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Brazil’s Operation Car Wash Anti-Corruption Investigation Receives International Prize

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Transparency International awarded its annual anti-corruption prize to Brazil’s Operação Lava Jato (Operation Car Wash), a wide-ranging corruption investigation into how officials overcharged for contracts on public procurement projects in order to finance political campaigns. State prosecutors began the probe in March 2014 and for nearly three years have meticulously indicted high-ranking politicians and businesspeople, shaking the Brazilian political and economic establishment to its foundation (NotiSur, Aug. 14, 2015).

Some analysts credit the scandal with bringing down Dilma Rousseff (2011-2016), the former Brazilian president who was impeached last year, ending the 13-year rule of Partido dos Trabalhadores (Workers Party, PT) (NotiSur, April 29, 2016, June 24, 2016, Sept. 30, 2016). Luiz Inácio Lula da Silva (2003-2010), the former president and PT political champion, was also ensnared by the probe (NotiSur, Jan. 16, 2004, Jan. 9, 2009, Sept. 30, 2016). Analysts link the scandal to Brazil’s ongoing recession, as bribery allegations have tainted leading multinational construction companies based in Brazil, as well as the state-owned oil giant Petrobras.

Transparency International, a Berlin-based international NGO, gave the award to the team of roughly two dozen prosecutors and lawyers working out of Curitiba, Brasília, and Rio de Janeiro for the Ministério Público (Prosecutor’s Office) and the Procurador-Geral da República (attorney general). The award committee cited the team’s conviction rate, noting more than 240 criminal charges and 118 convictions totaling 1,256 years of jail time. Moreover, the prosecutors were lauded for their lobbying efforts to encourage an anti-corruption bill in the Brazilian Congress. A watered-down version of their proposed legislation was passed on Nov. 30.

“Billions of dollars have been lost to corruption in Brazil, and Brazilians have had enough of the corruption that is ravaging their country,” said Mercedes de Freitas, chair of Transparency International’s Anti-Corruption Award Committee. “The Car Wash Task Force is doing great work in that ensuring the corrupt, no matter how powerful they are, are held to account and that justice is served. We are pleased to award the Brazilian prosecutors behind the Car Wash Task Force with the 2016 Anti-Corruption Award for their relentless efforts to end endemic corruption in Brazil.”

Meanwhile, the investigation continues apace and last year went beyond Brazil’s borders, with a major settlement in a US federal court and the opening of a congressional inquiry in Peru. However, some experts caution that Lava Jato may be losing steam, especially after it botched an indictment of Lula.

How it works

Nearly three years ago, state prosecutors in Paraná caught black-market financier Alberto Youssef in a money-laundering scheme that involved leaving bundles of cash at gas stations. The plot earned the investigation its name, Operation Car Wash. Facing a surefire conviction, Youssef became a key
state witness as he detailed his efforts to smuggle funds illicitly between top business executives and key political figures.

His testimony and the investigations that followed revealed a decade-long scheme that defrauded Brazilian taxpayers of hundreds of millions, if not billions, of dollars. Essentially, the political leaders overseeing Petrobras, one of Brazil’s most lauded companies, intentionally inflated the cost of construction contracts that were farmed out to leading firms with portfolios in and outside of Brazil, namely Odebrecht, OAS, Camargo Corrêa, and Andrade Gutierrez. The firms readily paid the overpriced amounts in order to secure the contracts, with the excess lining the pockets of elected officials who used them for political favors.

On the business side, the overinflated contracts did not damper profits. Petrobras was once responsible for 8% of Brazilian GDP. At its peak in 2013, the year before the probe began, Odebrecht brought in $40 billion in profits, more than the GDP of some Central American countries. It became one of Latin America’s fastest growing companies, with construction and engineering projects in nearly every country in the region as well as parts of Portuguese-speaking Africa.

The political establishment, meanwhile, benefitted from the arrangement. The PT won four consecutive presidential elections and became the driving force in Brazilian politics. The Partido do Movimento Democrático Brasileiro (Brazilian Democratic Movement Party, PMDB), the party of President Michel Temer (NotiSur, June 24, 2016), was also in on the scheme, as it secured his position as Rousseff’s vice president. By some estimates, every single member of Congress was embroiled in some capacity.

State prosecutors have worked diligently to prepare airtight cases, given the highly charged nature of the indictments, and for the most part have a remarkable track record. Judge Sérgio Moro, a federal jurist, has abetted their efforts by insisting on a high standard of evidence before allowing cases to proceed. Once convinced, he has used the full force of the law to put CEOs and former Cabinet officials behind bars.

