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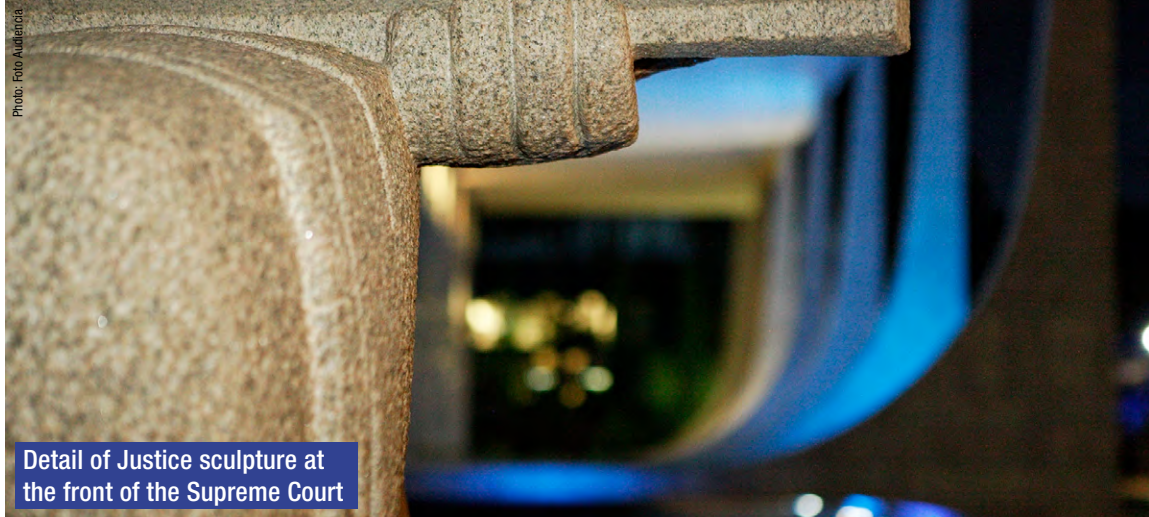
Justice Rosa Weber, rapporteur of the “secret budget” lawsuits in the Supreme Court

In 2022 final weeks, the Supreme Court took a decision that could potentially revolutionize the way the federal government has been dealing with the National Congress, by declaring unconstitutional the “secret budget” scheme, the undue use of parliamentary amendments to the budget to buy political support for government and control impeachment proceedings against President Jair Bolsonaro. Despite the Court’s decision to ban the scheme that has employed billions of Reais in the past two years, as explained in the Brazil Corruption Report, it will not solve a broader question of how the federal government builds its political base and the “governability” in Congress.

In this edition, we also have an analysis, by Jota’s Chief-Analyst, Fábio Zambeli, about the expected future impacts of the far-right in national politics. “We are experiencing a strengthening of the radical right, which is now aligned to Bolsonaro, but is not totally dependent on him”, Mr. Zambeli tells us.

Finally, we dig into the far-right and right advance in Congress in the environmental field and what this could mean, especially in the Federal Senate, to policies and bills intended to protect the environment and confront the climate change – even under a new federal government with a past record radically opposed to current President Jair Bolsonaro’s administration.

01



Detail of Justice sculpture at the front of the Supreme Court

Corruption Overview

AFTER MONTHS OF UNCERTAINTY, SUPREME COURT DECLARES THE 'SECRET BUDGET' UNCONSTITUTIONAL

On December 19th, the Supreme Court declared the so-called “secret budget” scheme unconstitutional. This could radically transform, or in the best scenario eradicate, the undue use of a specific type of parliamentary amendment to the federal budget that has been employed by current federal administration to buy political support in the National Congress.

Through the scheme, which was revealed by journalist Breno Pires and the Estado de S. Paulo newspaper, in 2021, billions of Reais from the federal budget have been allocated by federal representatives and senators, anonymously, to their political bases, in municipalities and states, bypassing technical criteria, public policy priorities and transparency mechanisms.

Threatened by numerous impeachment requests in the Chamber of Deputies, the government of President Jair Bolsonaro joined the “Centrão”, with the connivance of opposition sectors, to create what Transparency International Brazil has called the biggest known institutionalized corruption scheme in Brazil, with disastrous effects for the country.

The “secret budget” perverted the formulation of public policies in essential areas such as health, education and social assistance, withdrawing resources from programs prepared by technicians, guided by priorities and a long-term vision, to favor parochial and unsustainable projects of parliamentarians with electoral interests. The scheme further spread corruption in the country, boosting fraud and deviations at the local level, by pouring billions into municipalities with very low institutional capacity for control. Even more serious, it corrupted the electoral process and democracy itself, favoring the maintenance of physiological powerful politicians — with access to secret resources — and imposing even greater obstacles to a truly inclusive renewal of Brazilian politics.

