro handed down 26 sentences, convicted 92 defendants, and listened to dozens of plea bargains, before he convicted former President Lula, then running for a third term as president, of the crime of money laundering and corruption and sent him to prison. Figure 12 is an excerpt from a PowerPoint slide presented to judge Moro, in 2015, in the court of Curitiba. The presentation showed "Lula" surrounded by fourteen bubbles containing everything from "Lula's reaction" and "expressiveness" to "illicit enrichment" and "bribeocracy". All arrows pointed to Lula, "whom they characterized as the mastermind behind a sprawling criminal enterprise" (Fishman et al., 2019, p. 13). In former President Lula, the head of public prosecution, Deltan Dallagnol, author of the Power Point slide, had found his "king." The court session with prosecutor Dallagnol's presentation was transmitted live by the main Brazilian television networks and the media were sold the idea that President Lula was the head of a huge criminal organization responsible for money laundering and corruption.

Figure 12. Presentation names President Lula as the organized crime leader



In June 2019, leaked conversations between Judge Moro and prosecutors during the Car Wash trial reveal "serious ethical violations and legally prohibited collaboration between the judge and prosecutors." (Fishman et al., 2019, p. 1). In one of the messages leaked, prosecutor Dallagnol explained to Judge Moro that "he went to great lengths to characterize Lula as the maximum leader ... as a way to link the politician to ... bribes (paid by a contractor) at two Petrobras oil refineries." That charge was essential for the case to be tried under Moro's jurisdiction in Curitiba (Fishman et al., 2019, p. 14).

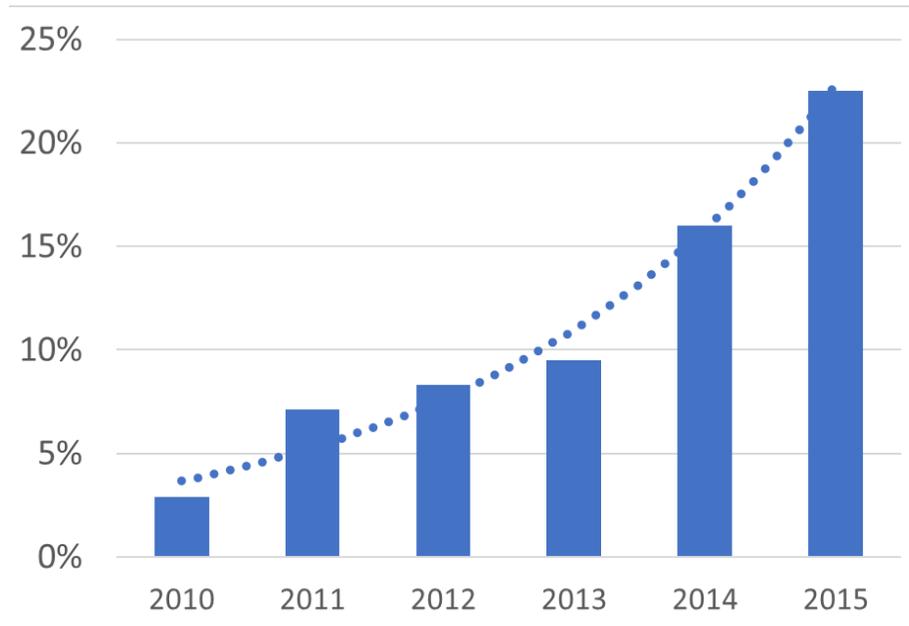
Car Wash is arguably the most outstanding investigation, prosecution, and criminal trial operation related to money laundering in Brazilian history. What is interesting to our research, however, is the curious fact that Car Wash is an iconic case of AML TLO implementation with results. It is the outcome of effective application of the AML TLO laws and policies, as promoted by the government of the United States. New laws were enacted, new policies implemented, with "follow-the-money" tactics, specialized workforce, and a web of cooperation between the federal police, prosecutors,

revenue service, and judicial and financial authorities in Brazil and the United States (Silva, 2020). The operation uncovered schemes involving politicians, public authorities, and CEOs from the largest private Brazilian companies -- such as Petrobras, Odebrecht, Andrade Gutierrez, Camargo Corrêa, Queiroz Galvão, and Mendes Junior. With help from the FBI, Brazilian federal police found that companies used administrative contracts with public entities, public sector pension funds, or private companies owned in part by the government -- such as the oil and gas corporation Petrobras -- to divert public resources and finance politicians in more than 20 countries and four continents. Car Wash investigations revealed crimes of money laundering committed by heads of states and other high-level public authorities in Argentina, Brazil, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Panama, Peru, Mexico, and Venezuela (Tourinho, 2018; Staffen, 2020; Le Monde, 2021).

The total Car Wash operation resulted in US\$ 15 billion in fines and assets recovery (in 2017 US dollars), 1,450 arrests warrants issued, 533 complaints filled, and 174 people convicted with almost 1,400 years in prison sentences imposed in Brazil (Tourinho, 2018). Prosecutors made extensive use of plea bargain deals, a legal resource applied for the first time in Brazil in 2013 (Janot, 2017a) and "incorporated into Brazilian law amid the protests that marked the (final years) of Rousseff's presidential term" (Silva, 2020, p. 95). Figure 13, "Perception of Corruption in Brazil," shows the exponential increase in the perception of corruption -- a crime associated with money laundering -- in the years 2010-2015. During these years, together with American diplomacy, a media campaign against corruption and money laundering incensed citizens even more and facilitated the adoption of the toughest measures of the AML regime, such as new investigation techniques, sting operations, lenience agreements, and plea bargains.

In 2013, the adoption of law 12,846 stimulated private sector collaboration with leniency agreements and compliance programs, and Law No. 12,850 on criminal organizations facilitated the use of new investigation techniques and defendants' collaboration to produce evidence (plea bargaining). They were both adopted by the Brazilian Congress and sanctioned by President Rousseff (2011-2016) as a response to the violent civil unrest and violent manifestations against corruption that shook Brazilian cities. As soon as these new laws were enacted, new investigations and testimonies from

Figure 13. Perception of Corruption in Brazil, 2010-2015.



Source: Non-profit *Corporación Latinobarómetro* annual surveys 2000 – 2015.  
 Note: Percentage of people in the Brazilian population that consider corruption the country's most important problem.

plea-bargainers immediately appeared, implicating presidents, the Brazilian speaker of the house, state governors, ministers, and other high-level politicians throughout a dozen countries in Latin America. In all those countries, investigations found politicians receiving kickbacks from Brazilian companies, mainly Odebrecht -- the construction company that built Miami International Airport -- and other Brazilian multinationals, such as JBS -- the largest meat processing company in the world at that time.

In 2017, two weeks after former President Lula was found guilty of money laundering and corruption by the court of Curitiba, the US Assistant Attorney General Kenneth Blanco announced to an audience at an Atlantic Council and Inter-American Dialogue<sup>26</sup> event that it was "hard to imagine a better cooperative relationship ... than the one that we have between the United States Department of Justice and Brazil." (Blanco, 2017 [Conference presentation]). After 29 years in the US Department of Justice, Assistant Attorney General Blanco was qualified to make such an assessment. He also

<sup>26</sup> The Atlantic Council and the Inter-American Dialogue are think-tanks based in Washington, D.C., that focus on the study of the United States relationship with countries in the Western Hemisphere.

told the audience that "the trust (between the two countries) allowed prosecutors and agents to have direct communications regarding pieces of evidence." Given the close relationship, he said, "we don't need to rely solely on formal processes such as mutual legal assistance treaties" (ibid.). As an example of the fruitful collaboration between US and Brazilian public safety authorities in the fight against money laundering and corruption, the US Assistant Attorney General reminded the audience that "this past week the prosecutors in Brazil won a guilty verdict against Lula da Silva." (Blanco, 2017 [Conference presentation]).

Former President Lula was arrested in 2017, indicted with money laundering and corruption crimes, under intense pressure of public opinion in favor of the Car Wash operation. President Lula's request for habeas corpus was rejected by the Supreme Court, following a public manifestation from the Army commander, General Vilas Boas, demanding that the Court "assume its institutional responsibilities." (Revista Veja, 2018). In response, Judge Moro immediately issued an arrest warrant and Lula, in prison, had to abandon the 2018 presidential candidacy. For former President Lula, the implementation of AML and anti-corruption norms and policies in Brazil were orchestrated by the US government through the US Department of Justice. "Everything that is happening in Car Wash operation has the hand of the United States on it," said President Lula in an interview from prison, in Curitiba, with journalist Bob Fernandes. (Silva L. I., 2019). In 2020, president Bolsonaro was elected and nominated Judge Moro as his Minister of Justice, responsible for federal police and COAF. The United States government, says Le Monde (2021), should be "pleased to have undermined the corruption systems implemented by Petrobras and Odebrecht, as well as their capacities for influence and political-economic projection in Latin America" (p. 10). In March 2021, Supreme Court Justice Edson Fachin annulled Lula's convictions, freed him from prison, and restored his political rights, considering that the Federal Regional Court of Curitiba was the wrong jurisdiction, and transferred the process to another court, in Brasília. With that, Lula recovered his political rights, but the implementation of an anti-money laundering regime in Brazil was forever marked by denunciations of manipulation, political use, and the influence exerted by United States foreign policy.

## Conclusion

In this chapter we saw how AML regime implementation in Brazil, since its inception, was accompanied by pressure from the United States. It all started with the War on Drugs during US President Reagan's administration (1981-1988), and the multilateral facilitation provided by the OAS Inter-American Drug Abuse Control Commission (CICAD) in a period contemporary to the final years of the military dictatorship and transition to democracy in Brazil. In that period, the enactment in Brazil of the Vienna Convention made the concealment or disguise of property by drug traffickers a crime in the country, but the new law was mostly ignored by the courts.

A new round of pressure was launched during the organization of the first Summit of the Americas, when President Clinton, in 1994, tried to install a free market in the Western Hemisphere, including in the package implementation of an AML regime. President Cardoso, who participated in the Summit as president-elect of Brazil, headed an administration that revised the federal budget system, making it harder for money to disappear into illicit projects, restructured the *Receita Federal* (Revenue Service) "with important repercussions for oversight of illicit money" (Power and Taylor 2011, 267), and signed Brazil's first AML Law (Law 9,613) that created the Brazilian FIU (COAF), and the Department for Combating Illicit Financial Assets in the Central Bank.

In coordination with NGOs (e.g., Transparency International), think tanks (e.g., Inter-American Dialogue), and multilateral organizations (e.g., OAS and OECD), US diplomatic efforts included the provision of technical and financial assistance and specialized services to implement international standards. The AML regime finally came to life in Brazil, in the 1990s and 2000s, through "legitimation, coercion, and implementation support" from the United States and multilateral organizations (Tourinho, 2018, p.1). The process of implementation of this new regime was immediately accompanied by political scandals, revealed thanks to extensive use of new investigation techniques promoted by the US Federal Bureau of Investigations (FBI), and judicial actions suggested by multilateral treaties promoted by the United States -- i.e., digital surveillance, phone recordings, background checks, wiretapping, undercover infiltration, sting tactics, and plea-bargains. Furthermore, active participation by the US government in the implementation of the AML regime in Brazil included professional training,

enhancing the capacity of the judicial system, legal assistance, police coordination, and surveillance of public authorities, as was revealed by the study of the impact of the US foreign policy on the most important case against money laundering in Brazilian history: the Car Wash operation. All these facts go to show that United States influence was a powerful determinant of the implementation of the AML regime in Brazil.

### **Domestic Political Interests and AML Implementation**

This chapter explores the nexus between domestic political interests and the outcome of anti-money laundering (AML) regime implementation in Brazil. Throughout the process of AML implementation in the country, domestic politics and related interests continued to play a prominent part in shaping the outcome of policies and post-policy compliance processes. That is to say, AML regime instruments and policy implementation interacted closely with roles played by political actors in Brazil.

Brazilian politicians and the accompanying political environment were influential in producing three separate outcomes for implementation of the AML regime's instruments and policies. First, electoral politics influenced AML TLO outcomes. Congressmen used the citizens' approval of the criminalization of money laundering to their advantage in fighting organized crime and corruption. In doing so, they took advantage of citizens' overall approval of efforts to combat crime and reaped electoral votes. Second, political actors also used and appropriated AML policies to suppress their opponents. For instance, the new AML regime tools were used by political actors to investigate and incarcerate opposition party personnel. Subsequently, AML regime implementation was shunned and discarded by those in power when it contradicted their political objectives. For instance, authoritarian governments that exercised leadership in Brazil as of 2016 and whose interests were not served by the AML framework were responsible for the regression in compliance with AML policies. During this period, politicians changed their congressional votes as soon as they saw the system turning against them. This chapter explores these three different interactions among political actors and AML, illustrated by three separate cases within Brazilian politics, that show precisely how AML regime implementation has been conditioned by domestic political interests.

#### **Winning Votes by Promising to Fight Corruption**

President Fernando Collor (1990 - 1992) was the first president democratically elected in Brazil after the end of the military dictatorship. His electoral campaign emphasized the need to combat corrupt public servants, whom he nicknamed the *Marajás*.<sup>27</sup> Figure 14 shows the iconic cover of the weekly *Revista Veja* that launched

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<sup>27</sup> *Marajá*, in Portuguese, is the translation of a Sanskrit title for a high-level ruler, or king.

Fernando Collor's electoral campaign in March 1989. The news magazine portrayed the presidential candidate and future president as an anti-corruption paladin. In 1992, in the midst of popular anti-corruption protests, Collor signed the first Brazilian law on administrative dishonesty (Law No. 8,429) in response to street protests against political corruption. Law 8,429, adopted in June 1992, provided for sanctions against public servants involved in corruption and illicit enrichment. (Brasil Presidencia da República, 1992).

To the surprise of many, on December 29, 1992, two years after his election, President Collor resigned, in an unsuccessful bid to stop an impeachment trial on charges of corruption. He was found guilty by the Senate, nonetheless, and disqualified from holding elected office for eight years. While he was elected on anti-corruption grounds, accusations of corruption cost him the presidency. For many decades, electoral campaign slogans in Brazil have conveyed the candidate's stance in favor of fighting corruption and

*Figure 14: Revista Veja cover during the 1989 presidential campaign*



Cover of the weekly news magazine *Revista Veja* of March 23, 1989, portraying presidential candidate and future President Collor (1990 - 1992) as an anti-corruption paladin Collor was the first president elected in Brazil after the military dictatorship.

money laundering to win votes and ensure the election of politicians. Similar developments took place in Mexico, Colombia, and Peru, where presidents promised to crack down on money laundering and corruption, only to win votes and later abandon the fight. President Collor's story of a candidate winning the presidential election by focusing on an anti-corruption motto and then being ousted due to corruption, and later pardoned, is, unfortunately, the tale of a region where it is not ugly to be punishable.

Collor returned to politics in 2005. In 2014, he was reelected to the Brazilian Senate for the period 2015-2023. He was acquitted in 2014 of the crimes of embezzlement and passive corruption that had prompted his impeachment. The acquittal, twenty-two years after the impeachment, was based on lack of evidence criteria (Borges, 2014). After his acquittal, Brazilian federal police went live on television with a parade of luxury cars, including Ferrari, Bentley, Lamborghini, Land Rover, and Porsche, seized from the former president. Months later, the Brazilian Supreme Court sent the collection of high-end cars back to Collor's garage, authorizing him to be their trusted custodian. Just three years later, in 2017, Collor was again indicted in the Supreme Court by the *Procurador Geral da República* (Attorney General) on charges of money laundering and corruption. The accusation stated that the former President had received US\$ 9 million in bribes for operations with a subsidiary of the state oil-company *Petrobras*, during the Car Wash scandal. Collor had laundered money, said the head of public prosecution, by buying high-end cars (Coutinho, 2015).

To Bertram Spector, an author and specialist in the study of corruption in developing countries, "raising public expectations without strong delivery of visible anti-corruption programming is especially detrimental" (Spector, 2016, p. 423). It is, in fact, always detrimental to the country, as corrupt politicians, corrupt public servants, and corrupt businessmen are criminals. In the case of former President Collor, however, the false promises of the anti-corruption paladin were not totally detrimental to himself. In the end, after a relatively brief period of eight years, he had his political rights reinstated, recovered his car collection, and went back to politics, twice winning a seat in the Brazilian Senate, representing the state of Alagoas. In 2019, Senator Collor publicly voiced his support for President Bolsonaro's government. The fate that cut short President Collor's mandate in 1992, however, raised a red flag to Brazilian politicians, as the

electorate was more aware of the false promises regarding AML implementation and demanded more than just speeches from candidates to political positions.

### **Winning Popular Votes by Adopting AML Laws**

In 1994, Brazil elected President Fernando Henrique Cardoso, a sociologist, university professor, writer, and late-in-life politician, affiliated to the Brazilian Social Democracy Party (PSDB). He won the election by running on a platform calling for reorganization of the State, resolute efforts to fight inflation, and implementation of ethical procedures. The campaign promise to fight corruption and money laundering was going to be fulfilled. In 1996, Cardoso's Central Bank implemented the know-your customer AML standard that limited unidentified bank accounts and financial transfers. The government targeted CC-5 accounts, which were bank accounts created in 1969 during the military dictatorship, that were used for unidentified international transfers (BACEN *Carta Circular* No. 5, hence the name: CC-5).

The Central Bank (BACEN) norm that created the CC-5 unidentified accounts was superseded by the Cardoso government's BACEN Circular 2.677 in 1996, after which money transfers were limited to a maximum of R\$ 10,000 (US\$14,000 in 2021 US dollars). The limitation of unidentified money transfers was a late addition to the AML requirement for customer identification. Eight years before, in 1989, the Financial Action Task Force (FATF) -- the international money laundering watchdog -- had issued its first Forty Recommendations, including know-your-customer requirements for banks and financial institutions. As a result of non-compliance with FATF know-your-customer standards and transparency requirements regarding customer identification, from 1991 to 1996 unidentified Brazilians wired US\$124 billion overseas, as revealed by the CC-5 accounts scandal (Escobar, 2020). Finally, in 1996, the leakage of financial resources was stemmed, and criminals were denied money laundering opportunities, fulfilling one of Cardoso's central electoral campaign promises, and satisfying voters. In addition, the Congress approved, and President Cardoso signed into law (No. 9,296 of 1996), a regulation facilitating the use of telephone tapping during investigations. The enforcement of know-your-customer norms, the use of special police techniques such as wiretapping and phone recording, and follow-the-money tactics, provided Brazilian

federal police, prosecutors, and the courts with powerful instruments to fight money laundering.

After two years in government, however, a political turmoil engulfed Cardoso's presidency. First, the President got Congress to approve changes to the Constitution that would allow for his reelection. Alongside this development, a scandal emerged, trumpeted by the news media, about congressmen taking bribes to approve the constitutional change to allow for the president to be reelected. The political opposition, led by the Workers' Party, accused President Cardoso of having bought the votes. In May 1997, excerpts of telephone wiretaps published by the *Folha de São Paulo* newspaper revealed conversations among congressmen confirming the bribes of US\$200,000 (in 2021 US\$ equivalent) paid to them to vote in favor of the constitutional change allowing presidential reelection. This case was investigated at the time by the House of Representatives Constitution and Justice Commission. After the parliamentary investigation, two representatives who had voted for presidential reelection and were accused of having received bribes, resigned.

The congressional investigation never proved the direct involvement of President Cardoso. Nevertheless, the scandals that emerged related to Congress's approval of the reelection of Cardoso mobilized public opinion and "motivated a series of self-imposed ethical reforms" by the government (Praça & Taylor, 2014, p.30) including an additional focus on AML laws and policies implementation. Cardoso's interest in winning the popular vote for reelection and the corruption scandal regarding the buying of the necessary votes in the parliament for a constitutional revision pushed the government to adopt legislation and implement policies mirroring AML transnational legal order (TLO) standards. The memory of Collor's impeachment was still vivid in the minds of Brazilians and President Cardoso, grilled by the media with allegations of corruption, felt obliged to show that he had a real commitment to fighting corruption and money laundering. In 1998 he signed the first Brazilian AML law and adopted the basic structure of the AML regime.

The 1998 AML law (Law 9,613) and the decree (No 2,799) that approved the Statute of the *Conselho de Controle de Atividades Financeiras* (COAF) are two highlights of the self-imposed ethical reforms implemented by Cardoso's government to

appease voters' desire to reverse the disappointment with President Collor. Law 9,613 is a foundational document of the Brazilian AML regime. It breathed new life into previous AML policies by explicitly providing a definition of money laundering and expanding the requirements for a predicate crime, including the crimes of public administrators and crimes in the financial system. Previously, the first generation of legal instruments required the association of money laundering with just one predicate crime: drug trafficking. Cardoso's AML law represented the second generation of AML laws, with a more ample list of predicate crimes. A third-generation AML legal system -- that considers that any serious crime can be a predicate crime to money laundering -- would have to wait until the next administration to be adopted, in 2003, when the government of President Lula (2003-2010) enacted the UN Palermo Convention against Organized Crime.