The Brazilian public has responded with overwhelming support for the Lava Jato investigators and for Moro. They have left a shrine of flags and offerings across the street from the prosecutors’ office in Curitiba, Paraná’s state capital. Moro, meanwhile, is one of very few public officials with an approval rating of over 50%. His face has graced carnival floats and bumper stickers. Broad public support has been essential to maintaining an open investigation even as politicians on all sides of the political spectrum hope to shut it down.

International ties

Last year, Lava Jato expanded its reach outside of Brazil as prosecutors sought to follow the money trail to some 40 countries. Already, they have signed cooperation agreements with 34 other nations. The US Department of Justice has been one of the most robust so far, unveiling an indictment against Odebrecht and Braskem, Latin America’s largest petrochemical company, which is jointly owned by Odebrecht and Petrobras, for hundreds of millions of dollars in bribes. The companies ran afoul of a US foreign bribery law because money passed through the US banking system and some of the illegal scheme was plotted on US soil.

On Dec. 21, the two Brazilian companies pleaded guilty in a US federal court in Brooklyn and agreed to pay US$3.5 billion, the largest ever penalty in a US foreign-bribery case.
In Peru, where Odebrecht secured several public contracts over a 15-year span, the Congress has created its own Lava Jato commission. On Jan. 4, it announced that three former presidents—Alejandro Toledo (2001-2006), Alan García (1985-1990, 2006-2011), and Ollanta Humala (2011-2016)—would be called before the commission. Odebrecht has already admitted to paying US$29 million in bribes for its Peru work.

The so-called “Lava Jato effect” has played out in several countries. Anti-corruption probes modeled on the Brazilian case have investigated previously untouchable public figures in Argentina, Mexico, and Guatemala. In 2015, prosecutors unveiled a fraud scheme plied in Guatemala by then-President Otto Pérez Molina (2012-2015) and Vice President Roxana Baldetti (2012-2015). The two were indicted, stripped of immunity, and immediately arrested. Anti-corruption activists hailed this move, conducted through the legal system and without military intervention, as a major step forward for a country with otherwise shaky legal institutions and a relatively recent civil war.

Uncertain future

Even as prosecutors were feted in Berlin for their award, they are on less firm political ground at home after nearly three years of crusading. The effect that bringing down major businesses has had on Brazil’s economy is starting to wear on the public—Brazilians are enduring the country’s worst recession in two decades. Prosecutors have also started to meddle in politics.

In September, the Lava Jato team called a press conference to announce their case against Lula, the immensely popular former president but also a polarizing figure hated by the political right. While the case on allegations that he received construction renovations on a beach home worth roughly US $1 million seemed strong, prosecutors went further and accused him of masterminding the entire kickback scheme. Evidence of that level of involvement was much shakier, prompting even fierce critics of Lula to accuse the Lava Jato prosecutors of a political show trial. The head of the Order of Attorneys of Brazil criticized the move as a “spectacle” rather than even-handed legal work.

Legislators reacted to the negative response by proposing a bill to offer retroactive legal immunity to politicians and companies that engaged in illegal campaign finance. However, the bill did not make it out of committee and was seen by the Brazilian public as a power grab to save face.

In turn, prosecutors have been spending more time working the halls of Congress to lobby for their 10-point anti-corruption bill. The proposed legislation would have created stronger preventive measures to discourage schemes from developing, increased penalties for public officials caught taking illicit funds, protected whistleblowers, and permitted preventive detention to ensure suspects do not flee the country. Instead, the final bill, voted on during a marathon session while much of the country was mourning the death of the members of a local soccer club in a plane crash over Colombia, included measures that could hold judges and lawyers criminally responsible. Legal experts fear this perversion of the original intent of the bill could endanger an independent judiciary.

As Lava Jato approaches its third birthday, the investigation may be finally losing steam even as it receives international acclaim. Brian Winters, editor-in-chief of Americas Quarterly, compared the probe to Italy’s Mani Pulite (Clean Hands) operation, a textbook study in how an anti-corruption investigation can go on for too long and ultimately create unintended consequences—in Italy’s case, a power vacuum that led populist Silvio Berlusconi to power. “But I believe that, even if Car
Wash doesn’t get a Hollywood ending, the case has still forever changed the culture of impunity in Brazil— and perhaps beyond,” Winters wrote.

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