It also served to neutralize Congress’ control role over the government’s acts, guaranteeing impunity for crimes of responsibility committed by President Bolsonaro and enormously strengthening the figure of Arthur Lira, the Chamber’s President and one of the pillars of the “Centrão”, who kept inert at his desk more than 140 impeachment requests against Mr. Bolsonaro.

After all of the 11 Supreme Court judges had declared their votes, outlawing the “secret budget”, the Prosecutor-General, Mr. Augusto Aras, radically reversed the Public Prosecutor’s Office position of defending the scheme, and said they now agreed it was unconstitutional.

Supreme Court’s decision should extinguish the “secret budget” scheme in its current format, but it will not solve the structural corruption in the relations between Executive and Legislative branches of power in Brazil. The spurious relations between these powers, in the name of what is conventionally called “governance” in the country, translates, in fact, into bargaining for projects of power and guarantees of impunity for the national political elite. As long as the country does not undertake reforms that attack the problem in its structures and ensure access to social sectors historically excluded from spaces of power, the oligarchic political system will continue to reproduce macrocorruption schemes in series and sabotage the progress of democracy in Brazil.

INTERVIEW: ‘We are experiencing a strengthening of the radical right, which is now aligned to Bolsonaro, but is not totally dependent on him’

In this interview with TI Brazil, Fábio Zambeli, Chief-Analyst from Jota, discusses the impact the far right may have in the new elected government and how Mr. Luiz Inácio Lula da Silva will most likely handle the anti-corruption agenda and the appointment of the future Prosecutor-General.

TI Brazil – So far, Mr. Lula has been very economical when talking about the Prosecutor-General’s Office. How do you see his relationship with the current Prosecutor-General and the choice of the future one?

Fábio Zambeli – What we have noticed is a movement to expand the list [of three candidates, drawn up by the National Association of Federal Prosecutors], perhaps to five or six names, taking suggestions from representative bodies, and leaving the president-elect with a wider range of options to choose from. Prosecutor-General Augusto Aras has a history of good relations with the PT, especially in his state, Bahia. I do not see difficulties in the relationship with Lula. I believe it will be constructive. But, naturally, even by the conduct of the Prosecutor-General’s Office in the Bolsonaro administration, there is a demand for change.

In recent years, TI Brazil denounced many cases of political interference: in the Prosecutor-General’s Office, the Federal Police, the Federal Revenue Service, COAF, the Department of Asset Recovery and International Cooperation (DRCI). PT governments allowed these bodies to be strengthened in the past, but the party ended up being the target of part of these bodies. How do you think Mr. Lula will relate to these institutions and the fight against corruption?

Lula uses this strengthening of the control mechanisms as a powerful discourse of armoring himself against corruption, which was a very difficult theme for him in the campaign. He knows that there will be a constant magnifying glass on any of the measures of his government that could represent a weakening of these bodies. It is a kind of protective barrier for him. I don’t see Lula willing to take risks with unrestrained interventions. He will not relinquish the authority of the head of the executive branch over the administrative structure, but will seek to give as much autonomy as possible to this apparatus.



Fábio Zambeli, Jota's Chief-Analyst

Will we have a republican transition?

The president-elect has told interlocutors that he knows he will find a much deeper hole in the accounts than has been publicized and a dismantling of public policies at an unknown level. The transition, therefore, will be a job of surveying the size of the problems to be faced. And Lula wants, politically, to define the dimension of these difficulties, above all to highlight the challenges at the beginning of his mandate.

Institutional rupture is highly unlikely, since the president is isolated within the political establishment. Congress is handling the transition, the Judiciary is trying to accommodate the new government, the Armed Forces are largely demobilized and economic powers are standing in favor of democracy and the rapid resolution of fiscal issues.

What we are experiencing is a strengthening of the radical right, which obtained a significant result at the polls and is now aligned with Bolsonaro, but is not totally dependent on him. If we look at the message of the polls, the president will leave the government with very organic support, especially in the Centre-South-Southeast regions, where the most relevant political vector is still anti-PT.

This almost horizontal movement, without well-defined leaders and engaged via social networks, will be active in the opposition to Lula, before his inauguration and during his government. Lula will not have only the party-political opposition that he dealt with in previous governments. He will also have an ideological opposition inserted in society, in economic sectors, in middle class families.

Lula is the elected president with the lowest expectation of success on the part of voters since redemocratization. The first polls carried out after the second round show that 50% of voters expect him to make a good government. It is lower than Bolsonaro's 57% in 2018. An indicator that the cracks in the electoral dispute will persist, with high rates of dissatisfaction with the administration since the start. In general, there is a period in which the electorate gives a "vote of confidence" to the new president in the first 100 days of government. The situation seems to be different for Lula. He has half the country waiting for him not to make a good government, even before taking office.