After the approval of the 1998 AML Law, the Cardoso government's implementation of the AML regime continued to evolve, in a constant bid to satisfy the electorate's expectations. In 1999, Brazil became the first Latin American country to become a member of the global Financial Action Task Force (FATF), followed immediately by Mexico and Argentina. The government signed into law (decree No. 2,799) the rules of operation of the Brazilian Financial Intelligence Unit, known as COAF. COAF had been created to impose discipline, apply administrative penalties, and examine and identify suspected instances of illegal activity related to money laundering (COAF, 2021). Decree 2,799 approved the Statute of COAF giving the Brazilian FIU powers to obtain and exchange information with the Central Bank, Federal Police, the intelligence office of the Presidency and other public bodies and entities responsible for supervising and regulating the citizens' financial transactions. In 2000, COAF became a member of the Egmont Group -- a multilateral body comprised of Financial Intelligence Units (FIUs). The Egmont Group<sup>28</sup> provided COAF with a platform for the secure exchange of expertise and financial intelligence to combat money laundering (Egmont, 2021).

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<sup>28</sup> The Egmont Group was created in 1995, in Brussels, Belgium, to improve international communication between the financial intelligence units (FIUs) of each country and facilitate compliance with the decisions of the European Union.

In 2000, the Fiscal Responsibility Law (*Lei Complementar N° 101*) established transparency standards focusing on the fiscal management of public finances. It also, for the first time in Brazil, instituted the holding of public hearings during the processes of preparation and discussion of financial plans and the budget law, creating a model for popular participation. (Brasil Presidência da República, 2000). The Brazilian Congress also enacted, in 2000, the Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Brasil Câmara dos Deputados Legislative decree 125, 2000; Decree 3,678, 2000). The 2000 FATF evaluation report on Brazil considered the country "fully compliant" with FATF Forty Recommendations, "with just one exception regarding the regulation of financial secrecy" (Machado, 2012, p.342).

In 2001, a bank secrecy law (*Lei complementar n. 105*) enlarged COAF access to banking and financial operations. On the eve of the general elections of 2002, the AML implementation process was strengthened. (Brasil Presidência da República, 2001). The Cardoso government enacted the Organization of American States (OAS) Inter-American Convention against Corruption (also known as the Caracas Convention), instituted policies regarding implementation of the OECD Anti-Bribery Convention (Convention on Combating Bribery of Foreign Public Officials in International Business Transactions), such as including in the list of predicate crimes to money laundering the crime of corruption of foreign civil servants; and implemented the organizational structure responsible for providing information to an anti-corruption evaluation mechanism. The first evaluation of Brazil, carried out in 2003, was considered positive, given that the Brazilian legislation was largely in line with the terms of the OECD Convention. In addition, the Cardoso government installed the *Controladoria Geral da União* (Federal Comptroller's Office) -- the Federal Government body responsible for assisting the president on matters related to the defense of public assets and increased management transparency, through the internal control, public audit, prevention, and anti-corruption activities.

As a sign, however, that AML laws were starting to give politicians and corporate businessmen cause for concern, the government of President Cardoso included a reservation clause to the Inter-American Convention against Corruption. The Inter-

American Convention, also known as the Caracas Convention, was the first anti-corruption multilateral treaty when it was adopted by the OAS member states in 1996 (Organization of American States, 1996). It took six years for the government of Brazil to partially implement the treaty with Decree 4,410 of 2002. The Cardoso government's reservation clause to the Convention stated that Brazil did not accept the terms of Article XI of the OAS Inter-American Convention intended to criminalize the actions of a private citizen who "seeks to obtain a decision from a public authority whereby he illicitly obtains for himself or for another person any benefit or gain" (OAS 1996, Article XI, 1, c). In the action of bribing a public servant, according to Brazil's reservation clause, the businessmen should not be charged as criminal -- almost an incentive to the bribery system, and a protection required by the sponsors of political and electoral campaigns. The Cardoso government was also unwilling to enact the United Nations Convention Against Organized Crime, known in short as the Palermo Convention. The Palermo Convention reduced defendants' rights and moved the threshold for guilt, facilitating convictions.

In the case of the OAS Anti-corruption Convention, to protect its political sponsors the government backpedaled on AML and decided not to accept the clause intended to criminalize the actions of private citizens that seek decisions from public authorities to illicitly obtain benefits. The Palermo Convention, on the other hand, promised an even more dramatic effect, eliminating the differences between national legal systems to improve the flow of information and mutual assistance, aimed at controlling organized crime. The countries that enacted the Palermo Convention committed themselves to criminalizing organized crime, including corruption and corporate or company offenses; cracking-down on money laundering; speeding up and widening the grounds for extradition, and protecting witnesses (Woodiwiss, 2015). By the end of the Cardoso government (1995-2002), corrupt politicians started noticing that the full implementation of an AML regime was a risky move for them and their illicit sponsors. The Palermo Convention, with its express mandate to criminalize organized crime and money laundering, was not to be enacted until four years later, in 2004, during President Lula's government. The adoption of a specific law to criminalize organized crime in Brazil, however, had to wait until 2013, with the signature by President Rousseff

(2011-2016), of Law No. 12,850 against criminal organizations that was widely used by the courts during the Car Wash operation.

In conclusion, from 1996, when the Central Bank issued a norm limiting unidentified international money transfers that stopped the laundering of money through CC-5 accounts (*BACEN Carta Circular No. 5*) until the establishment of the *Controladoria Geral da União* (Federal Comptroller's Office) in his last year in office, President Cardoso's government (1995-2002) followed a steady pace of AML implementation. Sensible to the clamor of the population, President Cardoso responded to his own political scandals by implementing the foundations of a comprehensive, but limited, regime against money laundering. This trend was recognized by citizens who saw corruption as Brazil's main problem and witnessed, via the news media, the Cardoso party's commitment to implement the AML regime.

For instance, during the Cardoso administration, even with the late AML backpedaling, the number of people who believed that corruption was Brazil's biggest problem was cut in half. From 13% of the population in 1996 -- when the reelection scandal exploded -- to 8% in 1999, after the approval of the AML Law, and just 6% in 2002. Longitudinal data from *Latinobarómetro* annual survey show the slow decrease in perception of corruption in Brazil between 1996 and 2002.<sup>29</sup> People's perception of the problem of corruption in Brazil, as measured by *Latinobarómetro*, improved with the Cardoso government's progress with implementation of the AML order. Despite the positive public opinion polls on corruption, however, the opposition political parties seized on the political baggage of the Cardoso government related to corruption for their electoral political agenda. Then, during the 2002 presidential elections, the Workers' Party in particular set the electoral agenda on anti-corruption and promises of more AML implementation. The Workers' Party won the elections.

### **Winning Votes by Implementing AML**

The Workers' Party was founded in 1980 by city and countryside workers, left-wing activists, intellectuals, and artists. It was organized around mobilizations associated

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<sup>29</sup> Data from *Corporación Latinobarómetro*, a private non-profit organization, based in Santiago, Chile, that is responsible for carrying out an annual public opinion survey in several Latin American countries, including Brazil. The general population survey includes a question on what the country's worst problem is.

with efforts to revive trade unionism in unity with other popular movements and grassroots organizations. The two foundational documents of the Workers' Party, the *Carta de Princípios* (Letter of Principles) and the *Manifesto de Fundação do Partido dos Trabalhadores* (Workers' Party Foundation Manifesto) prioritized grass-roots coordination and made no mention of political corruption (PT, 1979 & 1980). However, when Cardoso's presidency (1995-2002) was engulfed by the reelection bribery scandal, the Workers' Party saw it as an opportunity to conquer votes.

As soon as the telephone taps of Brazilian congressmen were published by newspaper *Folha de São Paulo*, in May 1997, revealing conversations on bribes to vote in favor of a change in the Constitution to authorize presidential reelection, the opposition to the government, led by the Workers' Party, accused President Cardoso of having bought the congressional votes. In 2001, when the Workers' Party launched the candidacy of Lula da Silva to replace President Cardoso, the party selected corruption as the main theme of the political campaign (Guandalini, 2001). Brazilians chose President Lula on October 6, 2002, in a landslide election. He won the votes in all but one of the twenty-six states, with twenty million more votes than his contender, José Serra, from Cardoso's social democracy party (PSDB). The use of anti-corruption and AML arguments to win election undoubtedly worked. Figure 15 shows the launching of the presidential election campaign in 2001, under the theme *Xô corrupção* (Shoo corruption). Ironically, all three people at the front of the picture, the future president Lula (center), and two of his ministers, José Dirceu (left) and Antonio Palocci (right) were later sent to prison, indicted in cases of money laundering and corruption. Duda Mendonça, the propaganda professional hired by the Workers' Party to run the electoral campaign, also went to prison, convicted of the crime of money laundering for the party.

Generally, people running for any public office in Brazil, since re-democratization, have always tried to woo voters from all segments of society by promising to implement anti-corruption AML policies. The examples of former presidents Collor (1991 - 1992) and Cardoso (1995 - 2002) showed politicians that promises to implement the ethical policies could earn votes. This electoral strategy gained even more momentum during Brazil's 2002 presidential elections, after the impeachment of Collor and the Cardoso reelection scandal.

*Figure 15: Worker's party anti-corruption campaign, 2001*



Workers' Party representatives (center, presidential candidate Luiz Inácio Lula da Silva) announce its anti-corruption campaign. São Paulo: May 1, 2001. Source: *Partido dos Trabalhadores* press office. Available at the following URL: [https://i.ytimg.com/vi/\\_SbQ7tKjk8/hqdefault.jpg](https://i.ytimg.com/vi/_SbQ7tKjk8/hqdefault.jpg)

In fact, President Lula was not the first presidential candidate who launched an anti-corruption campaign in Brazil for domestic political gain, but he was the first to actively commit to implement the AML TLO in full, on the understanding that compliance with multilateral standards was required for sustainability of the government. With the election of President Lula, the Workers' Party started a period of fourteen years (2003 - 2016) of political hegemony.

### **Political Actors Appropriating AML Policies to Suppress Their Opponents**

This section also discusses implementation of the AML regime by political actors to their advantage. Up until now we discussed how AML implementation in Brazil was driven by politicians' desire to obtain electoral votes. In this section, we will explore another aspect that made AML a useful tool for many politicians, giving them one more reason to push for implementation: the private appropriation of the state powers offered by AML policies, to fight and suppress political opponents.

At the end of the previous section, we observed that the Cardoso government made Brazil the only country in the Western Hemisphere that refused to accept a clause on the responsibility of private agents in cases of corruption of public authorities (OAS

1996 & 2021). We also noted that the Brazilian congress refused to enact the Convention against Transnational Organized Crime and the Protocols Thereto (Palermo Convention), signed by the United Nations member countries in 2000. The Palermo Convention mandate to criminalize organized crime, including corruption and corporate or company offenses; crack-down on money laundering; speed up and widen grounds for extradition, and protect witnesses was a direct menace to the safety of many politicians, as full implementation of the Convention had the potential to send corrupt politicians and their illicit private sector sponsors to prison, charged with organized crime and money laundering.

What makes this situation even more unique, however, is the fact that the Workers' Party, which played a leading role in the implementation of AML policies, was the one whose representatives were now being held accountable under the AML regime standards. The Judiciary appropriated the new AML tools to punish and discredit the presidency, cabinet members, and members of the Workers' Party and its allies in the government. It was a popular movement seconded by the political opposition in the legislature and by a large portion of the news media.,

Brazil is a prime example of manipulation of the AML regime, designed to use its' instruments to destroy the reputations of political foes. Hallyday et al. (2019) remind us that AML regimes can do political harm. "As an unanticipated by-product of enhanced executive powers in AML regimes, authoritarian leaders obtain new tools to monitor and suppress opposition" (p. 6). A fully functioning AML regime can in fact provide tools for "authoritarian rulers to repress their political opponents" (Hallyday et al, 2014, p. 32). The newly implemented instruments and policies reduced or eliminated defendants' rights and promoted more powerful and intrusive methods for investigation and prosecution. Plea bargains, access to financial information, monitoring, sting, and surveillance tools were used generously in the recent history of Latin America to incriminate and get rid of political foes. In fact, the study of Latin-American politics since the 2000s would be incomplete if it were not followed by a study of the use of AML regime instruments to monitor and suppress opposition. At the same time, scholars should pay attention to the prolonged postponing of judgements, the annulment of court decisions, and the political pardons granted to friends of the government.

The power, and the risks for the establishment, arising from the implementation of the AML regime was obvious in Brazil since its early years. For a regular citizen, AML policies could discipline public servants and businessmen and punish organized crime. The heinous crimes law (Law 8,072) passed by President Collor in 1990 is a constitutional provision to expand the criteria for criminalization. This law emerged as a response to the violence of organized crime and reduced or eliminated several rights of defendants. The same rationality (fight organized crime) was extended to the AML laws and judicial processes with the reduction or elimination of defendants' rights. Ordinary citizens were informed by the news media about the successes obtained with the implementation of the new regime and "best-practices" such as reducing defendants' rights, enforcement taskforces, phone tapping, erasing banking secrecy, and using follow-the-money tactics -- the same strategy, trumpeted the media, that was applied by US agent Eliot Ness and his FBI Untouchables during the Prohibition in Chicago: A set of laws and policies that is considered by many to be the best strategy to fight organized crime.

The instruments for breaking bank and tax secrecy -- key tools from the AML follow-the-money menu -- were assessed by Brazilian law enforcement authorities, in a survey, in 2002, the last year of the Cardoso government, just after the adoption of the bank secrecy law (*Lei Complementar 105*) that provided COAF with access to bank information (CJF, 2002)<sup>30</sup>, and four years after the adoption of the AML Law (9,613/98) that introduced the concept of money-laundering into Brazilian legal vocabulary.<sup>31</sup> The ample (more than 90%) majority of federal police and public prosecutors surveyed mentioned that the breaching of bank and tax secrecy was critical for their investigations.

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<sup>30</sup> The survey was developed by the *Conselho Federal de Justiça* (Federal Justice Council) -- the central organ of the Brazilian federal justice system -- regarding the implementation of AML Law No 9,613/98 and the bank secrecy law (*Lei complementar 105/2001*) on money laundering. A questionnaire (closed and open questions) was sent to federal judges, public prosecutors, and federal police and elicited written responses, with qualitative and quantitative information, from 134 federal judges, 65 public prosecutors, and 20 federal police officers. Judges, prosecutors, and federal police also expressed their views on the constitutionality of AML Law No. 9,613/98, its applicability, regulatory objectives, and its scope with respect to bank secrecy and administrative sanctions.

<sup>31</sup> There is no mention of the words "money laundering" in the text of the UN Vienna Convention on drug-trafficking, enacted in Brazil in 1991, even though the convention criminalizes the concealment of assets from drug trafficking. AML Law No 9,613/98 is the first Brazilian legal document that includes the concept "money laundering" and criminalizes the laundering or concealment of assets; prevents the use of the financial system for money laundering; and created the Brazilian Financial Intelligence Unit (COAF).

In cases of money laundering, they said, the invasion of privacy is needed and justified, for the purposes of criminal investigation or criminal prosecution. Most federal police officers surveyed (94%) were in favor of making bank secrecy even more flexible. A large majority of federal public prosecutors (92%) was also in favor of relaxing banking secrecy, simplifying the legal requirements for access to and the exchange of information regarding surveillance of private financial dealings. Brazilian federal police and public prosecutors knew that following the money was a way to catch organized crime and mitigate money laundering, but nobody mentioned, then, the AML potential to discipline and punish politicians.

During the Workers' Party administration (2003- 2016), Brazil was making its debut in this uncharted territory of having all legal tools to follow-the-money and fight crime, effectively. Police and prosecutors surveyed in 2002 did agree that the laws on money laundering and bank secrecy (AML Law 9,613/98 and *Lei Complementar 105/2001*) were effective tools to fight crime (CJF, 2002). In a comment by a police officer (not identified in the survey) we learn that: "in modern times, the current hurdles for breaking a person's fiscal secrecy are unjustifiable. The law of society must prevail over the citizen" (CJF, 2002, p. 60).

The 2002 judiciary survey also registered the complaint by a public prosecutor (not identified in the survey) saying that: "bank secrecy, as understood by BACEN (the Brazilian Central Bank), in most cases prevented an investigation from finishing on time, contributing to legal prescription" (CJF, 2002, p. 61). Seventy-six percent of the federal public prosecutors interviewed suggested more severe prison sentences and 66% called for heavier fines. Almost all prosecutors (85%) believed that the laws on money laundering were insufficient to prevent enjoyment of the proceeds of crime, and more prosecutorial power was needed to prevent it, even if those powers entailed a reduction or elimination of rights.

With the Workers' Party in power, in Brazil the law enforcement sector -- police and public prosecutors -- was strengthened, with more resources and independence. The *Procuradoria Geral da República* -- PGR (Attorney General's Office), the *Controladoria Geral da União* (CGU), and COAF received all the legal powers and policy mandates they needed to breach bank secrecy, and request and distribute financial information. In

2003, Decree 5,015 enacted the UN Palermo Convention on Organized Crime that specifies the crime of money laundering. The Federal Council of Justice created Federal Courts specializing in AML, such as the court of Curitiba where the perpetrators of the Car Wash scheme would be tried. Resolution 314/2003 of the Supreme Court ruled that money laundering activities are a crime, independent of any predicate offence (Inq.2245, Justice Joaquim Barbosa, full plenary judgment: 28.08.2007).

In 2005, Brazil enacted the United Nations Convention against Corruption, known as the Merida Convention, a comprehensive binding treaty that criminalizes money laundering (UN 2003, Article 23) and includes a range of preventive mechanisms as well as dealing with the proceeds of corruption (Article 14). It covers the prevention of money laundering and "establishes extensive standards regarding asset recovery" (Wickberg, 2013, p.1). In the same period, the government implemented the National Strategy to Combat Money Laundering (ENCLA) -- the main network for the formulation of AML policies.

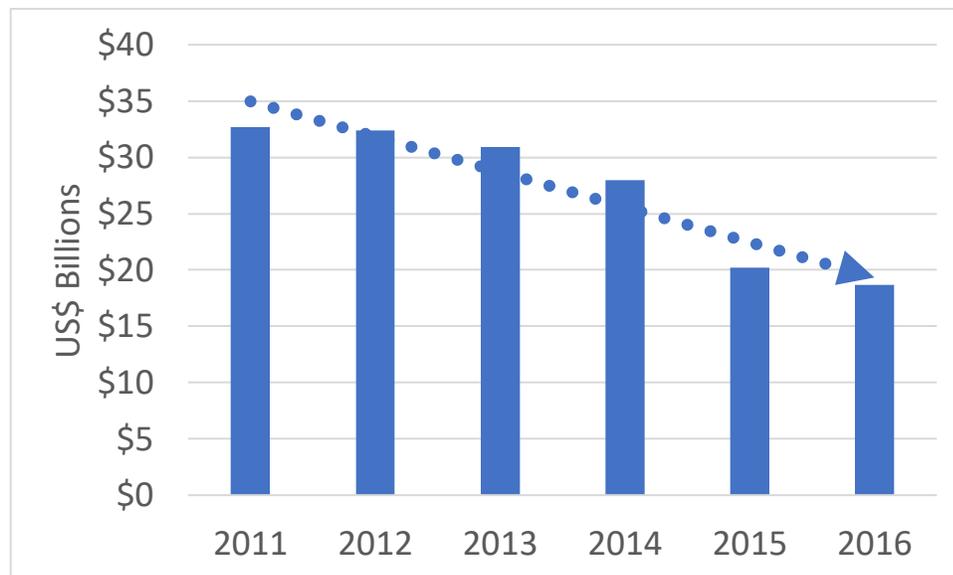
The congress approved, and the President signed, norms on recovery of assets (Decree No 6061), administrative control over the financial sector (Law 12,683), early seizures and forfeitures (Law No12,683), leniency agreements, and compliance programs (Law No. 12,846), investigation techniques and plea bargaining (Law No. 12,850). Figure 16 shows a reduction in illicit financial flows between 2011 and 2016, parallel to implementation of these AML norms and policies, indicating the impact of AML implementation on money laundering.

The Workers' Party was a key influence on the government and in Congress during AML regime implementation. What was not expected by the Worker's Party, at the time, was that its two members elected to the presidency, Lula da Silva (2003 -2010) and Dilma Rousseff (2011-2016), were going to face money laundering scandals, fueled by the application of the laws and policies that the party had helped to implement. *Operação Satiagraha* (Operation Satiagraha), *Mensalão* (Monthly allowance), *Máfia dos Sanguessugas* (Leeches' mafia), *Operação Navalha* (Razor operation), *Furnas* (Furnas case), and *Operação Lavajato* (Car Wash operation) are six high profile scandals that diverted billions from Brazilian public coffers to criminals. The two biggest – *Mensalão* (2004-) and Car Wash (2014-) -- brought down politicians from the Workers' Party and

their allies, public authorities, and businessmen. Table 2 (p. 100) presents a summary of these scandals with their estimated costs and the impact caused by the implementation of AML.

The *Mensalão* (monthly allowance scheme) was the most damaging scandal of President Lula's administration. It was a scheme to embezzle public money, organized by members of the Workers' Party (PT). They used to bribe congressmen from allied parties, with illicit money provided by big companies, in exchange for votes in favor of government projects. The scheme was discovered in 2005, when the weekly news magazine *Revista Veja* (May 14, 2005) published an article in which a former government employee explained how the embezzlement worked. Upon being denounced, congressman Roberto Jefferson, from *Partido Trabalhista Brasileiro* (Brazilian Labor Party) gave an interview to the *Folha de São Paulo* newspaper, in which he detailed the scheme for buying votes (Castro, 2017). According to Jefferson, parliamentarians received, every month, around fifteen thousand dollars from the Workers' Party (PT) to vote in favor of government projects. Thus, the investigations began, and Jefferson named Workers' Party treasurer Delúbio Soares as the person responsible for distributing the monthly allowance (Leitão, 2012). He also accused José Dirceu, the strongman of

Figure 16. Brazil Illicit Financial Flows, 2011-2016



Source: Source: Global Financial Integrity 2020, with data organized by the author.

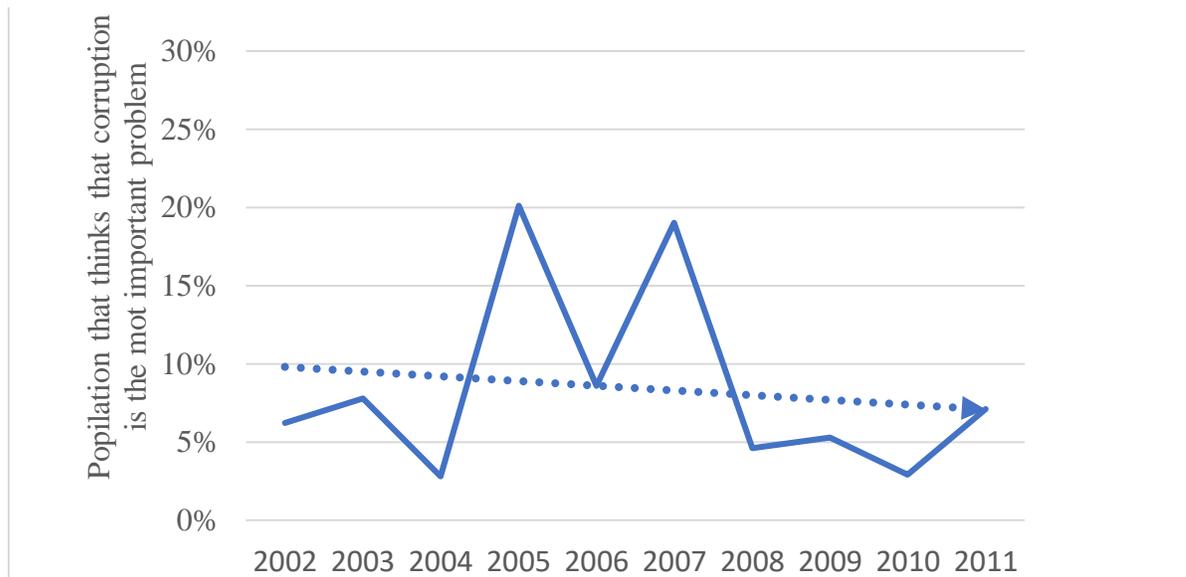
President Lula's cabinet, of being aware of what had happened. Minister Dirceu resigned from his position and was replaced by future president, Dilma Rousseff.

The Workers' Party was also accused of paying campaign expenses with illicit money. The party treasurer confirmed to the court that they had used undeclared money and argued that this was a normal procedure, used by various parties in their electoral campaigns (Leitão, 2012). The publicist and marketer of President Lula, Duda Mendonça -- responsible for the *Xô Corrupção* (Shoo corruption) campaign -- also testified and said that he received payments from the Workers' Party in a fiscal paradise, without providing receipts. In July 2005, President Lula gave a television interview explaining that he "will continue to be relentless in investigating corruption" (Gomes, 2021, p. 2). The *Mensalão* complaint was received by the courts in 2007 and the investigations of the case, extensively covered by the news media, lasted until 2011. The defendants were accused of money laundering, corruption, conspiracy, currency foreign-exchange fraud, embezzlement, and fraudulent management.

While big money laundering scandals occupied the headlines of the national newspapers, Brazilian public opinion developed an increased perception that corruption was Brazil's main problem. Figure 17 shows the percentage of the population that believed that corruption was the country's most important problem between the years 2004 and 2008, as measured by *Latinobarómetro* annual surveys. In 2004, just 3% of the population surveyed agreed that corruption was the most important problem in Brazil. The following year, 2005, when *Mensalão* was discovered by journalists from *Revista Veja*, 20% of the Brazilian population considered corruption the biggest national problem, ahead of problems such as poverty, health, education, or public safety. The *Mensalão* case went to the Supreme Court in 2007. The charges, indictment, and sentences in the Supreme Court of 25 persons, including a minister of State, the President of the Workers' Party, seven congressmen, three political party treasurers, public servants, and businessmen follow a decrease in the *Latinobarómetro* perception of corruption as the main problem in Brazil annual data (Figure 17).

During the Car Wash operation and the government of President Rousseff (2011-2016), the number of persons who believed that corruption was the main Brazilian problem started going up again (Figure 18) as corruption and money laundering schemes

Figure 17. Corruption most important problem, 2004 – 2008

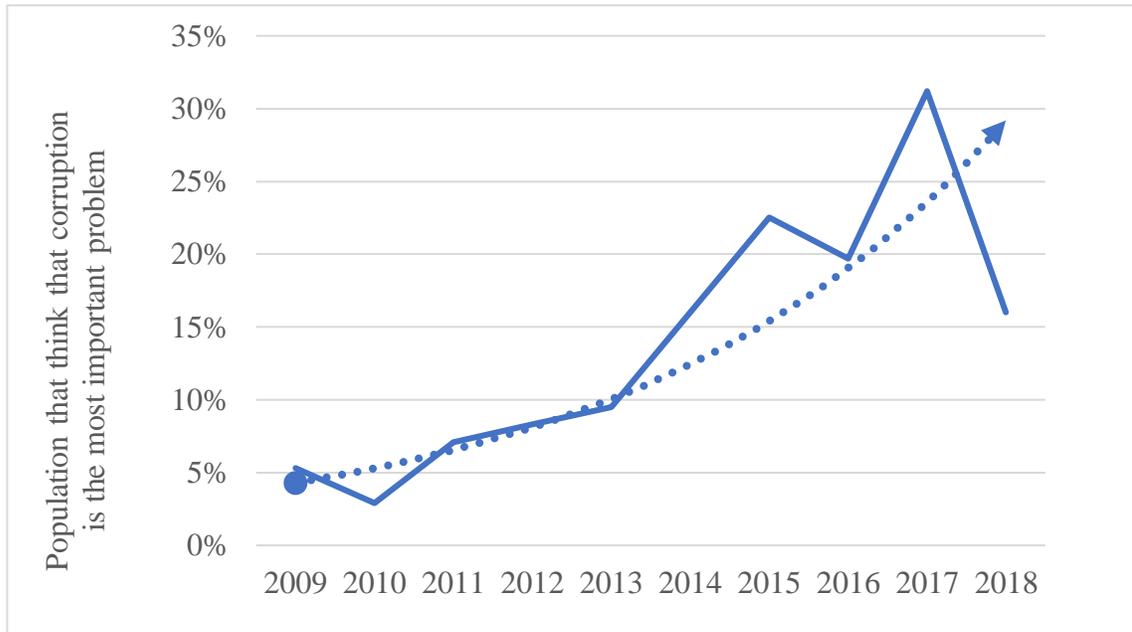


Source: *Corporación Latinobarómetro* annual survey.

were revealed. Before President Rousseff completed her third year in power, in 2013, the congress approved, and the President signed, the Brazilian Law on Criminal Organizations (Law No. 12,846) that impacted the legal system, reducing defendants' rights and moving the threshold for establishing guilt, easing convictions. This law was widely used by the Car Wash task force, which shook the political world and sent members of the Workers' Party and many of their political allies to prison and. The 2013 Law on Criminal Organizations facilitated private sector collaboration and established leniency agreements and compliance programs. It also regulated the means to obtain criminal evidence, including the lifting of financial, banking, and fiscal secrecy, the use of electronic recordings, access to records of telephone calls, interception of telephone and telematic communications, infiltration by police officers in investigative activities, cooperation between institutions and bodies in the investigation or criminal prosecution, and the use of plea bargains (Law No. 12,846, Ch.2, Sections I - IV).

In 2015, during the presidential impeachment, the number of Brazilians who believed that corruption was the country's most important problem (*Latinobarómetro* survey) reached 23% of the population. After the impeachment of President Rousseff and

Figure 18. Corruption most important problem, 2009 -2018



Source: *Corporación Latinobarómetro* annual survey.

Note: Data for the years 2012 and 2014 are interpolated.

the indictment of her successor, President Temer, in 2017, on corruption and money laundering charges, a staggering 31% of the population surveyed believed that corruption was Brazil's most important problem (Figure 18).

The 2018 Workers' Party presidential elections *Plano de Governo* (government plan), however, proposed a regression on AML implementation, including limitations on the work of prosecutors and curtailing most plea bargains. The Workers' Party electoral plan argued that AML instruments were being used "to protect self-confessed bandits and condemn innocent people" (PT et al., 2018, p.16). The political program also promised that, in the event of an electoral victory, the Workers' Party was going to set up a high-level commission to promote a legal review of AML and anti-corruption policies, and specifically mentioned the Brazilian law against criminal organizations that defined the means of obtaining evidence in corruption and money laundering cases.

During a Conference at the London School of Economics, in 2018, former president Rousseff said that she regretted having signed the law on organized crime. "Unfortunately," she said, "I signed the law that created ... a weapon of discretion, of absolute exception" (Yonezawa, 2018. Translation by the author). Rousseff also

recognized that her government and that of her predecessor, former president Lula, exerted influence to implement all mechanisms against corruption and money laundering crime, such as investments in the Federal Police and appointments of independent prosecutors.

"They used what we built, against us," said President Rousseff at the London School of Economics. Meanwhile, President Lula was imprisoned in the headquarters of the Federal Police, in the city of Curitiba, following a decision by Judge Moro taken seven months before the general elections of 2018. Lula was convicted of corruption and money laundering in 2018 -- with accusations based on the instruments of the new AML regime, such as use of electronic equipment, access to records of telephone calls, interception of telephone communications, removal of banking secrecy, cooperation between enforcement institutions, and plea bargains.

In April 2018, the Car Wash taskforce was dealing with 56 investigations incriminating high-level politicians in Brazil, including President Temer, three governors, twelve senators, and thirty-five members of the House of Representatives from ten political parties (Fellet, 2018; Desideri, 2021; Pereira, 2021). Table 3, Elected politicians investigated by Car Wash in 2018 (page 101) shows that 21% of those politicians were members of the Workers' Party (twelve members). A similar amount, 20%, were elected by the Brazilian Democratic Movement, and 18% percent of those investigated by Car Wash were elected by the Progressive Party. In total, almost 80% of the politicians investigated in 2018 were not members of the Workers' Party. In fact, during the period when the Workers' Party was in power (2003-2016), the implementation of AML was providing not only votes for the opposition, which appropriated the ethical parlance that went with it, but also punishing the original AML implementers and a sizable group of political allies: a case in which "the spell turned against the sorcerers."

### **The Return of Authoritarian Governments and Regression of AML**

In 2001, the Brazilian bank-secrecy law (*Lei Complementar 105/2001*) had given COAF access to information on financial and banking operations, provided for automatic reporting of financial operations, and reversed the burden of proof -- with the defendant being responsible for proving the legality of his financial resources. In fact, since the enactment of the Vienna Convention in Brazil (1991) it was already possible to reverse

the burden of proof when dealing with financial resources derived from illicit drug trafficking proceeds. The text of the 1988 Vienna Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances says that: "Each Party may consider ensuring that the onus of proof be reversed regarding the lawful origin of alleged proceeds or other property liable to confiscation." (Art. 5, paragraph 5). The Brazilian bank-secrecy law of 2001 also instituted the prohibition of probation and of bail for persons accused of money laundering and strengthened the instrument of plea bargain in Brazilian legislation, that was rarely used before 2013. (Janot, 2017b).<sup>32</sup>

For police officers and prosecutors interviewed in 2002 for a survey conducted by the *Conselho da Justiça Federal* (Federal Justice Council), these new instruments would facilitate investigations, prosecutions, and convictions in money laundering cases. Police officers and prosecutors considered, however, that they needed even more power, to bend the legal limits that delayed and annulled court decisions, to reverse the burden of proof by placing it on the defendant, to break privacy standards, to check bank accounts, and to request and distribute financial information. Enforcement officers were ready and eager to use the new AML tools. The effect of the newly implemented legal regime was immediately felt by corrupt politicians, corporate businessmen, and high-level public servants.

After the impeachment of President Rouseff, in 2016, and the jailing of former President Lula, in 2018, significant setbacks to AML regime implementation occurred in Brazil. In March 2016, Brazilian newspapers transcribed a conversation that anticipated most of the debate on reversing AML implementation. The conversation between Senator Romero Jucá and Credit Suisse's then highest-paid executive in Brazil, Sergio Machado, was recorded by the Car Wash special taskforce (Borges, 2016; Lucchesi et al., 2016; O Globo, 2016; Oliveira, K., 2018). The Brazilian Supreme Court had opened twelve inquiries against Senator Jucá, mostly related to the Car Wash investigations. The recorded dialogue between Machado and Jucá took place weeks before the vote in the Senate Chamber that triggered the impeachment of President Rouseff. The seventy-five

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<sup>32</sup> The plea bargain instrument appeared for the first time in Brazilian law *Lei dos Crimes Hediondos* (law of heinous crimes) (*Lei* 8,072/1990). The AML Law (*Lei* 9613/1998) also mentions the plea bargain instrument, which was rarely used in Brazil before 2013. (Janot, 2017b) YouTube: <https://youtu.be/rR5Yiz84b5c>

minutes of conversations revealed a plan to get rid of President Rouseff, then put Vice-President Michel Temer in the presidency, and collude with the judiciary to nullify the charges, convictions, and sentences against politicians derived from the Car Wash operation. The transcription read as follows:

Credit Suisse's executive Machado: "It's a deal, putting Michel [then Vice President Temer] in a big national deal."

Senator Jucá: "We need to stop the bleeding" ... [with] a deal with the Supreme Court, with everybody. "

Credit Suisse's executive Machado: "With everybody. Then, everything [charges, convictions and sentences] will be stopped ..."

Credit Suisse's executive Machado: "One way is to look for someone who has influence on Teori [Zavascki, the Rapporteur for the Car Wash operation in the Brazilian Supreme Court, but it seems there is no one."

Senator Jucá -- "There isn't. He was nominated by Dilma [President Rouseff] and he is a very closed person, who does not admit approach ... a bureaucrat."<sup>33</sup>

With President Temer (2016-2018), Senator Jucá had been elevated to the position of Minister of Planning and strongman of the interim government. According to the rapporteur of Car Wash at the Supreme Court, Justice Teori Zavascki, the tape recordings of the conversation between Senator Jucá and businessmen Machado pointed to a concerted plan by politicians to withdraw from the criminal justice system the AML instruments that were crucial to the success of investigative efforts (Borges, 2016).

Justice Zavascki anticipated an anti-Car Wash movement that, between 2017 and 2021 weakened the prevention and enforcement mandates of AML and anti-corruption, such as President Collor's Law No. 8,429 of 1992 that established penalties for public servants in cases of illicit enrichment in the exercise of a political mandate (Brasil Presidencia da República, 1992). The Judge responsible for Car Wash in the Supreme Court was not able to follow the entire process that triggered the regression on AML

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<sup>33</sup> Excerpts from a federal police recorded dialogue between Senator Romero Jucá and Credit Suisse's executive Sérgio Machado, transcribed and published by the news media, available on the web at the following URL: <https://adaorochas.jusbrasil.com.br/artigos/341717649/dialogo-entre-romero-juca-e-sergio-machado-isso-e-uma-vergonha?ref=feed>

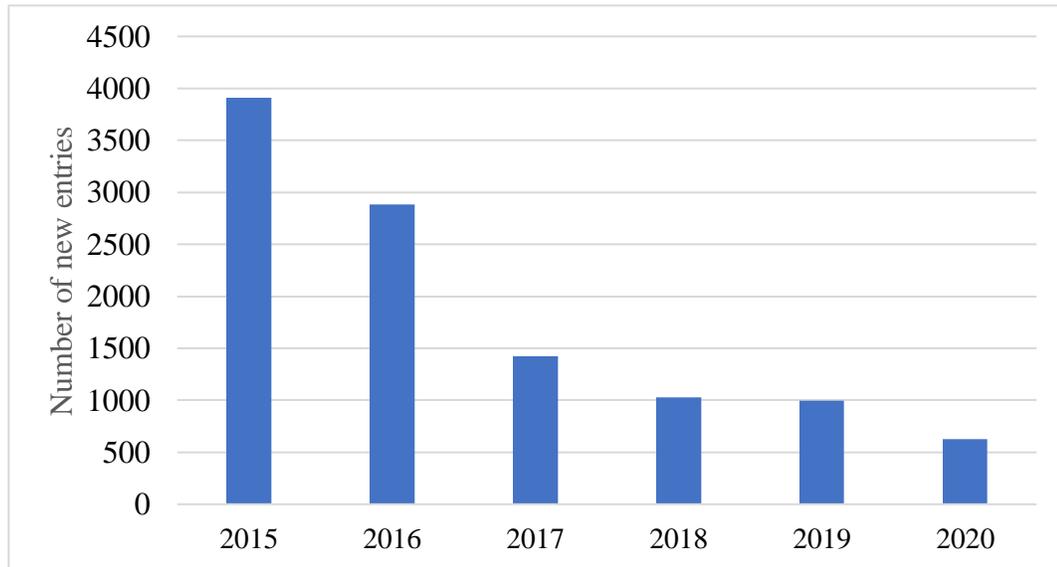
implementation, as he was killed in an air crash, on January 19, 2017, but his findings, archived in the Car Wash files, still document the political intrigues that directly impacted implementation of the AML regime in Brazil.

On August 31, 2016, the Senate removed President Rousseff from office, alleging budgetary reasons, in a process not directly related to money laundering, but in the midst of accusations, indictments, and convictions for money laundering crimes committed by members of the Workers' Party and government allies, such as the *Movimento Democrático Brasileiro* (MDB) and *Partido Progressista* (PP). By this time, criminal politicians were already aware of the power and dangers of the AML regime that they had helped to install. Law 12,850 against criminal organizations, adopted in 2013, was the last meaningful law on money laundering adopted and implemented by the Workers' Party. This law, which details new investigation techniques to produce evidence and encourage a defendant's collaboration (plea bargaining), was the legal instrument used to send former President Lula to prison, in 2018.

Presidents Temer (2016-2018) and Bolsonaro (2019- ) were accused, together with members of their families, of several counts of money laundering. It comes as no surprise, therefore, that they actively promoted a more lenient AML regime. Now, instead of helping politicians to gain electoral votes, AML is seen as a menace to the political establishment and conditioned by those who want to regress to previous stages of implementation, because the AML regime no longer serves their political interests. Temer and Bolsonaro followed their own desires and those of politicians who felt that AML implementation had turned against them. They cut resources and responsibilities previously assigned to government agencies. They also acted with Congress and members of the Supreme Court to weaken AML laws, inhibit the implementation of norms, establish limits on COAF activities, release criminals accused of money laundering, limit prosecutions, delay judgements, and free indicted politicians.

COAF data illustrate this regression on AML implementation. The number of persons registered at COAF (Figure 19) fell by 80% between 2015 and 2020 (COAF, 2020). In fact, the number of newly registered persons who are directly subject to COAF supervision, pursuant to the money laundering law of 1998 (Law 9,613, art. 14 § 1), fell

Figure 19. Persons registered by COAF per year of enrollment, 2015-2020



Source: COAF 2017; COAF 2020; and COAF 2021

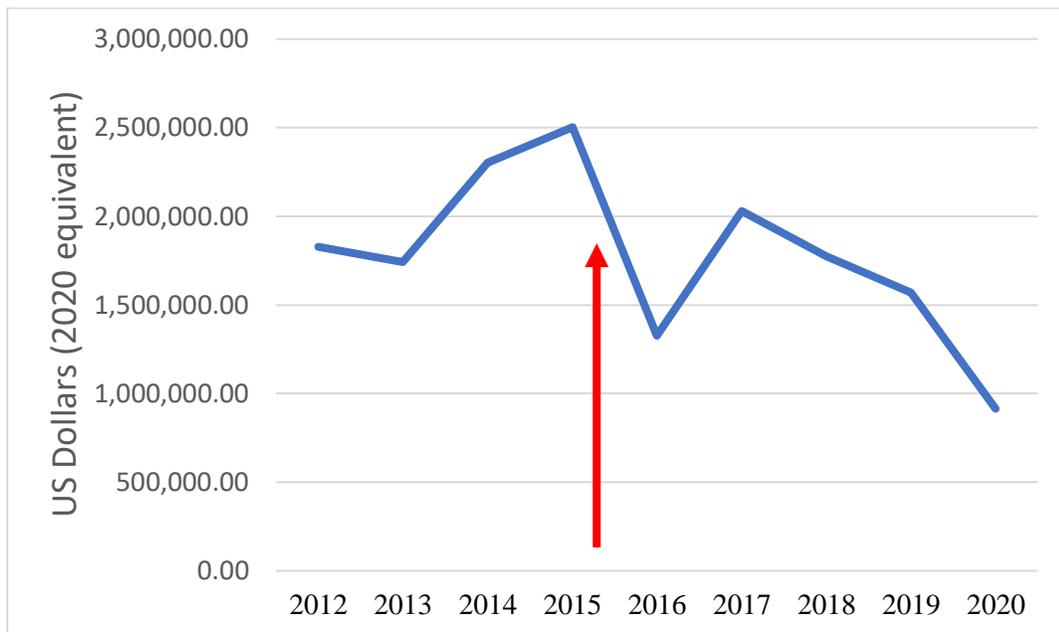
Note: Registered persons are people from the sectors that are required to forward communications to COAF such as banks, accountants, public notaries, real estate dealers, jewelers, insurance professionals, etc.

every year since 2015, as shown in Figure 19. COAF's expenses are another indicator revealing the trend reversal regarding AML implementation in Brazil after the arrival in office of President Temer in 2016. Figure 20 shows COAF expenses between 2012 and 2020. The graph reveals that between 2015, when the impeachment process started, and 2020, the COAF's annual expenses shrank by 63% (from US\$2,502,991 in 2015 to US\$914,239 in 2020).<sup>34</sup>

In 2016, the final year of President Rousseff's administration, FATF released a statement about failures to address the "serious deficiencies identified" in Brazilian AML implementation (FATF 2020, p. 35). In 2017, when Vice President Temer became president, he was immediately accused, and indicted by the *Procuradoria Geral da República* (PGR) (Attorney General's Office) on crimes of corruption and money

<sup>34</sup> Total expenses include air-tickets and per-diem; contributions to international organizations; third-party services provided by federal police and judiciary police; equipment and permanent material, special projects, and other expenses. It does not include salaries and IT Services. (COAF 2020, SISCOAF Newsletter, June 2020). Values are converted from Brazilian Real to US dollars using data from Refinitiv: <http://go.microsoft.com/fwlink/?LinkID=249332> Conversion to 2020 dollars through the Website US Inflation Calculator: <https://www.usinflationcalculator.com/>

Figure 20. COAF expenses 2012-2020



Sources: COAF 2012, 2014, 2017, 2020.

Note: the year 2015 marked the start of President Rousseff's impeachment with the acceptance of the process by the *Presidente da Câmara* (Speaker of the House).

laundering. In 2018, in the same year that President Lula was sent to prison, the extreme-right President Jair Bolsonaro was elected on an anti-corruption platform. It took less than one year, however, for the government to dismantle operation Car Wash, as President Bolsonaro and his sons were accused by federal prosecutors of money laundering. (Anderson, 2019). In June 2019, FATF elevated the issue of Brazilian non-compliance with AML TLO "as a membership concern" if the Brazilian government failed to act immediately. The 2019-2020 FATF Annual Report<sup>35</sup> expresses its concerns regarding "Brazil's ability to comply with international standards." (Ibid.)

The 2019-2020 FATF report mentions a "limitation placed by the Brazilian Supreme Court on the use of financial intelligence in criminal investigations." The Report also mentions that "the (Supreme) court decision is impacting the ability of Brazil's FIU

<sup>35</sup> FATF (2020), Financial Action Task Force -- Annual Report 2019-2020, FATF/OECD, Paris, [www.fatf-gafi.org/publications/fatfgeneral/documents/annual-report-2019-2020.html](http://www.fatf-gafi.org/publications/fatfgeneral/documents/annual-report-2019-2020.html)

to share information with law enforcement authorities" (Idem, *ibid.*) The FATF report does not provide names, but it refers to a decision by Chief Justice Toffoli of the Brazilian Supreme Court, on July 16, 2019, accepting a request from Senator Flavio Bolsonaro, the son of President Bolsonaro, accused of money laundering. The decision by the Chief Justice suspended judicial proceedings against the president's son that used COAF data. This decision is also binding and applies to all investigations where data from COAF, the Federal Revenue Service, and the Central Bank were shared with public prosecutors of the *Procuradoria Geral da República* (PGR) (Attorney General's Office) without prior judicial authorization (Pupo, 2019). In the same year, Law 13,974, and Brazilian Government Provisional Measure No. 893 renamed COAF as the Financial Intelligence Unit (FIU) and moved the new body from the Ministry of Economy to the Brazilian Central Bank, under strict control of the presidency and eliminating its power to exchange information with public security agencies without authorization from the courts.

In 2018 Bolsonaro had won the presidential election using the same anti-corruption language used by his predecessors. He invited Judge Moro -- a symbol of the Car Wash operation, AML implementation, and anti-corruption efforts -- to his cabinet, to be Minister of Justice and Public Security. The judge that convicted former President Lula, withdrawing him from the elections won by Bolsonaro, accepted the new position. In April 2020, former Judge Moro resigned from Bolsonaro's cabinet, accusing the President of interferences in the Federal Police to benefit his family members in investigations. In 2020, President Bolsonaro said that he terminated Car Wash because "there is no more corruption in the government" (Poder 360, 2020). Critics say Bolsonaro has not put an end to corruption, and that, rather, he is putting an end to AML efforts, by appointing anti-Car Wash officials to the Attorney General's Office and nominating his favorites to run the Federal Police (Gallas, 2020).

After reversing the trend on AML implementation, Bolsonaro fell into the arms of *Centrão* -- a group of politicians investigated and convicted in the Car Wash operation that formerly had been allied with the Workers' Party and helped them achieve a majority in the parliament (Pereira, 2021). The Brazilian Congress, after President Bolsonaro came to office, began approving projects that dismantled the AML order. Senator Weverton

Rocha -- a defendant in a civil dishonesty suit and in a criminal action for embezzlement -- is the rapporteur of the 2021 bill that opens up loopholes in Law No. 8,429 of 1992 that penalized public servants in cases of illicit enrichment in public office. The new administrative misconduct law contradicts the AML framework, by reducing punishments for public agents found guilty of corruption (Pereira, 2021). Another law (14,230/2021) was adopted by the Congress ensuring that public sector managers whose government accounts were rejected, can, nonetheless, run for office. (Brasil Presidencia da República, 2021).

Mauricio Moura, a sociologist, and Chair of the Brazilian Think Tank *Instituto Ideia Big Data*, said that although Bolsonaro was elected with great expectations of fighting corruption, the issue does not influence his popularity as much as it did before. According to the researcher, this is not because the Brazilian electorate has stopped worrying about corruption, but because "the segment of the electorate that attaches importance to the issue had already abandoned Bolsonaro" (BBC News, 2020, p. 1).

In his interview with BBC News, Moura said that about 10% to 15% of Brazilians who supported Bolsonaro stopped doing so when anti-corruption stances ceased to matter to the government (Ibid.). On October 25, 2021, the Brazilian Congress approved, and President Bolsonaro immediately sanctioned, Law No. 14,230 that replaces the first Brazilian law on administrative improbity (law No. 8,429) that had been signed thirty years before by President Collor (1990-1992). The anti-corruption law of 2021 radically altered one of the laws most used by prosecutors in the supervision of government agencies, thereby weakening the fight against corruption. The new law makes it difficult to hold a public servant accountable in cases of corruption and makes it almost impossible to punish cases investigated, among others, by the Curitiba task force, directly benefiting congressmen indicted by the Car Wash operation, including the Speaker of the House, and a Bolsonaro ally, Arthur Lira.

## **Conclusion**

After careful crafting of AML regime implementation, during the governments of Presidents Cardoso, Lula and Rousseff, the dismantling of the AML regime and the cancellation of punishments of money laundering criminals, during the governments of Presidents Temer and Bolsonaro, is ongoing. Currently, the goals presented in the pact

proposed by Senator Jucá "to stop the bleeding", by making a deal with Congress, the courts, and everyone else, to stop investigations into money-laundering and corruption cases, cancel charges, and nullify sentences have been achieved. Vice President Temer replaced President Rousseff in 2016. After the disclosure of the audio of the minister and strongman of the Temer government Romero Jucá, in which Senator Jucá suggested a pact to bar operation Car Wash, Jucá had to leave the government and, subsequently, was not re-elected to the Senate. But the courts, politicians, and businessmen followed the goals of the announced pact and were able to "stop the bleeding" caused by AML implementation.

The AML regime that, for the first time in Brazilian history, had led to the jailing of bigwigs in politics and the business world was to be wiped out. The Supreme Court annulled the judgments handed down against former president Lula, in 2021, alleging a technicality -- the accusations should have been filed in a different federal circuit (São Paulo and not Curitiba) -- and that the judge responsible for the Car Wash Operation, Judge Moro, was biased against Lula. All other convictions against those involved in the corruption scandal are now potentially subject to annulment.

The Brazilian Supreme Court, after the decision that freed President Lula in 2020, started releasing other indicted and convicted congressmen, alleging a variety of reasons. It referred the accusations of money laundering and corruption to the lower courts, or to the Electoral Court, as if they were mere electoral infractions. In his rulings regarding the Car Wash operation, Supreme Court Justice Gilmar Mendes argued that psychological torture had been applied (Mendes, 2018), a thesis that could potentially nullify all Car Wash depositions obtained through plea-bargains.

In fact, judges in Brazil already started to cancel or archive other money laundering proceedings against politicians on the pretext of following the STF's original decision. (Pereira, 2021). The news magazine *The Economist*, in its March 9, 2021, edition (Figure 21) describes the "unceremonious" disbandment of Operation Car Wash, and how politicians made an alliance with President Bolsonaro to weaken COAF and revert AML implementation.

Former governor, Sergio Cabral (2007-2014), convicted in the special court of Rio de Janeiro, was the only politician arrested in connection with the Car Wash

*Figure 21 The Economist announces disbandment of Car Wash*



Source: The Economist weekly news magazine, March 9, 2021

operation who remained in prison in 2021. Imprisoned in pre-trial detention, since November 2016, the former governor, who confessed to having headed a criminal organization, saw political allies, rivals, corporate businessmen, and corrupt public servants get out of jail, benefiting from court rulings that were denied to him during this period. Cabral was convicted of money laundering and corruption and sentenced to 392 years in prison. He still faces thirty-four additional lawsuits. (Nogueira, 2021).

With the help of Brazilian politicians, the AML budget was curtailed, laws weakened, judgements cancelled, and policies suspended. Now, what will be the future of AML implementation in Brazil? What is the Brazilian government going to do with the billions of dollars paid in court by the criminals? As *O Globo* columnist Merval Pereira suggests in an op-ed piece published in 2021, the criminals "might get the money they stole back" (Pereira, 2021).

The commitment of politicians, driven by their electoral interests to implement the AML regime that started with the signature by President Cardoso of the 1998 AML Law and intensified during the Workers' Party period in office (2003-2016) created the

instruments needed to investigate criminal acts by corporations, businessmen, political parties, and politicians. The new regime facilitated extensively use of investigation techniques that yielded evidence, with the possibility of collaboration by defendants (plea bargaining). Police investigations traced the resources distributed to parties and candidates by identifying the public source from which they originated. Follow-the-money analysis, conducted by COAF, the Federal Police, and the *Procuradoria Geral da República* (PGR) (Attorney General's Office), dismantled the appearance of legality conferred by laundering techniques and obtained proof of the diversion of resources from state agencies.

For 18 years, from 1989 till 2016, Brazil was the Latin American country that led implementation of the AML regime in the region. It was the first country in the region to be a FATF member (1999) -- together with Mexico and Argentina -- and the first to assume the presidency of the FATF (2008). Suddenly, after 2014 and the indictment of politicians and businessmen during the Car Wash operation, political interests changed, with a new goal of stopping and reversing AML implementation.

The full results of the regression of the implementation process are yet to be seen, but the contribution of politicians to the oscillations in the level of AML regime implementation is confirmed. This chapter registered those three moments of Brazilian political history illustrating three ways in which the Brazilian political class manipulated AML implementation. First, after re-democratization, a push for implementation due to immediate electoral interest; then the implementation of AML for the elimination of political foes, mainly the Workers' Party and its allies; and finally, the active participation of politicians to obtain a reversal of AML implementation. The regression process that started during the final years of the government of President Rousseff (2011-2016) and intensified during the Temer (2016-2018) and Bolsonaro (2019-present) administrations facilitated the annulment of money laundering convictions and protected the political establishment from investigations.

Table 2. Brazil, Money laundering scandals, 2004 – 2014

Year	Name	Crime	Estimated state loss <sup>33</sup>	AML impact
2000 2004	<i>Furnas</i> (Furnas case)	Overpricing in the construction of hydroelectric plants	Loss of R\$177 million to the public coffers Worth US\$111 million in 2021	156 politicians accused but never charged. Board of directors of the state-owned company was changed. (Castro, 2017).
2004	<i>Operação Satiagraha</i> (Operation Satiagraha)	Scheme of diversion of public funds and money laundering among bankers and politicians	US\$2 billion sent to the Cayman Islands. Worth US\$2.9 billion in 2021	Investigations were suspended in 2015 based on a technicality regarding the recording of conversations. (O Globo, 2008).
2005	<i>Mensalão</i> (Monthly allowance)	Purchase of votes in the National Congress	Diverted R\$350 million to bribe politicians. Worth US\$200 million in 2021.	20 people convicted, including Workers' Party higher authorities. (Rangel, 2012).
2006	<i>Sanguessugas</i> (Leeches' Mafia)	Scheme diverted money budgeted for investment in health	Diverted R\$110 million Worth US\$61 million in 2021	Congress inquiry recommended the ousting of 65 politicians. Just 5 of them were re-elected. (Guerreiro, 2008).
2007	<i>Operação Navalha</i> (Razor operation)	Over-invoicing of public works	Loss of R\$154 million. Worth US\$82 million in 2021	47 people arrested, including governor and mayors. President Lula's cabinet member resigned. (Folha de São Paulo, 2007).
2014	<i>Operação Lavajato</i> (Car Wash operation)	Money laundering scheme involving oil company Petrobras, politicians, and businessmen	Embezzled more than R\$40 billion from public coffers. Worth US\$14 billion in 2021	155 persons convicted. R\$ 2,5 Bi returned to Petrobras. 13 leniency agreements with reimbursement of R\$ 13 billion. Additional R\$11.5 billion to be returned to the treasury. (Costa, 2019).

Sources: Folha de São Paulo, 2007; Matais & Guerreiro, 2007; O Globo, 2008; Rangel, 2012; Castro, 2017 & Costa, 2019. Additional research on the archives of newspapers *Folha de São Paulo* and *O Globo*.

*Table 3. Elected politicians investigated by Car Wash in 1918*

Political Party	Total Investigated (*)	Elected Politicians
PT (Workers' Party)	12	1 Governor, 2 Senators and 9 Representatives
MDB (Brazilian Democratic Movement)	11	1 President, 1 Governor, 6 Senators, 3 Representatives
PP (Progressive Party)	10	2 Senators, 8 Representatives
DEM (Democratic Party)	7	1 Senator, 6 Representatives
PSDB (Brazilian Social Democratic Party)	3	1 Senator, 2 Representatives
PSD (Social Democratic Party)	2	1 Governor, 1 Representative
PR (Republican Party)	2	2 Representatives
PRB (Brazilian Republican Party)	1	1 Representative
PPS (Popular Socialist Party)	1	1 Representative
PC do B (Brazilian Communist Party)	1	1 Representative

Sources: BBC News Brasil, 2018; Fellet, 2018; Costa, 2019; O Globo, 2020, Desideri, 2021; and Folha de São Paulo, 2020. Data aggregated and organized by the author.

(\*) Note: High-level elected politicians with mandate (President, Governors, Senators of the Republic, and Members of the House of Representatives of the Republic) investigated by Car Wash operation in 2018. It does not include politicians in a government position such as ministers and secretaries, state or municipal elected politicians, or politicians that were already convicted, such as President Lula. In total, 14 political parties had at least one of their members arrested, indicted, or investigated by the taskforce of operation Car Wash. They are: Avante (formerly PTdoB), DEM, PCdoB, PDT, PMN, PPS, PR, PRB, PSB, PSD, PSDB, PSL and PTC.

### **The Influence of a Network on AML Implementation**

Networks are "an important and understudied source of change" (Praça & Taylor, 2014, p. 28). This reference from Praça & Taylor (2014) is valid in understanding AML implementation in Brazil and the role of networks. They consider Brazil's *Estratégia Nacional de Combate à Corrupção e à Lavagem de Dinheiro* (ENCCLA) (national strategy to combat corruption and money laundering) as "the best example" of the success of a network "in generating new policies and ideas from all its many member institutions" (Praça & Taylor, 2014, p.30). The interactions between ENCCLA's member agencies, which will be further explored in this chapter, "proved to be an important generator of institutional change, sparking dialogue between institutions with little previous contact" (Ibid.).<sup>36</sup>

ENCCLA is an important and understudied actor that induced a positive change in AML implementation and compliance in Brazil. The model of governance based on a network of multi-sectoral agencies inspired the creation of this Brazilian network and shaped its development. ENCCLA started with representatives from the Office of the Comptroller General (CGU); the Accounting Tribunal (TCU); investigation agencies (e.g., the federal police); and sanctioning agencies (e.g., the *Ministério Público* or public prosecutors' office; and the courts) (Praça & Taylor, 2014). Once established, ENCCLA meetings also hosted sub-regional (state level) and municipal agencies, and representatives of the private sector and civil society. In Brazil, ENCCLA is the central network that brought multi-level and multi-sector groups of actors together, and which established a high level of cooperation between the government, NGOs, and the private sector, to effectively implement AML.

### **The Case of a Network Conditioning AML Implementation**

The implementation of the anti-money laundering (AML) regime evolved in Brazil with constant adaptation, mainly in response to international pressure, domestic political interests, and a network of government agencies, the private sector, and civil society. *Estratégia Nacional de Combate à Corrupção e à Lavagem de Dinheiro*

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<sup>36</sup> Praça & Taylor base their information on interviews conducted on September 11, 2012, with the General Coordinator for the Promotion of Ethics, Transparency, and Integrity of the *Controladoria Geral da União* (CGU), Izabela Corrêa, and a "senior staff member" of the *Tribunal de Contas da União* (TCU). (Praça & Taylor, 2014, p.30).

(ENCCLA) was enacted in 2003 -- the first year of President Lula's (2003-2010) administration. It was instituted to establish the network that would be responsible for the formulation and implementation, through its agencies, of AML public policies.

With ENCCLA, the Brazilian government; federal, state, and municipal public security agencies; civil society; and the private sector developed a coherent anti-money laundering (AML) policy implementation strategy. ENCCLA, which was in effect a conglomerate of agencies, acted as an outstanding conditioning factor and actor, pushing effectively for Brazil's AML implementation progress. (Financial Action Task Force [FATF], 2010; Araújo, 2012). ENCCLA systematically reviewed AML implementation and set annual goals, enhancing compliance with the AML transnational legal order, involving anti-money laundering norms, policies, agencies, and actors that "authoritatively order[ed] the understanding and practice ... across national jurisdictions" (Michaels, 2016, p.144).

At the end of 2006, the network formally received a mandate from the government to also fight corruption.<sup>37</sup> In 2010, the Financial Action Task Force (FATF) plenary adopted the first Mutual Evaluation Report on Brazil.<sup>38</sup> The 2010 FATF Mutual Evaluation Report on Brazil states that ENCCLA succeeded as a "mechanism for consultation between the competent authorities and the private sector [and therefore is an] important factor contributing to Brazil's progress" (FATF 2010, p.26). The FATF multilateral report recognized the important role that ENCCLA was performing for AML implementation, aiming for implementation of a full AML transnational legal order in Brazil, in compliance with the Financial Action Task Force Forty Recommendations (updated in 2009) that included the adherence to UN and OECD mandates and standards, and FATF Special Recommendations on money laundering regarding terrorist activities (2004, updated as of February 2009).

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<sup>37</sup> The National Strategy to combat Money Laundering, which dealt only with money laundering from 2003 to 2006 (when its acronym was ENCLA with just one "C"), had its acronym changed, in 2007, to ENCCLA, with the addition of a "C", due to the addition of the corruption issue, and the new name National Strategy to combat Corruption and Money Laundering.

<sup>38</sup> The 2010 FATF Mutual Evaluation Report of Brazil presents an assessment of AML, based on FATF Recommendations. The evaluation was conducted jointly by FATF and the *Grupo de Acción Financiera de Sudamérica* (GAFISUD) based on information supplied by the government, and information obtained by the evaluation team during its on-site visit to Brazil. The evaluation team met with representatives of governmental agencies and the private sector.

ENCCLA's development and the policies that this network recommended as of 2003 created an impetus for change with the standards that were also being pushed by the United States, UN, OECD, and FAFT on AML (Abrão, 2021). This period also coincided with the Workers' Party government, between 2003-2016, which was also politically motivated to change the standards for fighting money laundering and corruption in Brazil. One of the main lessons of the ENCCLA process was how the experiment of a new form of network building -- as demonstrated in multi-level and multi-sectoral actors' involvement in ENCCLA -- could be used to improve the effectiveness of AML implementation (Nance, 2018).

Since 2003, ENCCLA coordinated with relevant actors from federal agencies, representatives from different levels of government, and the private sector. Starting in the 2010s, civil society had a more active role, participating in selected ENCCLA meetings, including its annual meetings, helping set framework goals to diagnose problems, propose legislative and legal solutions, advise government actions, research typologies, draft norms, and implement policies regarding the mitigation of corruption and money laundering (Souza, 2015). As such, ENCCLA was the main player in the implementation of AML laws and policies in Brazil. Its development was originally accompanied by participation from high-level government authorities, politicians, and businessmen who, in the end, would be hit hard by the same policies, as they were caught in money laundering and corruption schemes. Precisely that outcome about the implementers of the AML regime being convicted of money laundering crimes is evidence that the network approach and experimentalist architecture<sup>39</sup> -- multi-level and networked governance -- practiced by ENCCLA for the implementation of the AML regime was effective and, to some extent, successful in persuading politicians and the government to implement the AML regime. However, one should not exaggerate the effect of ENCCLA. In fact, ENCCLA members did not always act in line with the ENCCLA network's proposed policies nor was ENCCLA solely responsible for AML implementation in Brazil. Nevertheless, the ability of ENCCLA to hold those who were once members or actors in

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<sup>39</sup> Charles Sabel and Jonathan Zeitlin (2008) characterize experimentalist architecture as a type of multi-level and networked governance: core features of ENCCLA.

its network accountable for their actions challenging AML standards is commendable and important.

Paulo Abrão, Secretary of Justice of Brazil between 2011 and 2014, responsible for the Executive Secretariat of ENCCLA, explains that what made ENCCLA unique and effective was its relative independence. ENCCLA allowed for fast and comprehensive AML implementation because it operated as a state agency (Abrão, 2021). At the time of ENCCLA's founding, Abrão notes how he was committed to building a state agency, instead of a government agency. He explains how, although he failed to make the ENCCLA network a formal state agency such as other Brazilian institutions like the judiciary, the public prosecutors' office, or the federal police, he did succeed, at least until the end of his term, in 2014, in ensuring that ENCCLA kept its independence from domestic politics.

Abrão remembers ENCCLA's work to obtain the approval of AML norms and policies by more exhausting your Congress:

The party alliance had a majority in Congress and the government passed these bundles of laws every time an opportunity arose. If there was a public commotion about some situation of murder, of violence, then congress was willing to pass tough laws on organized crime, and we were ready to present this project of ours. Most congressmen would enjoy it and pass, and we passed laws and policies.

(Interview with Brazilian Secretary of Justice and Chair of ENCCLA's Executive Secretariat Paulo Abrão [2011-2014]. November 8, 2021.)

Abrão was the head of ENCCLA in the most active period of comprehensive AML implementation, in the first half of the 2010s. His vision of ENCCLA implied that the agency should represent "the state organized against crime ... [that] propose administrative and legislative measures to improve Brazilian institutions in their ability to confront organized crime" (Interview with Paulo Abrão, 2021). Looking back at his time in office, Abrão -- the former National Secretary of Justice and ENCCLA Chair from 2011 to 2014 -- recognized that he tried but was not able to make ENCCLA a council for AML policy development and implementation pertaining to the fixed structure of the Brazilian state.

In fact, the regression of AML implementation observed after 2014 -- with new laws cancelling previous advances in AML compliance, revisions of court decisions, the weakening of ENCCLA, and the weakening of other AML agencies such as the Brazilian Financial Intelligence Unit (COAF) -- did show the limits of this type of network governance. Nevertheless, it is still illustrative to see how ENCCLA worked in tandem with the Workers' Party government, mainly between 2003-2014, providing for implementation of the international AML standards proposed by the United States, UN, OECD and FAFT, and generating a self-sustained process of increasing compliance with the AML transnational legal order. The dynamics of ENCCLA with Lula's government is explored further in the next section.

### **ENCCLA Impact on AML Implementation**

On January 1<sup>st</sup>, 2003, President Lula was inaugurated, and the Workers' Party was the government party. In the wake of Lula's electoral victory, the Brazilian National Strategy to Combat Money Laundering (ENCCLA) was immediately enacted as the main network for the formulation of money laundering policies. The commitment to implement the AML regime by the new government can also be seen in the presidential signing of Decree 5,015 that enacted the United Nations Palermo Convention against Organized Crime, with its clear mandate for the criminalization of money laundering (United Nations, 2000) and the adoption by the Federal Council of Justice of Resolution 314, creating the Anti-Money Laundering Specialized Federal Courts (Brasil Poder Judiciário, 2003). The enactment of the Palermo Convention introduced into Brazilian legislation instruments to facilitate confiscation and seizures, and the application of special investigative techniques such as electronic surveillance, controlled delivery, and undercover operations. The work of ENCCLA agencies was crucial for the implementation of the AML policies, including the policies mandated by Resolution 314/2003 of the Federal Council of Justice that gave birth to the court of Curitiba -- where President Lula was convicted of the crime of money laundering, in 2017. President Lula was arrested in April 2018 and spent 580 days in jail -- an outcome that, ironically, confirms the impact of the AML regime implemented by ENCCLA.

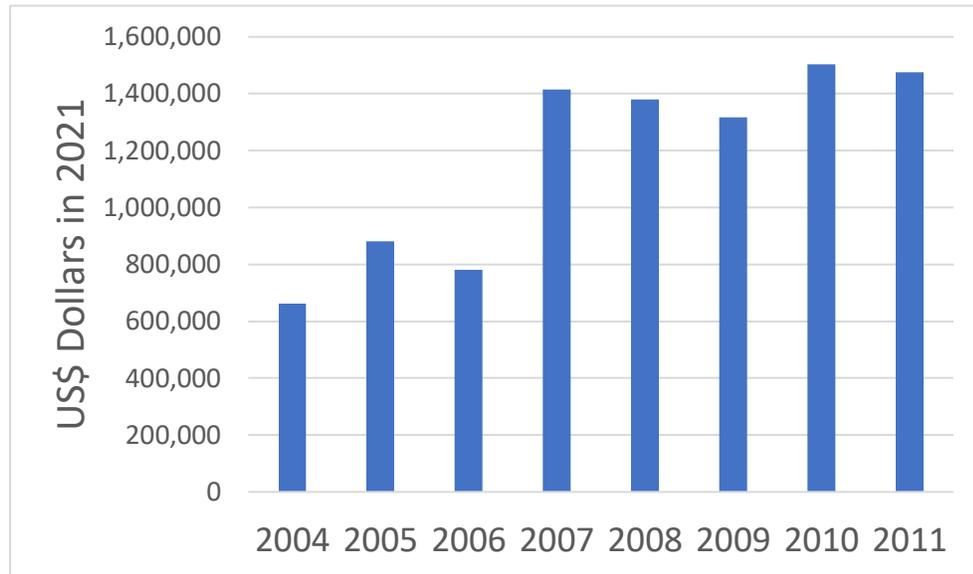
ENCCLA enactment, in fact, was not only the fulfillment of an election promise by the Workers' Party. It required a concerted effort, with active and permanent

coordination between the Brazilian judiciary, government ministries, and administrative agencies, and conversations with the private sector and civil society. ENCCLA may have been created because of domestic political interests, but it is important to acknowledge that the network was able to serve its proper function and do good work against crime. Even though ENCCLA was enacted to control money laundering by organized crime, it was mainly used to control the money laundering and corruption that were plaguing Brazilian politics. ENCCLA effectively implemented a regime that sought to control the money laundering and corruption taking place in the governments that had first fostered its existence. So, this is an interesting dynamic, because the moment that ENCCLA network processes led to President Lula being held accountable is, arguably, the moment that demonstrates the objective quality and autonomy of this institution.

President Lula's Minister of Justice, Thomaz Bastos, led the initiative to enact ENCCLA at the end of 2003. ENCCLA's network started with basic training programs on anti-money laundering for public servants, including police. In the first years, the work consisted mostly of facilitating the adoption of international legal instruments, affiliation to specific organizations or networks, standardization, professional training, and harmonization of norms. Initially, ENCCLA had to tackle the immediate internalization, in Brazilian norms and policies, of several international mandates and standards of the AML transnational legal order. The government of Brazil's commitment to the works of ENCCLA in its first years can be seen in Figure 22, detailing the resources budgeted for AML actions between 2004 and 2011. In those first eight years, the ENCCLA network saw the federal budget allocated to its work more than double in real terms (from US\$660,000 in 2004 to US\$1.5 million in 2011). As the budget was mainly committed to the organization of ENCCLA meetings, the increase in budget was the result of more and bigger ENCCLA meetings, with more agencies participating in the network (ENCCLA 2017, 2021).

Since 2003, the ECCLA network has been responsible for defining guidelines and implementing public policies and drawing up Action Plans for the following year. The network's annual meetings did bring together high-level and mid-level representatives of public agencies, the private sector, and, for a brief period between 2011 and 2016, civil society to "discuss internal deficiencies, identify overlapping tasks, and formulate plans

Figure 22. Brazil's budgeted resources for AML actions, 2004-2011



Source: Brasil Câmara dos Deputados, 2021. Database with the complete federal budgets from 1995-2002. Data compiled and organized by the Author.

Note: Budgeted resources refers to appropriation for *Programa 1164* of the federal budget for prevention and combating money laundering, aiming to cut the financial flows of organized crime.

Conversion of BR\$ Real to 2021 values done using BACEN *Calculadora do Cidadão* available at the following URL:

<https://www3.bcb.gov.br/CALCIDADA0/>

of action" (Machado M. , 2012, p. 354). The impact of ENCCLA was felt, altering the Brazilian juridical system, and shaking up Brazil's political parties (Araújo, 2012). In fact, the Brazilian juridical system had to change to adopt AML aspects of the common law legal tradition such as a lower burden of proof, and corrupt politicians were hit hard by the new norms and policies.

What made the ENCCLA network unique in being able to influence developments related to AML was the membership of multi-sectoral groups: namely, investigative agencies such as the federal police, sanctioning agencies such as the public prosecutors' office, and the courts. This network of diverse agencies dealing with legal matters makes up what can be called the Brazilian "national integrity system," a reorganization of the government's efforts to successfully develop a national AML

strategy -- based on a coordinated approach that examines the "inter-relationships, inter-dependence and combined effectiveness" of the public agencies as originally proposed by Transparency International<sup>40</sup> founding director and author Jeremy Pope (2000, p.37). ENCCLA has some of the characteristics of a "web of mechanisms of accountability" (Mainwaring 2003; Nance, 2017) such as periodical reviews of the work of the agencies, procurement procedures, domestic and international cooperation, and effective network management, in addition to an independent judicial system, and free media, aiming for effective norms and policy implementation.<sup>41</sup>

For instance, a department in the Ministry of Justice, the *Departamento de Recuperação de Ativos e Cooperação Jurídica Internacional* (DRCI, Department of Asset Recovery and International Legal Cooperation) is the executive secretariat of ENCCLA. The work of the network is carried out through "actions" which are prepared and mutually agreed upon, annually, by the members of ENCCLA. The actions are formulated at ENCCLA's annual meeting, in a consensus of all participating agencies, to be implemented by one or more responsible bodies. The results are evaluated at the following year's meeting. Working groups, composed by agencies' representatives, deal with ENCCLA actions, on a monthly basis, through activities such as facilitating compliance with international recommendations, carrying out legal-regulatory studies, drafting legislative proposals, assessing agencies' works, or holding training, and events. (Araujo, 2012; ENCCLA, 2021). The decrease in the number of ENCCLA's actions in the period 2004-2020 could mean that money laundering was decreasing, with a reduced need for AML policies, but the multiplication of political scandals and the strengthening of organized crime in the period does not support that interpretation. In fact, the average number of actions taken in the first quinquennial (32 actions per year in the period 2004-2008) decreased by 65% when compared with the last quinquennial (11 actions per year

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<sup>40</sup> Transparency International (TI) is a Berlin-based NGO, founded in 1993 by former World Bank and government officials. Today, TI has more than one hundred national branches, worldwide, including Transparency Brasil.

<sup>41</sup> The following federal agencies were members of ENCCLA in 2010: Police, the Public Prosecutors' Office, Courts, the Central Bank, the Stock Exchange Commission (*Comissão de Valores Mobiliários - CVM*), the Private Insurance Commission (*Superintendência de Seguros Privados - SUSEP*), the Financial Intelligence Unit (COAF), the Ministry of Justice's Department of Recovery of Assets and International Legal Cooperation (DRCI), and operational bodies, such as the National Secretariat of Justice; the Justice Councils; and the Office of the Federal Comptroller General (*Controladoria-Geral da União*).

in the period 2016-2020) (Brasil Ministério da Justiça, 2004 – 2020, data compiled by the author). The most important indicator here, however, is the diminishing relevance of these actions after 2014. This weakening of ENCCLA relevance is, instead, an indication of the lowering of political and administrative powers of the ENCCLA network as a driver of public policy implementation after 2014.

A good example of the relevance and impact of ENCCLA AML implementation is the adoption, in 2012, of Law 12,683, resulting from ENCCLA's *Ação* No. 20 of 2004, which amends the 1998 AML Law 9,613 that had criminalized money laundering in Brazil. The first money laundering instrument in Brazil—AML Law 9,613—introduced into the Brazilian legal system with the adoption of the Vienna Convention, applied only to money laundering from drug trafficking. These types of laws were classified as a form of first-generation AML law. The second-generation of AML laws criminalized the concealment of capital resulting from other serious crimes and included corruption Law No. 9,613, adopted during the President Cardoso government in 1989 but the *Projeto de Lei* 3,443/2008 prepared by ENCCLA, later approved by the Brazilian Congress as law No. 12,683/2012, upgraded the AML regime in Brazil to a third-generation regime, which regarded money laundering as any act that implies hiding or disguising the nature, origin, location, or disposition of financial resources; and established standards for obtaining information arising from a breach of bank secrecy.

The legal change meant that money laundering was a crime in itself, and any politician that used money from bribes could be accused without having to resort to a previous crime to specify the crime of money laundering. In this case, ENCCLA had succeeded in implementing law and policy, facilitating the prosecution of the crime of money laundering, and revoking the requirement for a predicated crime (Araújo, 2012). Law 12,683 also included other provisions required by ENCCLA such as a consolidated list of persons and professions subject to money laundering control, the strengthening of administrative control over the financial sector and other private areas susceptible to money laundering, and the facilitation of early seizures and forfeitures (Brasil Câmara dos Deputados, 2012).

Other examples of ENCCLA's direct impact on AML implementation include the opening of the digital *Cadastro de Clientes do Sistema Financeiro Nacional* (CCS), a

registry of customers of the National Financial System (*Meta 2*, ENCCLA 2005) that implemented "know your customer" standards<sup>42</sup>; the *Sistema Nacional de Bens Apreendidos* (National System of Confiscated Goods); the obligation to perform enhanced due diligence on Politically Exposed Persons (PEPs); and the creation of standards for obtaining information arising from breaches of bank secrecy (Araújo, 2012). In its 2010 meeting, ENCCLA network members were tasked with twenty-one actions, including the drafting of policy recommendations and the implementation of policies regarding bank-secrecy, the reduction of time limits for trying laundering crimes, the prohibition of casinos (*bingos*), money laundering in sports agencies, offshore companies, drug trafficking, paramilitary groups, and organized crime in prisons.

The relevance of the 2010 ENCCLA actions for AML regime implementation is supported by the following. First, the results of 2010 ENCCLA Action Number Six. The term "action" was chosen as the name for the programmatic statements formulated every year in the ENCCLA work cycle. Historically, those statements have been described variously as guidelines, goals, and recommendations. (Araujo, 2012, p. 24). Action Number Six mandated by the 2010 ENCCLA meeting was a direct answer to the 2010 FATF Mutual Evaluation Report (MER) on Brazil that had criticized the number of cases of money laundering prosecutions that ended without a valid judicial decision. The FAFT MER suggested that the Brazilian government fix loopholes in the country's legal system, to allow shorter deadlines for trying laundering crimes. The network immediately began discussions designed to enable its agencies to reduce deadlines during the processing of laundering crimes. In 2007, ENCCLA had prepared a draft law extending the criminal statute of limitations, in compliance with Article 29 of the UN Merida Convention, and Article 11.5 of the UN Palermo Convention, extending time limits for judicial courts. The *Ministerio Público Federal* (public prosecutors' agency) was the lead agency on this matter, responsible for proposing and implementing new norms and policies regarding deadlines for prosecution and judgement, in coordination with ten other legislative, judiciary, and executive public agencies. In 2012, Law No. 12683 amended the AML law

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<sup>42</sup> The "know your customer" guidelines require that financial institutions attempt to verify the identity and risks of a business relationship with a client. It is an expression used to refer to anti-money laundering regulations for the purpose of ensuring that customers are compliant with anti-bribery regulations.

of 1998 (No.9,613), changing administrative procedures so as to expedite decisions and impose deadlines for money laundering legal processes, thus making the criminal prosecution more efficient.<sup>43</sup>

Action Number Twenty mandated by ENCCLA 2010 is another good example of the influence of the network on AML implementation. This action decided to "make available and disseminate technology for analyzing statements breaching bank secrecy " (ENCCLA 2010, Action 20).<sup>44</sup> Up until then, there was no accessible database in the federal government that financial institutions could use to report on those investigated in money laundering cases. Until 2010, the Central Bank used to notify all banks in the country, in writing, about court orders requesting information regarding each person or company investigated. Because of this, and following ENCCLA guidelines, the Ministry of Justice, in coordination with the *Ministério Público Federal* (federal public prosecution agency) created *the Laboratórios de Tecnologia contra Lavagem de Dinheiro* (Anti-Money Laundering Technology Laboratories [LAB-LD]) -- a data analysis unit aimed at identifying illegal activities, especially financial data arising from the lifting of bank and tax secrecy, accounting documentation, and so on. The AML Technology Laboratories were equipped with the Banking Transactions Investigation System (SIMBA). Developed by the Federal Prosecutor's Office, as required by ENCCLA, SIMBA consisted of a set of processes, modules, and rules for transferring bank data between financial institutions and government agencies. SIMBA is also an important and successful result of ENCCLA's work regarding Action Twenty, of 2010, geared to lifting bank secrecy and improving AML implementation (Brasil Secretaria Nacional de Justiça, 2012).

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<sup>43</sup> Under the coordination of *Ministerio Público Federal* (National Public Prosecutor' Office) the following agencies were responsible for implementing 2010 ENCCLA Action Six, with the new deadlines for prosecuting and and trying money laundering crimes: BACEN (the Central Bank), *Conselho Nacional de Chefes de Polícia Civil* (CONCPC), *Conselho Nacional dos Procuradores-Gerais de Justiça dos Ministérios Públicos dos Estados e da União* (CNPJ), *Grupo Nacional de Combate às Organizações Criminosas* (GNCOC), *Associação dos Juízes Federais* (AJUFE), *Associação de Magistrados do Estado do Rio de Janeiro* (AMAERJ), *Tribunal Regional Federal da 2ª Região* (TRF 2), Departamento de Polícia Federal (DPF), and a specialized office in the the Ministry of Justice.

<sup>44</sup> The *Ministério Público Federal* (National Prosecutors' Office) with the collaboration of eleven other agencies, including BACEN (the Central Bank) and CFJ (Federal Justice Council) were responsible by the implementation of Action 20 of ENCCLA 2010 on technology for analysis of breaches of bank secrecy.

In 2011, two Anti-Money Laundering Technology Laboratories (LAB-LD) had been installed and five others had been planned. In 2014, each state had one (a total of twenty-seven laboratories installed). Other LAB-LDs were installed within the Federal Revenue Service, Federal Court of Auditors, Federal Police, and the National Prosecutors' Office. According to federal criminal expert Renato Barbosa, one of the public servants responsible for the implementation of ENCCLA technology laboratories and SIMBA, in an interview with the *Folha de São Paulo* newspaper, "many investigations that took months, and even years, can now be completed in a few hours with Simba" (Ferreira, 2010) and the effect of ENCCLA laboratories on money laundering was felt immediately. Paulo Abrão, the Justice Secretary and Chair of ENCCLA, recalled the impact of ENCCLA laboratories:

The Car Wash operation ... benefited from the mandates adopted by ENCCLA and ENCCLA's technological structure. All Car Wash investigations operated with information provided by ENCCLA laboratories, the technology laboratories, which we created. (Former Brazilian Secretary of Justice and Chair of ENCCLA's Executive Secretariat Paulo Abrão, personal communication, November 8, 2021).

Operating in the network of ENCCLA laboratories -- in the states and the federal district, dozens of public agencies, and financial agencies -- the integrated, web-based, digital system SIMBA illustrates the impact of ENCCLA governance on the implementation of the AML regime (Banco Central do Brasil [BACEN] Circular No. 3,454, 2010; Conselho Nacional de Justiça [CNJ] Instrução Normativa No. 3, 2010).<sup>45</sup>

Starting in 2016, however, there was a major change, with a significant reduction in the relevance of ENCCLA mandates. Sixty percent of 2020 actions involved the preparation of different assessments or diagnoses of agencies' policies, along with three other actions regarding updates to the electoral system, disposal of assets, and information sharing, that had already been implemented by ENCCLA. The option to prioritize assessments (60% of the 2020 actions) shows that ENCCLA was transforming itself into an assessment and evaluation agency, instead of the original network of

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<sup>45</sup> Other outstanding outcomes of AML implementation achieved by ENCCLA, in the 2003-2014 period, include: the National Training and Capacity-Building Program in the Fight against Corruption and Money Laundering (PNLD), which trained 18,000 public servants in money laundering deterrence; and the Single Registry of Account Holders of the National Financial System.

agencies aiming for policy implementation. It looks like ENCCLA was also a victim of the change of mind by political parties and politicians, mainly caused by the adoption of Law 12,683 of 2012 cancelling the need of a predicate crime to criminalize money laundering and Law 12,850 of 2013 against criminal organizations that prompted the Car Wash operation prosecutions. That change of mind by political parties and politicians increased as corrupt politicians realized the risk posed by the new regime. The political class changed its behavior as soon as full implementation of money laundering norms and policies began to take effect, in 2014. Instead of supporting implementation, politicians voted to weaken laws, limit public policy, and review court rulings.

The regression of AML policies that characterized the period 2016-2021 could have been at least delayed if the Workers' Party government had followed the recommendation of its National Secretary of Justice and Secretary General of ENCCLA Paulo Abrão (2011-2014), who sought to transform the informal network of public agencies installed by the government into a state agency. The former Secretary General of ENCCLA (2011-2014) wanted a network of agencies against money laundering and corruption that could be shielded during transfers of power and be impervious to domestic political disputes (Abrão, 2021).

Law No. 12,850 against criminal organizations had been adopted, in 2013, after many years of discussion in the courts about the legality of the mandates of the Palermo Convention in Brazil. The Congress, influenced by ENCCLA and its agencies, had finally adopted a law which definitively defined "Criminal Organization" -- a condition established by the Brazilian Supreme Court for indicting politicians accused of money laundering (Moreira, 2015). In the same year, together with Law No. 12,850 against criminal organizations, the Congress adopted Law No. 12,846 that encourages private sector collaboration, establishing leniency agreements with violators and compliance programs. ENCCLA's work had peaked with full implementation of an AML regime, providing the executive and the judiciary with all the tools, norms, policies, and agencies they needed to control money laundering. The newly implemented regime expressly authorized digital recordings and other investigation techniques to produce evidence,

with the possibility of collaboration by defendants (plea bargaining) that was extensively used in Operation Car Wash (Soares, 2013).<sup>46</sup>

The imprisonment, indictment, and convictions of politicians and high-level businessmen that followed the adoption of the law on criminal organizations triggered the reaction by political parties and politicians that led to the reversal of AML implementation. After 2016, a new majority in the Congress modified the law to make it more difficult for elected politicians in executive positions to be held accountable when resources are misused, or public administration errors occur. At the same time, the courts hampered and delayed legal proceedings, suspended indictments, and annulled convictions, freeing convicted politicians.

Following the backpedaling on implementation, after the removal of President Rousseff (2011-2016), ENCCLA was assigned fewer policy responsibilities, conducted fewer and less important operations, and witnessed a decline in the impact of its actions on implementation of the AML regime. Figure 23 on the budgeted resources reserved for ENCCLA shows that, between 2015 and 2020, the network suffered systematic budget constraints, proposed by the government, and accepted by Congress, limiting its capacity to promote its meetings, and once again illustrating the story of a regime that started strong, reached maturity, but weakened over time, returning to its infancy after 2016.

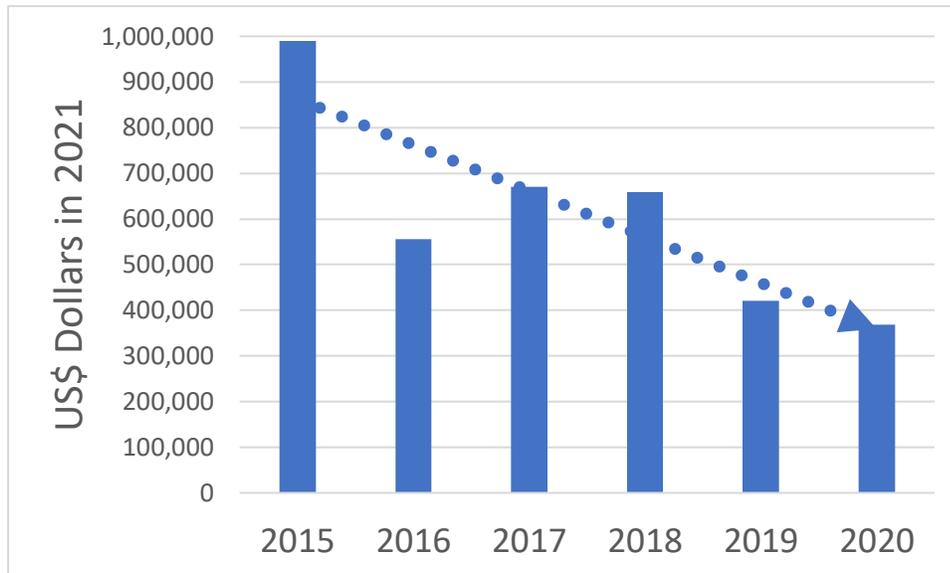
### **ENCCLA Domestic Experimentalist Governance**

The ENCCLA network is a model based on the multi-layered FAFT network of global agencies (e.g., UN, IMF, Interpol, and the World Bank), regional agencies (e.g., OECD, OAS, IDB, GAFISUD), and national Financial Intelligence Units (FIUs). The FAFT AML implementation network model is a successful replication of European inter-agency network development (Nance, 2017). The OECD network on corporate governance of member State agencies provides fora for government representatives, the private sector, and NGOs aiming "to share experiences, identify good practices and

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<sup>46</sup> The 2013 Brazilian Law on Criminal Organizations established the following means of obtaining evidence: plea bargaining agreements; monitoring of electromagnetic signals, acoustic or optical; controlled response; access to phone and computer records, data contained in public or private databases, and commercial and electoral information; interception of telephone and computer communications; removal of banking and tax secrecy; police infiltration; and cooperation among federal, state, and municipal government institutions. (Law 12.850, Art. 3)

Figure 23. Brazil's budget resources for ENCCLA activities, 2015-2020



Source: Brasil Câmara dos Deputados, 2021. Database with the complete federal budgets from 1995-2002. Data compiled and organized by the Author.

Note: Budgeted resources for ENCCLA activities refers to appropriation for Program 2070 of the federal budget, regarding the organization of ENCCLA meetings.

Conversion of BR\$ Real to 2021 values done using BACEN *Calculadora do Cidadão* available at the following URL:

<https://www3.bcb.gov.br/CALCIDADA0/publico/exibirFormCorrecaoValores.do?method=exibirFormCorrecaoValores>

develop recommendations ... to improve state ownership practices and strengthen the OECD Guidelines" (OECD, 2021, p.1).

The study of the experimentalist architecture of the network of agencies that characterizes ENCCLA governance -- resembling networks within the European Community, the United Nations, and FAFT network operations (Sabel & Zeitlin, 2011; Nance, 2017; Abrão, 2021) provides further insight into the effectiveness of AML implementation in Brazil after 2004. Regional and national agencies in ENCCLA used to cooperate directly, without the need for court orders, political decisions, or official communication between foreign ministries, thereby facilitating information exchange. That is probably one of the reasons why ENCCLA networked governance was able to

hide from politicians the risks they incurred with AML implementation. ENCCLA ceded control of decisions on policy adoption and implementation to specialized agencies, staffed with technical professionals and public servants.

Professors of Law Charles Sabel and Jonathan Zeitlin of Columbia University and the University of Amsterdam established the concept of experimentalist governance: "in this architecture, framework goals ... are established by joint action of [agencies]" (Sabel & Zeitlin, 2012, p. 271). Sabel & Zeitlin (2012) investigate "transnational transformations" in the European Community's multilateral, multi-level, and networked governance. Their article suggests that experimentalism appears "particularly well suited to transnational domains" (Sabel & Zeitlin, 2012, p. 14) in view of the lack of a global high authority powerful enough to impose common goals, in a world characterized by economic, socio-political, and cultural diversity, and local conditions, which "make the adoption and enforcement of uniform fixed rules even less feasible" (Ibid.). The concept of experimentalism presented by Sabel & Zeitlin (2012) -- the best description of the governance practiced in the Brazilian *Estratégia Nacional de Combate à Corrupção e à Lavagem de Dinheiro* (ENCCLA) -- defines a type of arrangement far removed from the conventional hierarchical type of governance that implies a separation between policy conception and administrative execution. In the case of ENCCLA, the network developed norms and policies, and ENCCLA member agencies in the Congress, the Judiciary, or the Executive implemented those norms and policies.

ENCCLA is an "issue network" of agencies, experts, officers, and interests that arise in connection with a particular issue (Hecló, 1978). It also can be called a "policy network" (Milward & Wamsley, 1985), a complex and shifting aggregation of governmental authorities, public and private agencies, experts, and others "whose interplay shapes the formation and implementation of policy" (Rainey, 2014, p. 134). It consists of a network of government agencies in the executive, legislative and judicial branches, and public prosecutors, with the participation of the private sector (mostly financial institutions) and civil society. The evolution of experimentalist governance in the European Community, the development of the FATF, and the implementation of AML in Brazil during the 2003-2013 period follow similar processes and standards. In all those networks, implementation required "flexibility ... across contexts" (Nance, 2018, p.

135). That entailed a network in which participants should "regularly update the core standards ... in ways that reflect lessons learned in implementation" (ibid.). Flexibility in implementation across contexts reinforced the ENCCLA network dynamic, promoting the adaptation of Brazil's AML regime to the context of ENCCLA agencies, thereby avoiding the top-to-bottom political control exerted by the executive or legislative branches. The network systematically assessed the effectiveness of its work and used previous experiences to revise its standards, thereby ensuring continuous internal development.

The network of agencies model adopted by ENCCLA was also replicated at the local, regional, and international level. In the 29 Brazilian states and in the Federal District, groups of local public security agencies organized the so-called *Encclinhas* (little-ENCCLAs) (Brasil Ministério da Justiça, 2015). The *Encclinhas* followed the national model, organizing meetings with representatives at the state level to coordinate public agencies in the fight against corruption and money laundering. When ENCCLA was formed, it introduced an important process in the states and municipalities, which began to replicate ENCCLA initiatives, making plans and discussing prevention of corruption and money laundering. According to the Brazilian Secretary of Justice in 2015, Beto Vasconcelos, "it was a great advance for the country as the three levels of government and the three branches (executive, legislature, and judiciary) shared experiences" (Brasil Ministério da Justiça, 2015, p.1). Brazil has also "consistently shared its anti-corruption expertise with other countries and international organizations" (Iglesias, 2017, p. 23). In fact, ENCCLA trained public servants from Angola, Bolivia, Colombia, Paraguay, and Peru in the effectiveness of networks of public-safety agencies for money-laundering prevention (Transparency International, 2017). Paulo Abrão, National Justice Secretary and coordinator of ENCCLA (2011-2014) recalls that he was very much sought after by other governments to describe ENCCLA's experience. In 2013, he was invited to travel to China to deliver a presentation to the Chinese government regarding Brazilian AML strategy. That same year, he introduced ENCCLA to audiences in Spain and Turkey. In Latin America, then Secretary Abrão went to Peru, Argentina, and Chile, at the invitation of the respective governments (Interview with Brazilian Secretary of Justice Paulo Abrão, 2021).

Since its beginning, in 2003, ENCCLA discussed strategies and actions to improve public policies within its network, aiming to improve AML regime implementation. Its network created and enacted policies that impacted thousands of lower-level agencies and units that were obliged to implement AML laws and policies. However, the ENCCLA network provided some autonomy to implement policies to lower-level governmental units, private business, and professions. In return for that partial autonomy, all entities in the AML system were obliged to report, regularly, on their performance, including participation in ENCCLA groups' review activities. The assessment of AML regime implementation was (and still is) periodically revised by the ENCCLA network. ENCCLA followed the model of "experimentalist government [where] participants should regularly update the core standards [reflecting] lessons learned in implementation" (Nance 2018, p. 135). The "flexibility across contexts" suggested by Sabel & Zeitlin's model (2012), served the Brazilian context well, particularly in ENCCLA, reinforcing and accelerating AML implementation in Brazil. Within Brazil's network of agencies for implementing the AML regime, this "flexibility across contexts" was a requirement (Nance, 2018).

AML regime implementation was mainly driven by this network of governmental agencies, public security agencies, with contributions from the private sector and civil society representatives, who fostered the adoption of laws, policy elaboration, implementation, assessment of outcomes, and continuous updates on the AML regime. The gradual evolution of ENCCLA in AML implementation was politically advantageous because it did not attract too much attention from the politicians, up to a certain point, and assured the effectiveness of ENCCLA's network strategy. This is what I refer to as "incremental" policy change. In such a system, "incremental changes that fly below the radar of veto players in the legislative and executive branches may be more likely to prosper" mainly because they do not require the acquiescence of politicians (Praça & Taylor, 2014, p. 29). Flying under the radar of politicians, ENCCLA has not only implemented norms and public policies "but also significantly altered and reshaped public policies, in incremental fashion" (Ibid., p. 27). ENCCLA worked to implement, as fully as possible, the most up-to-date AML standards, "driven by small, gradual shifts ..., but nonetheless adding up to a sea change over the past generation" (Ibid., p. 28).

The ever-increasing number of participants during ENCCLA meetings demonstrates the interest of public agencies in the network's strategy, the outcomes of which include the criminalization of money laundering, an extensive training program, the adoption of regulations, implementation of new investigation techniques, know-your-customer systems, the lifting of financial privacy, etc., while always seeking cooperation from public agencies, private sector and civil society to fight organized crime (ENCCLA, 2017). In fact, one cannot overlook its focus on incremental gains and changes that helped the network work fly under the radar and therefore not face too many political and bureaucratic obstacles.

The 2013 Law No. 12,850 against criminal organizations, facilitating collaboration by defendants (plea bargaining), and new investigation techniques to produce evidence, is a good example of how the ENCCLA network was able to fly under the radar of the political establishment, with incremental changes, benefitting AML implementation. The first Brazilian law specifically against criminal organizations was the culmination of a process of AML implementation in Brazil. Law No. 12,850, drafted and promoted by ENCCLA and its member agencies during a decade (2004-2013), opened the hunting season aimed at capturing criminal politicians in Brazil. After its adoption, politicians who received money from the private sector in exchange for votes in the legislature felt threatened. With the definition of participation in criminal organization as a crime, ENCCLA responded to the insistence by the Brazilian Supreme Court regarding a Constitutional requirement of a previous crime in order to charge a politician with the crime of money laundering. Until 2013, the ENCCLA network and its member agencies were providing background information, drafting laws, and implementing AML policies without many complaints from politicians. Congressmen adopted laws against money laundering, agencies were strengthened, and policies applied, but the Brazilian Supreme Court was then making it difficult to consider money laundering a crime, as the Palermo Convention was not considered sufficient, under the Brazilian Constitution (Moreira, 2015).

Law No. 12,850/2013 against criminal organizations was the result of one of the first Actions mandated by ENCCLA and one that it reiterated most over the years. ENCCLA Action 20 of 2004 mandated member agencies to work on the definition of the

crime of participation in a criminal organization. Representatives from *Advocacia Geral da União* (AGU), COAF, the Ministry of Justice, *Conselho da Justiça Federal* (CJF), the Public Prosecutors' Office (MPF), *Controladoria Geral da União* (CGU), and the Brazilian Intelligence Agency (ABIN) were to be responsible for monitoring projects in the Congress, "with a view to their being approved until October 2004" (ENCCLA, 2004, Meta 20). Action Eleven, adopted during the ENCCLA annual meeting in 2006 repeated the mandate to draft legislation defining criminal organization. Since then, almost every year, ENNCLA annual meetings have repeated its mandate to define organized crime in Brazilian law, but without proposing a deadline. In 2010, a bill was presented (PL N° 6826/2010) and the law was finally passed in 2013. The 2013 Law No. 12,850 against criminal organizations was extensively used in Operation Car Wash.

### **The Influence of Civil Society Advocacy**

On September 25, 2002, just before the presidential elections, then-candidate Lula signed an Anti-Corruption Commitment prepared by *Transparência Brasil*, the Brazilian national chapter of Transparency International. Peter Eigen, Chairman of Transparency International (TI) at that time, recalled that President Lula has made a historic commitment when signing the civil society agreement. Now, said the TI Chair, "is the time to use a historic opportunity to turn the tide against corruption in Brazil (and) Transparency International and *Transparência Brasil* are prepared to help in this task" (Transparency International Press Release, 2003). The commitment written by *Transparencia Brasil* that President Lula had signed with civil society, in 2002, defined the "essential" measures needed to reduce corruption. The most important measure mentioned was the formation of a network that would design policies to fight corruption and money laundering, with the participation of the legislature, the judiciary, the Public Prosecutors' Office, the Federal Congress Accountability Office (*Tribunal de Contas da União*), and civil society organizations.

In January 2003, one year after the installation of the Workers' Party in government, the then executive director of the Brazilian chapter of Transparency International, Claudio Abramo, announced that *Transparência Brasil* was "ready to help the government to design and implement such a strategy" (Transparency International, 2003). The new agency, as it was originally proposed by civil society, would orchestrate

the implementation of the AML regime, including the AML and anti-corruption provisions mandated by the UN, OECD, and OAS multilateral conventions to which Brazil was a signatory.<sup>47</sup> The commitment signed by President Lula with the NGOs also mentioned initiatives to strengthen agencies pertaining to the ENCCLA network, such as the *Procuradoria Geral da República* and federal police investigation bodies.

On December 7, 2003, the government created the network suggested by the agreement that was signed by President Lula with civil society a few months before. Eighteen governmental agencies, together with the *Procuradoria Geral da República* and the *Superior Tribunal de Justiça* (higher court of justice) inaugurated ENCCLA. "We took the first strong step towards building a culture of combating money laundering in Brazil," said President Lula's Minister of Justice, Thomaz Bastos (Dantas, 2003, p. 1). As one of its initial twelve actions, ENCCLA proposed allow the public prosecutors from *Procuradoria Geral da República* and other federal agencies to access taxpayers' taxes and banking data, without the need to obtain prior judicial authorization. Asked about the issue of bank secrecy during ENCCLA's opening ceremony, the Minister of Justice confirmed that "the trend is to remove barriers between public administration bodies," (Folha de São Paulo [FSP], 2003) by allowing public prosecutors and the enforcement agencies to access private financial information.

Since its enactment, in 2003, ENCCLA's meetings received permanent collaboration from several other entities "including organizations from other spheres of the Brazilian federation (state and municipal) and organized civil society" (Rocha, 2008, p. 80). This included government agencies and representatives of the private sector, such as the Brazilian Federation of Banks (FEBRABAN), but on a few occasions, civil society and specialists from think-tanks were invited -- mostly to participate in working groups, meetings of specialists, etc. Despite the active participation of civil society in favor of the inauguration of ENCCLA, it took eleven years since its enactment for the participation of civil society in the ENCCLA network to be formalized. Law No. 13,019 of 2014 provided the legal foundations for the participation of civil society in the Brazilian

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<sup>47</sup> OECD Anti-Bribery Convention (ratified August 2000); OAS Inter-American Convention against Corruption (ratified July 2002); UN Convention against Transnational Organized Crime (ratified January 2004); and UN Convention against Corruption (ratified June 2005).

government. Not that civil society was not part of the discussion on money laundering and corruption, as we saw during ENCCLA's enactment, but the new law made this arrangement official, regulating the participation of civil society in government matters. Law 3,019 entered into force on January 23, 2016, regulating partnerships between government administration and civil society organizations. These same organizations had acted as key stakeholders during the process of drafting, adopting, and implementing Law No. 13,019, of 2014, that allowed for partnerships between the public administration and civil society organizations (Brasil Câmara dos Deputados, 2014), and Federal Decree No. 8,726 of 2016, which regulates Law No. 13,019 providing the rules and procedures governing partnerships between the Brazilian federal public administration and civil society organizations (Brasil Câmara dos Deputados, 2016).

In 2015, in the middle of the Car Wash scandal, President Rousseff's Minister of Justice José Eduardo Cardozo, praised the first 13 years of ENCCLA, mentioning the network's drafting and implementation of laws that made it possible for money laundering to be investigated and punished. "I can give many examples," said the Minister, "one of them is ... the law that governs plea bargains" (ENCCLA, 2015). The Brazilian Minister of Justice was referring to Law No. 12,850 on criminal organizations that defined what constituted a criminal organization and established the means of obtaining evidence in a criminal investigation, including lifting bank secrecy, access to recorded material, phone interception, infiltration by police officers, controlled police actions, cooperation between agencies, and plea-bargain agreements -- the essential enforcement instruments of the Car Wash operations, and the policies that turned the tide by mobilizing political parties and politicians against the AML regime.

Law No. 12,850 was adopted after an intensive campaign by civil society and the news media, with the help of the majority of ENCCLA agencies. It provided a group of policy instruments that makes the link between ENCCLA's policy formulation and policy implementation. The new organized crime law -- carried out during the government of President Rousseff (2011-2016) -- was drafted, promoted, and implemented with the participation of ENCCLA member agencies. Law No. 12,850 is the culmination of Brazil's AML regime, and its policies were implemented together with changes in three of ENCCLA's most important agencies: the strengthening of the Office of the

Comptroller General (CGU), the autonomy to investigate granted to the federal police, and the *Procuradoria Geral da República* (PGR) (Brasil Câmara dos Deputados, 2013; Brasil Ministério da Justiça, 2015).

On the eve of the 13th ENCCLA annual meeting, in 2015, the network members officially recognized the participation of civil society with a first-ever meeting to receive civil society proposals on dealing with money laundering and corruption. Opening the meeting, Beto Vasconcelos, then Brazilian Secretary of Justice and ENCCLA coordinator, said: "I hope it will be the first in a series of meetings that encourage and enable ... the collective construction of public policies to combat corruption and money laundering" (Brasil Ministério da Justiça, 2015).<sup>48</sup> In 2016, after the inclusion of civil society organizations as official members of ENCCLA, representatives from NGOs such as *Transparência Brasil*, *Instituto Ethos*, and *Contas Abertas* still had high hopes regarding increased participation in the ENCCLA process. As soon as the new legal regime governing partnerships between government and civil society was announced in Brazil, ENCCLA approved a specific action, during its annual 2015 meeting, to "follow the implementation of the new Regulatory Framework for Civil Society Organizations (MROSC) and its effects" (ENCCLA, 2016, action 12). This ENCCLA action was also driven by the need of the Brazilian government to comply with Recommendation No. 8 of the Financial Action Task Force, which warned of the risks associated with misuse of governmental resources practiced by people who take advantage of the legal status of private non-profit entities to commit illegal acts (FATF Forty Recommendations, 2021).

However, this was the year of President Rousseff's impeachment and the political turn around that triggered regression in AML regime implementation. Civil society was being officially accepted by a network that was, at the same time, losing its leading role in the implementation of AML and anti-corruption public policies. On March 2020, Decree No. 10,270 established a working group for national risk assessment of money laundering, composed only of representatives of the COAF, the Ministry of Justice and

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<sup>48</sup> The 2015 ENCCLA - Civil society meeting was organized in two sessions, on November 4, with the participation of the following bodies: *Transparência Brasil*, *Contas Abertas*, *Instituto de Fiscalização e Controle (IFC)*, *Instituto de Estudos Socioeconômicos (INESC)*, *Observatório Social do Brasil*, *Artigo 19 e Ame a Verdade – Coletivo*, *Redes de Controle nos Estados*, *Fóruns Permanentes de Combate à Corrupção (FOCCO)*, and *Movimento Articulado de Combate à Corrupção (MARCCO)*.

Public Security, and the Brazilian Central Bank (Brasil Presidência da República, 2020). A possible civil society input is not mentioned. In July 2021, the government of Brazil presented a national money laundering risk assessment in which ENCCLA played no part. The 2021 risk assessment is presented as an input for the mutual evaluation process in Brazil, that will be carried out by FATF, in 2022, during its Fourth Round of Mutual Evaluations. ENCCLA's role in this process was downgraded.

On December 13, 2021, due to the COVID-19 pandemic, the Annual ENCCLA meeting was held in a hybrid format, partially online. There was no previous civil society meeting and civil society actors were invited to just follow the ceremonial opening on the Web, without any opportunity to offer input, not even via writing comments. All the other moments of this ENCCLA four-day meeting (December 13-16) were closed to the public and to civil society. No live transmissions, no public information, and no comments. ENCCLA's 2021 annual meeting included 68 federal agencies, seven professional associations (workers for the police, Public Prosecutors' Office, judges, etc.) and 15 state agencies. The Brazilian Federation of Banks (FEBRABAN) kept its seat, but no NGO was present.

The 2021 Brazil Risk Assessment prepared by governmental agencies without ENCCLA's input mentions corruption as the "most pernicious" predicated crime of money laundering; drug trafficking "remains one of the most common predicated offenses for money laundering activities in Brazil"; the country has "highly dangerous criminal organizations," in addition to important financial flows, currency evasion and tax crimes (Grupo de Trabalho de Avaliação Nacional dos Riscos de Lavagem de Dinheiro, 2021, pp. 6-7). While ENCCLA had succeeded in implementing the AML regime in Brazil up until 2016, the assessment made by government agencies in 2021 is one more proof that implementation of the regime does not necessarily guarantee the mitigation of money laundering or control over organized crime, as promised by the supporters of the AML regime.

## **Conclusion**

In this Chapter, we saw that anti-money laundering regime implementation evolved in Brazil with the contribution of a network of government agencies, the private sector, and civil society. The *Estratégia Nacional de Combate à Corrupção e à Lavagem*

*de Dinheiro* (ENCCLA) enacted in President Lula's first year of office (2003-2010), directed the formulation and implementation of AML public policies with a high degree of independence from the government and politicians. Up until 2016, ENCCLA implemented a coherent anti-money laundering (AML) regime, by generating a high level of cooperation among government agencies.

In 2013, ENCCLA had finally succeeded in its decade-long push to obtain the approval of essential norms of the AML TLO regime: the adoption of Law 12,683 -- criminalizing any act that involves the hiding or disguising of money; Law No. 12,846, that stimulates private sector collaboration, with leniency agreements and compliance programs; and Law No. 12,850 against criminal organizations, which authorizes new investigation techniques, with the possibility of collaboration by defendants (plea bargaining), which was extensively used in Operation Car Wash. The new norms established that money laundering was a crime in itself, and any politician that had received money in exchange for a congressional vote could be accused of the crime of money laundering.

The successful AML implementation mandated by ENCCLA, however, had its own limits. ENCCLA made a difference, norms and policies were implemented, and corrupt politicians went to jail, but then 2016 happened and the majority in the three branches of government disavowed the AML network. At the end of the day, it was not the agencies' network but political interests that made a big difference, inducing a regression of AML implementation. The active role of civil society, that had influenced the opening of ENCCLA and was being slowly included as part of the network until 2016, disappeared with the reversal of implementation. In fact, the argument that the ENCCLA process, with a network of public agencies, private sector, and civil society, provides a more effective type of governance has yet to be proved. However, the impact of ENCCLA on AML implementation is a fact that can be assessed and measured, making it a useful element to advance the study of AML implementation in Brazil.

### Conclusion

*Quem rouba pouco dinheiro é ladrão, quem rouba muito é barão.*

*Quem mais rouba e esconde passa de barão a visconde.*<sup>49</sup>

(Brazilian 19th Century popular verses)

This dissertation explored the drivers or influencers of conditions that moved anti-money laundering (AML) implementation, using a systematic process-tracing comparative case-study approach. The text argues that external pressure, domestic politics, and a network of agencies were and remain the main factors influencing AML implementation in Brazil. However, final assessment of the impact of the AML regime in Brazil is still subject to debate.

At the beginning of this dissertation, I mentioned Michel Foucault's book *Discipline and Punish: The Birth of Prison* to assert that the modern State built a system between itself and the punishment that it imposes, because "there is no glory in punishing" and the system works because "it is ugly to be punishable" (Foucault, 1995, p. 10). For the State to act upon crime, said Foucault, it requires the building of a whole system of norms and public policies dedicated to prevention and punishment. In allegorical terms, I interpreted the anti-money laundering transnational legal order (AML TLO) as this system. The AML TLO encompasses laws, norms, standards, policies, agencies, networks, and components of prevention and control of institutions and professions, including punishment. Foucault (1995) provided an explanation for us to understand why this type of system is built. What was not anticipated by the French philosopher, however, was that in some cases it is not ugly to be punishable, with dire consequences regarding system (AML regime) implementation. This meant that, in certain cases, there may be no shame attached to the punishment of actors who committed the crime of money laundering. In addition, politicians, public administrators, and businessmen may not be ashamed of having committed this crime, thereby undermining AML regime implementation

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<sup>49</sup> "The person who steals little amounts of money is a thief, the one who steals a lot receives the nobility title of baron. And the one who steals and hides the most goes from baron to viscount" (Free translation of a well-known popular verse portraying money laundering ["the one who steals and hides"] in the Court of the Brazilian XIX Century Empire).

The epigraph at the top of this Conclusion refers to the life of Francisco Targini, treasurer in the court of King John during the Brazilian Empire (1808-1889). Targini amassed a fortune in the 19th century. His mansion, in Rio de Janeiro, was dazzling. His fortune was accompanied by titles of nobility: Targini was awarded the title of Baron of St. Lawrence in 1811 and was elevated to the rank of Viscount in 1819, which, later on, inspired the popular verses mentioned in this epigraph. A familiar expression in Brazilian politics: *rouba mas faz* (meaning that a politician steals and hides money for personal use but get things done) is used to designate corrupt politicians that are elected and reelected, illustrating the Brazilian paradox of unpopularity of corruption combined with election of very popular corrupt politicians (Pereira & Melo, 2015). In this scenario, why should a politician be ashamed for having committed money laundering and corruption crimes?

The association of political corruption and money laundering is not only a Brazilian phenomenon. It is a global problem, calling for multilateral policies and international coordination. Investigations in European countries into the funding of political parties have "uncovered the links which can exist between politics, dirty money, and organized crime." (Thony, 1996, p. 271). In Mexico, Colombia, Peru, and the countries of the Northern Triangle of Central America, the indictment of heads of state whose electoral campaign was funded by criminals exemplifies the direct involvement of criminal organizations in politics. As in Brazil, the recent history of those countries confirms the strong relationship between money laundering, corruption, and politics, more apparent during electoral periods, when politicians fight for votes and need help with campaign funding.

As we saw in the previous three chapters, in more than two decades of anti-money laundering (AML) regime implementation in Brazil -- moved by international pressure, domestic political interests, and a network of agencies -- the country reached reasonable levels of AML compliance before starting a process of implementation regression. The 2010 Financial Action Task Force Mutual Evaluation Report on Brazil registered the progress that had been made "since the 2004 mutual evaluation, [when] the authorities have been working to address the deficiencies identified" (FAFT, 2010, p. 25). The Report applauded the Brazilian authorities for raising the public's awareness about the importance of combating money laundering and noted that "these efforts have begun to

Figure 24. Brazil: ML police investigations and defendants, 1998, 2005



Source: COAF (2006) with administrative data from the Brazilian Federal Police.

generate results in terms of ... investigations, prosecutions, and convictions" (FAFT, 2010, p. 17). Figure 24, a graph on the frequency of money laundering police investigations and the number of defendants investigated, since the adoption of the AML Law, from 1998 until 2005, shows the increase in police investigations and the number of people indicted for the crime of money laundering -- an outcome that confirms AML implementation during the government of President Cardoso (1995-2002) and the first mandate of President Lula (2003-2006), mainly pushed by active international pressure, and domestic political interests to earn votes and, after 2003, by the ENCCLA network of strengthened agencies. Figure 24 shows that 116 police inquiries about money laundering were opened in 2003 – more than one case per day – and 652 people were indicted, accused of the crime of money laundering, in 2005 (COAF, 2000, 2001, 2004 & 2005 and administrative data published by the Division for Repression of Organized Crime and Special Inquiries of the Federal Police [CFJ, 2002, p.54]).

The financing of political parties in Brazil always required the use of bribes, kickbacks, tax evasion, fraud, false invoices, and undeclared slush funds. Thus, the investigations started by the Public Prosecutors' Office (PGR) and the police, after implementation of the AML regime, was very fruitful. The links between political financing, fraud, and money-laundering were staggering. The impact of the 1998 AML

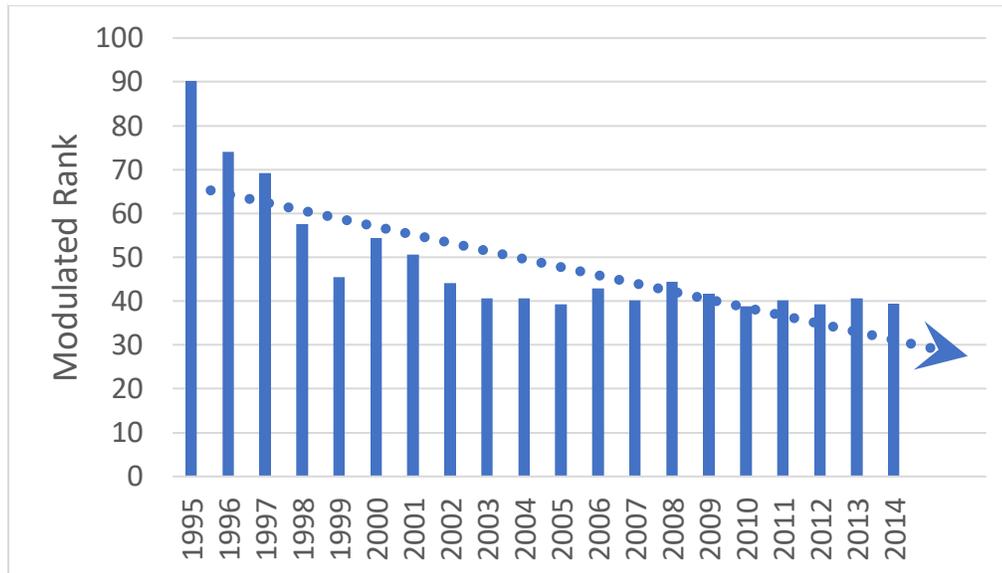
Law and the enactment of the Brazilian financial intelligence unit (COAF) was immediately felt. Data presented in Figure 24 reveal the use by the judicial system of the new laws, agencies, and policies, with both the following indicators, proxies for AML implementation, increasing: frequency of police investigations and the number of defendants in cases of money laundering.

No doubt, the new AML regime being implemented during the Workers' Party government satisfied a public opinion that was frightened by the money laundering scandals reported by the media and was avid to react, supporting the punishment of public authorities and businessmen. Figure 1, however, shows just the first wave of judicial decisions that followed AML's initial implementation. In fact, the anti-money laundering regime implemented in the period 2003-2014 was going to advance much further in Brazil, triggering the tsunami that drowned political parties, politicians, public servants, high-level businessmen, and big companies.

Compliance with implementation is confirmed by the longitudinal assessment of another proxy from the Transparency International Corruption Perception Index (CPI) in Figure 2. The Corruption Perception Index (CPI) prepared every year since 1995 by Transparency International is a composite indicator that ranks countries according to levels of government corruption. Corruption offenses generate money that need to be laundered to enter the financial system. Corruption also facilitates money laundering: "corrupt officials may influence the process by which proceeds ... are laundered and enable launderers to escape all controls and sanctions" (Kyriakos-Saadet all., 2012, p. 1). Countries with a low level of control over corruption tend to have lower levels of compliance with the AML standards, according to research published by the International Monetary Fund (IMF, 2011, p. 19). Figure 25 presents the Transparency International Corruption Perception Rank of Brazil in the period 1995-2014. During this period, the perception index trend recorded continuous improvement of Brazil's rank worldwide, fueled by the implementation of laws and policies against money laundering and corruption.

If the goal of the AML regime is to control money laundering, however, it looks like the system is not fulfilling its promises. The graph in Figure 26, Brazil Illicit Financial Flows, 1998-2017, presents an ascending curve, reflecting the increase in illicit

Figure 25: Brazil's TI Corruption Perception Rank, 1995-2014

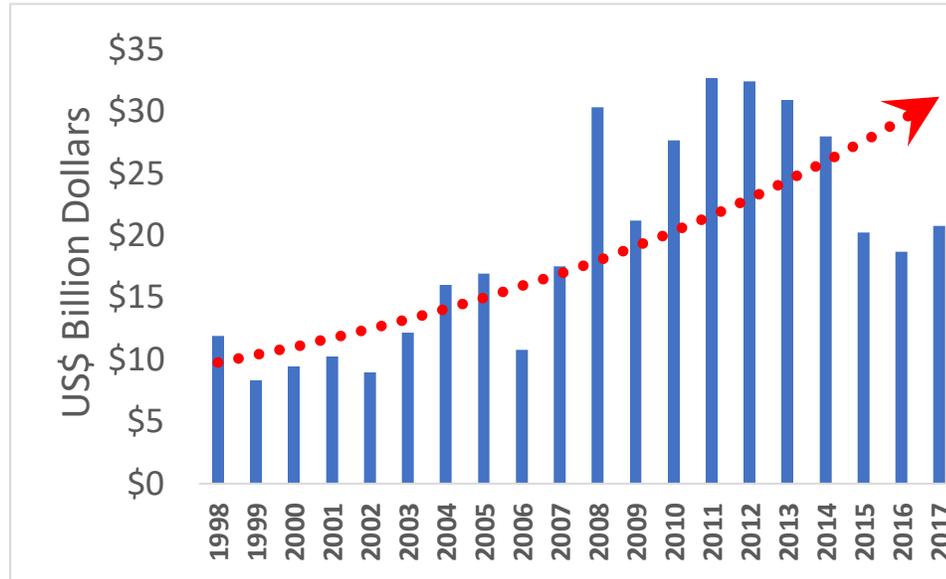


Source: Transparency International Corruption Perceptions Index (CPI).

Note: Modulated rank is the result of the division of the yearly rank within countries worldwide by the number of countries evaluated for the same year, multiplied by 100. The modulated rank is a scale from #1 (country or countries with less perception of corruption) to #100 (country or countries with the higher perception of corruption).

financial flows - a proxy for money laundering in Brazil - since the adoption of the AML law and the creation of COAF, in 1998. The increase in illicit financial flows in Brazil in the period 1998 - 2014 makes it difficult to argue that there has been a positive impact of the implemented regime on the control of money laundering. It is, nonetheless, arguable that a relative decrease in the final five years presented in Figure 26 suggests the impact of the full implementation advocated by the ENCCLA network and induced by AML law of 2012, anti-corruption law of 2013, and the organized crime law 12,850 in the same year.

These federal laws and the previous strengthening of public agencies tasked with money laundering crime control that happened during the Workers' Party government (2003 – 2016) generated investigations, indictments, and imprisonment of corrupt politicians. But the short life of the fully implemented regime, promptly reversed by a new government, a new majority in congress, and changes in court rulings, make it even

*Figure 26 Brazil Illicit Financial Flows, 1998-2017*

Source: Global Financial Integrity 2014 (data for the years 1960-2007) & 2020 (data for the years 2008-2017). Information compiled and organized by the author.

more difficult to reach a definitive assessment. In the same way, if the goal of the AML regime is to control organized crime, as proposed at its inception and announced by politicians and academics, the seizure of a record amount of cocaine in Brazil in 2019 (UNODC Center of Excellence to Fight Drug Trafficking in Brazil, 2021) and the Brazilian world record in intentional homicides (UNODC, 2021) demonstrate that the country's approach towards the implementation of an AML regime is not leading to the fulfilment of its original goals.

The conditioning factors of AML implementation, nonetheless, are clear: international pressure, domestic politics, and the network of prevention and enforcement agencies. The international pressure, led by United States foreign policy, was felt mainly during the initial implementation of AML in Brazil, through diplomatic engagement, inter-governmental action, the adoption of standards, the training of Brazilian specialists, and the issuing and enactment of multilateral mandates. Domestic politics also played a part in AML adoption and, in fact, was the main factor for the regression in implementation that followed the impeachment of President Dilma Rousseff in 2016 and intensified following the imprisonment of former President Lula in 2018. Brazilian politicians and the accompanying political environment produced three main outcomes

for AML policies. First, congressmen used citizens' approval of criminalization of money laundering to garner electoral votes. Later, political actors used and appropriated AML policies to suppress their opponents. Finally, politicians, in alliance with the executive, and the Courts, fostered a reversal of the AML regime when it ran counter to their political objectives. Finally, this dissertation showed how ENCCLA -- a key actor orchestrating the dynamics of AML implementation in Brazil -- impacted the implementation process. AML governance, based on a network of multi-sectoral agencies, with the participation of the private sector and civil society helped shape AML regime implementation in Brazil. The study of the regression in AML implementation after 2016, nonetheless, confirms the predominant influence of domestic politics in the implementation of the AML regime. Domestic politics ignored US and multilateral influences and dismantled the gradualist implementation of AML promoted by ENCCLA.

The regression in implementation, however, did not happen immediately. Raquel Pimenta, Professor of Law of *Fundação Getúlio Vargas* (FGV), the main Brazilian Public Administration university, identified a process of "deterioration of democratic practices in Brazil" associated with the regression in AML and anti-corruption regime implementation.<sup>50</sup> She mentions an episode in 2020 when the head of the federal police, Paulo Matoriano, removed 20 policemen from key agency posts, just to benefit President Bolsonaro's relatives and allies (Pimenta, 2021). Since 2016, ENCCLA and COAF are losing relevance, power, and resources. Laws are being re-written and reinterpreted and congressional votes do not follow standards of transparency in the allocation of budget resources. In October 2021, Congress weakened the law of administrative misconduct adopted by President Collor by making it more difficult to punish politicians who cause harm to public administration.

In March 2019, the Brazilian Supreme Court ruled that cases of money laundering committed by politicians should be considered as an electoral crime and ordered that all proceedings be transferred to a specialized electoral justice court, removing the cases

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<sup>50</sup>*Fundação Getúlio Vargas* (FGV) Professor Raquel Pimenta interviewed by journalist Renata Lo Prete from *Globonews*, on December 15, 2021. Published by the podcast *O Assunto*. Audio available at the following URL: <https://g1.globo.com/podcast/o-assunto/noticia/2021/12/15/o-assunto-600-o-desmanche-das-decisoes-da-lava-jato.ghtml>

from the court of Curitiba, which had specialized in money laundering and corruption. Thus, the 2019 Supreme Court decision sent Car Wash cases to the smaller regional electoral courts of the Brazilian states, with far fewer resources, thereby delaying investigations, and even cancelling previous court decisions.

In June 2019, messages posted by *The Intercept Brasil* website showed leaked conversations between judge Moro and prosecutors of the Car Wash operation. Judge Moro had, unlawfully, guided and demanded new operations from prosecutors.<sup>51</sup> In March 2021, the Brazilian Supreme Court decided to recognize that the judge of the Car Wash cases was biased in the judgment he handed down against President Lula. Judge Moro "acted decisively to remove from the 2018 presidential elections the person who was the frank favorite to win it".<sup>52</sup> The declaration by the Supreme Court regarding judge Moro was followed by the overturning of former president Lula's convictions for corruption and money laundering, and the restoration of his political rights. The revelations by *The Intercept Brasil* did show that judge Moro agreed to be justice minister of President Bolsonaro before the presidential election of 2018, while he awaited a promised post as a Justice on the Brazilian Supreme Court. The decision by the Brazilian Supreme Court that followed *The Intercept Brasil* disclosures suggests that former President Lula was the victim of a process of persecution by State agents.

On November 7, 2019, the Brazilian Supreme Court decided that the judicial conviction of a criminal was no longer sufficient for making an arrest, before infinite possibilities of appeals have run out, which, with the hiring of an expensive lawyer, can take many years and invalidate previous legal decisions. In April 2021, the Supreme Court ruled that the Car Wash cases did not belong in the *13<sup>a</sup> Vara Federal de Curitiba* – the court that was headed by Judge Moro until 2019. The Special Court of Curitiba, specialized in money laundering cases, was considered ill-fitted by the Supreme Court to judge on most cases of money laundering and corruption that had been already tried as

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<sup>51</sup> In a series of reports *The Intercept Brasil* shows that the former federal judge and former justice minister, Sergio Moro, guided the investigations of the Lava Jato operation in Curitiba through messages exchanged by the Telegram application, with Deltan Dallagnol, public prosecutor task force coordinator.

<sup>52</sup> Attorney Marco Aurelio de Carvalho, interviewed by *Globonews* journalist Renata Lo Prete, published by the website g1 on December 16, 2021. Available at the following URL: <https://g1.globo.com/podcast/o-assunto/noticia/2021/12/15/o-assunto-600-o-desmanche-das-decisoes-da-lava-jato.ghtml>

part of the Car Wash operation. Cases had to be initiated again in a different legal jurisdiction, with its validation constrained by strict deadlines.

Even though the roots of anti-money laundering implementation can be traced to the scandals of President Collor (1990-1992) and the 1998 AML law of President Cardoso's government that created the Brazilian FIU (COAF), the establishment of the ENCCLA network and the strengthening of oversight agencies, judicial collaboration agreements, and leniency agreements are more recent, having been enacted during the Workers' Party administration. After 2014, Brazilian authorities, public servants, the private sector, and civil society went through a huge institutional learning process, with the AML regime implemented and while the Car Wash investigations were under way. Through those investigations into money laundering "we were able to discover complex schemes" (Pimenta, 2021). AML regime norms and policies saved hours of investigative resources that could then be directed to other cases. Judicial and enforcement agencies were able to collect significant resources in terms of fines and reparation payments. The AML regime also allowed for individuals and legal entities to come clean by paying their dues and ending their illegal conduct. Therefore, in my opinion, the AML regime is effective and must be kept and deepened in Brazil. I also agree with Pimenta (2021) when she mentions that the right strategy to address money laundering includes strengthening the network of agencies. Corruption policy must be thought of in a network environment. The experience of ENCCLA with controlling agencies acting in an inter-dependent manner is a productive lesson.

According to Brazilian inter-union statistics and socio-economic studies think-tank DIEESE, the Car Wash operation -- an important proxy to assess the impact of AML regime implementation in Brazil -- did cost 4.4 million jobs and 3.6% of Brazilian GDP. The operation damaged the Brazilian economy in the amount of US \$30 billion in resources that were not invested, and almost US \$8.5 billion in uncollected taxes, and destroyed important industrial sectors, such as construction and the oil and gas industry. It also affected other sectors, due to indirect impacts (Departamento Inter-Sindical de Estatísticas e Estudos Socio-Econômicos [DIEESE], March 2021). The diversion of public resources meant less capacity for the State to act and fight money laundering.

Nevertheless, I still think it is time, in Brazil, to leave behind imperial cultural traditions of nobles and commoners represented by the admiration for the one-time public officer, then Baron, then Viscount of St. Lawrence at the beginning of the 19<sup>th</sup> Century or the adoption of the very popular (un)ethical notion that allows a politician to steal and hide money for personal use and still be elected. In fact, it is time for Brazilians to stop believing in politicians who steal and hide money for personal or political use. The findings of this dissertation strengthen the idea that it is time to stop the regression in AML implementation and to revert to positive AML implementation. The process-tracing qualitative work and the quantitative data (descriptive statistics) processed here suggest that it is necessary to rebuild the system of norms and public policies dedicated to prevention and punishment, and provide for the strengthening of agencies such as COAF, while returning to a regime of free exchanges of information among agencies, improving transparency, easing legal procedures, facilitating access to the courts, following multilateral standards, reviewing processes, and correcting former mistakes. The main risk of not following such policies is to live forever in a country where it is not ugly to be punishable: a country where the law is not for everybody, and some citizens are more citizens than others.

## Appendix

**Chronology of AML TLO implementation in Brazil**

Year	Norms & Standards of AML TLO in Brazil	International Influence	Comments
1991	Decree No, 154 promulgate the UN Vienna Convention into law in Brazil. To Vienna Convention, ML is a criminal offense, if connected to predicate crime of drug-trafficking	1980: Council of Europe agrees on "know-your-customer" principles. 1987: UN plenary adopted the anti-drug Vienna Convention	President impeached. President Collor's brother produced evidence of President Collor's illegal foreign bank accounts.
1992	Law No. 8,429 prescribes conduct forbidden for public agents (e.g., receiving bribes) and persons committing such crimes are subject to civil, administrative, and political penalties	1991: FAFT Recommendation: predicate crimes to money laundering should cover all serious offences.	
1995		US State Department classifies Brazil as "medium-high" risk for money laundering, with "locations in which action is needed" (GAO 1996, 29–30)	
1996	BACEN Regulation determines that cash deposits (without identification) in international CC-5 accounts should be limited to R\$ 10,000. (US\$14,000 in 2021 dollars)	FATF had issued its first Forty Recommendations" to deter ML, in 1989, including "know your customer" standards for banks and financial institutions	From 1991 to 1996 Brazilians anonymously wired US\$124 billion overseas, as revealed by the CC-5 accounts scandals
	Law No. 9,296 regulates the use of telephone tapping for investigations	The first financial intelligence units (FIUs) were established in the early 1990s in the US and Europe "in response to the need for countries to have a central agency to receive, analyze, and disseminate financial information to combat money laundering." (IMF, Financial Intelligence Units: An Overview, 2004)	
1998	Law 9,613 on ML: creates the Brazilian FIU (COAF), and the Department of Combating Financial Illicit Goods in the Central Bank		Brazilian law 9,613 falls short of mentioning "all serious offenses" as predicate crime to ML
	Decree 2.799 adopt the statutes for the COAF in the Finance Ministry		

			President Cardoso's second term was marked by political scandals that "motivated a series of self-imposed ethical reforms." (Praça & Praça & Taylor, 2014, p.30)
2000	Fiscal Responsibility Law 101, mandates transparency for all fiscal proceedings	Brazil becomes a member of the FATF (first country in Latin America, with Argentina, and Mexico)	
	Decree 3.678 enacts OECD Anti-Bribery Convention	The Palermo Convention mandated the implementation of a comprehensive domestic regulatory and supervisory regime for financial institutions, considering the establishment of financial intelligence units to serve as a national center for the collection and analysis of information regarding money laundering. Palermo Convention establishes that money laundering is a crime, and all serious crimes must be predicate offence	First Multilateral FATF evaluation in Brazil. FATF plenary considers Brazil "fully compliant with the recommendations then in effect, with one exception: the regulation regarding financial secrecy" (Machado, 2012, p.342)
2001	Law 105 provides COAF with unrestricted access to information on financial and banking operations		
	Decree 3,976 enacts UN Security Council Resolution 1373 on terrorism and money laundering		
	Decree 4,410 enacts the OAS Inter-American Convention against Corruption (Caracas Convention) with exceptions	Countries of the Western Hemisphere had signed the Inter-American Convention against Corruption (Caracas Convention) in 1996	Brazil did not fully accept the Caracas Convention, taking exception to an Article that punishes private sector involvement in bribing politicians
2002	Entry into force of the implementing legislation regarding the OECD Anti-Bribery Convention		
	Decree 5,015 enacts the UN Palermo Convention on Organized Crime	To Palermo Convention ML is a crime. Under domestic law, all serious crimes must be predicate offence to the offence of ML	The legal validity of the Palermo Convention as the law of the land in Brazil was not accepted immediately by the courts and the Brazilian Supreme Court manifested, in specific cases, against the Palermo
	Executive Decree (Law 10,683) creates the Federal Comptroller's Office responsible for public auditing and carrying out anticorruption activities within the federal government		
2003	Enactment of the Brazilian National Strategy to Combat ML (ENCLA) - the main federal,		

	state, and municipal network for the formulation of AML policies		Convention mandates in Brazil
	Resolution 314 of the Federal Council of Justice creates AML Specialized Federal Courts	FAFT 2010 MER says that "Brazil has significantly enhanced its ability to prosecute ML by implementing a system of Specialized Federal Courts."	
	Law 10,701 includes terrorism financing as predicate offense to ML		
	Integrated Management Cabinet for Prevention and Combat Against Money Laundering (GGI-LD) enacted		The addition of the fight against terrorism to the AML TLO resulted in the approval of laws against ML related to terrorism in Brazil
2004	Decree No. 5640/05 enacts UN Convention for the Suppression of the Financing of Terrorism	UN had adopted the Convention on the Financing of Terrorism in 1999	
2005	Decree 5.687 enacts the Merida Convention against Corruption. (UNCAC)	UN had adopted the Merida Convention against Corruption (UNCAC) in 2001	UNCAC includes the World Bank and UN agencies with mandates to inform on recovered assets
2006	ENCCLA was expanded from combating ML to include anti-corruption initiatives	UN Security Council Res. 1,617 of 2005 "strongly urges" countries to implement the FATF standards on money laundering	
2007	The Department of Assets Recovery and International Legal Co-operation (DRCI) was created by Decree 6061/2007 as the Central Authority for international legal co-operation in Brazil. It examines requests for mutual legal assistance, including seizure and forfeiture requests		
2010		In 2003, FATF, IMF and the World Bank published a Methodology for Assessing Compliance with the FATF Recommendations. Based on the methodology, the IMF and World Bank started to conduct evaluations	3 <sup>rd</sup> Mutual Evaluation. FATF Plenary Meeting adopts the Brazilian Mutual Evaluation Report (MER), highlighting some "serious" deficiencies

2012	<p>AML Law 12,683 establishes that any serious crime can be a predicate offence to ML and lists a group of persons and professions subjected to ML control.</p> <p>Strengthen administrative control over financial sector and other private areas sensitive to ML.</p> <p>Facilitates early seizures and forfeitures disposal in cases of ML</p>	<p>In 2000, the Palermo Convention had established that any serious crime can be a predicate offence</p> <p>In 2012, the OAS MESICIC published a Legislative Guide: Elements on the Registration of Income, Assets, and Liabilities</p>	<p>Between 2003 and 2015, the Brazilian government adopted a series of specific laws dealing with AML issues. In that period, the government installed the Brazilian National Strategy to Combat ML (ENCCLA), opened AML Specialized Federal Courts, made any serious crime a predicate offense to ML, facilitated early seizures and forfeitures, stimulated private sector collaboration, facilitated the use of new investigation techniques and defendant's collaboration (plea bargain)</p>
2013	<p>Law 12,846 Anti-corruption law. Stimulates private sector collaboration with leniency agreements and compliance programs</p> <p>Law 12,850 (New organized crime law) facilitates the use of new investigation techniques and defendant's collaboration to produce evidence (plea bargaining)</p> <p>Law 12,813 (<i>Lei de Conflito de interesses</i>) on conflicts of interest of the federal executive branch employees and impediments after the exercise of office</p>	<p>The 2000 Palermo Convention mandates countries to facilitate confiscation and seizures, encourages countries to use special investigative techniques such as electronic surveillance, controlled delivery, and undercover operations. It also mandates cooperation between law enforcement agencies, prosecutors, and private entities</p>	<p>Car Wash operation unleashed</p>
2014			<p>2015-2016 Impeachment drives President Rousseff from power</p>
2015	<p>Decree 8,420 provides Regulation for the Anti-Corruption Law (Lei 12.846/2013) regarding leniency agreements and judicial compliance.</p>	<p>Latin American states establish a joint taskforce (15 countries) to investigate the scheme that was uncovered by Car Wash operation in Brazil</p>	<p>ICIJ published the Panama Papers, providing a look at how dark money flows through the global financial system.</p>
2016		<p>In 2016 FATF issued a statement concerning "Brazil's continued failure to</p>	
	<p>The Supreme Court (STF) ruled that Operation Car Wash processes involving politicians</p>		

	must be processed in the Electoral Court, cancelling work done by criminal courts	address the serious deficiencies" identified in its 2010 MER	
2018	Law 13,974 and Brazilian Government Provisional Measure No. 893 renamed COAF as the Financial Intelligence Unit – FIU and moved the new body from the Ministry of Economy to the Brazilian Central Bank.		2018: President Bolsonaro is elected with a platform of fighting corruption but governs with the aim to regress AML implementation. President Bolsonaro and his sons are accused by federal prosecutors of money laundering
2019	<p>The Brazilian Supreme Court decides that Car Wash cases had to be re-tried in electoral courts, nullifying previous decisions by criminal courts</p> <p>Decree 9,663 changes the statute of the FIU (COAF), move it to the Ministry of Justice, and remove the right to promote preliminary ML investigations jointly with agencies such as BACEN, Brazilian Securities Commission, Superintendence of Private Insurance and other public bodies that are responsible for applying AML administrative penalties</p> <p>Law 13,869 (<i>Lei de Abuso de Autoridade</i>) modifies the regulation on telephone interceptions, punishing the judicial authority that requests the breach of secrecy or interception "with an objective not authorized by law".</p> <p>Law 13,964 (<i>Pacote Anti-crime</i>) softens the laws of administrative improbity and makes it more difficult to punish officials and politicians</p>	<p>FAFT Plenary, in 2019, adopted a "critical assessment" regarding the AML regime in Brazil</p> <p>In the aftermath of a 2019 temporary decision from the Brazilian Supreme Court that barred the sharing of data on suspicious financial transactions without court decision, the OECD's anti-bribery group issued notes questioning the Brazilian government about changes in legislation that could "seriously compromise the country's ability to meet its obligations" under the international conventions. OCDE instruct Brazil to "immediately end threats to independence and capacity of law enforcement to fight corruption" (OECD, 2019)</p>	The decision of the Supreme Court sending Car Wash ML proceedings to electoral courts represents a defeat for prosecutors in the task-force responsible for the operation
2020	Law 13,974 restructures COAF, moving it to BACEN, limiting access by the Federal Police and		Communications of suspicious money laundering

	the Public Prosecutors' Office to financial data (Art. 14) and making the exchange of information between public agencies subject to the existence of a court order		activities grew by 40% in 2020, according to the National Federation of Banks (FEBRABAN)
2021	The TRF-3 (Federal Regional Court) reversed a measure that was considered for almost two decades as an evolution in the fight against ML: the exclusivity of specialized courts to judge these cases.		
	Law 14,230 changes to the Administrative Improbability Law. Damages caused by recklessness, malpractice or negligence can no longer be defined as improbity.		

Sources: UN, 1988, 2000, 2003; Presidencia da República, 1992, 1998, 2000, 2001, 2020, 2021; BACEN, 1996; Fleischer, 1997; Câmara dos Deputados 1998, 2000, 2012, 2013, 2014, 2016, 2021; COAF Annual Reports, 2000-2021; FATF, 2000; Arantes, 2003; Poder Judiciário, 2003; Ministério da Justiça 2004-2020; Reuter & Truman, 2004; Andreas & Nadelmann, 2006; FATF, 2006; Kerche 2007; Loureiro et al. 2009; Conselho Nacional de Justiça, 2010; FATF, 2010; Medeiros, 2012; GFI, 2013; Mendroni, 2013; Soares, 2013; Souza, 2015; FATF, 2016; IMF, 2011; Verhage, 2017; Florêncio Filho, & Zanon, 2018; Nance, 2017 & 2018; Tourinho, 2018; Maya & Lovón, 2019; OECD, 2019; Barbosa, 2020; Escobar, 2020; FATF, 2020; GFI, 2020; Halliday et al., 2020; Brasil, 2021; Brasil Poder Judiciario, 2021; COAF, BACEN & Ministério da Justiça e Segurança Pública, 2021; Egmont Group, 2021; ENCCLA, 2021; FAFT, 2021; IMF, 2021; Le Monde, 2021; OAS, 2021; OECD, 2021; UNODC; The World Bank, 2021.

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