What happened with the truck drivers, with roadblocks, and demonstrations in military installations calling for intervention, is likely to be a typical feature in the coming years. Depending on economic conditions, it will have more or less endurance and reach. But it is quite likely that on September 7, 2023, we will have Paulista Avenue overcrowded with a kind of "Out Lula". The power of this movement will be inversely proportional to the success of Lula's economic policy.

How do you see the international reintegration of Brazil with Lula?

Lula's third mandate will be biographical for him. He will certainly be committed to re-positioning the country in the global context on agendas such as the environment, technological innovation and food security. The president-elect has given various signals that he intends to travel the world, open negotiations with international bodies and lead the emerging bloc on various fronts.

Lula will try to reactivate the conciliatory role that he once played when faced with the differences between the great powers in the current context of economic and territorial conflicts. He will also seek to gain credibility as a regional protagonist, using his political credit with the leftist governments in Latin America.

02



Elected President Lula is certified by the Superior Electoral Court to take office

The Constitutional Powers

LULA GOVERNMENT WILL BE CHALLENGED TO DEFEND TRANSPARENCY OVER SECRECY

Confusion over President Jair Bolsonaro's establishment of secrecy of up to 100 years for relevant information regarding his administration has marked discussions about the right to access public information during the presidential campaign. In the last debate before the first round, former president Luiz Inácio Lula da Silva said that he would revoke President Bolsonaro's decree which determined secrecy of 100 years for several documents. The incumbent president replied, saying there were no such decrees. He challenged Mr. Lula to identify them. The current government did, indeed, imposed secrecy of 100 years to information related to the president, his family and political allies. It, however, was not established by force of presidential decrees.

The 31st article of the Access to Information Law (LAI) allows for secrecy of up to 100 years for personal information in cases of "intimacy, private life, honor, and image". What we observed during the past four years in the current administration was an abusive and systematic use of this legal provision, even for information of clear public interest. Information about who the president and his family meet with, visits to the presidential building or even administrative disciplinary proceedings related to government officials are matters of public interest that should be available for the scrutiny of journalists and society as a whole. According to the press, the government has applied the justification of personal information to keep in secret public information of great relevance in, at least, 65 situations. Most recently, in relation to the director of the Federal Highway Police. Following his declaration of electoral support to President Bolsonaro, eight administrative processes against him were classified as secret documents.

The new Lula administration can make public documents currently under secrecy by reviewing previous denials of access to information. It can also request a new evaluation to the Joint Commission for Reassessment of Information (CMRI), a body that acts as the last administrative appeal instance in the analysis of access to information. Other measures, such as changes in rules and administrative procedures for denying access to information, training for civil servants and the definition of clear criteria to determine which information is confidential and specific procedures, are also actions that could be adopted.

It has been reported that the Mr. Lula's transition team is considering a new norm to establish clearer criteria when determining if a specific information goes against the General Data Protection Law (LGPD) or if it poses a national security risk. According to the report, it is unlikely that the new government will unveil, at one go, all the information classified by the Bolsonaro government as secret.

Ending the culture of secrecy goes beyond respecting the LAI. The Lula administration will be challenged to rescue policies, commitments and instruments left behind during the past four years, such as: 1) Active participation at the Open Government Partnership and enforcement of the open government agenda in Brazil; 2) Providing transparency over all sectors of the federal government, mainly the ones that suffered “data blackouts” like the budget; 3) Providing a common understanding of balance between transparency and personal data protection, two fundamental rights; 4) Guaranteeing that public information will be released as open data following international standards; and 5) Collaborating with stakeholders who use and add value to public data, such as journalists, civil society organizations, enterprises and citizens in general.



03



Corruption and the Environment

WHAT TO EXPECT FROM LULA'S ADMINISTRATION AND THE NEW CONGRESS IN THE ENVIRONMENTAL AGENDA

Mr. Luiz Inácio Lula da Silva's new federal administration will most likely end the systematic dismantling of environmental governance, dissemination of disinformation and unabashed support for environmental crimes that characterized Mr. Jair Bolsonaro's administration. Mr. Lula has a relatively good track record in fighting deforestation and climate change, and made commitments to actively fight deforestation if elected. Most recent setbacks in environmental norms and institutions can be reverted by administrative decisions and, therefore, rest on decisions by the future president and his government. Civil society has already identified hundreds of administrative norms due for repeal or reform in order to rebuild efficient, participatory, transparent and accountable environmental governance and to revert setbacks that occurred under Mr. Bolsonaro's administration.

Within days of the elections, global political leaders have signaled enthusiasm for the future administration, evident during Mr. Lula's participation in the COP27. Germany and Norway have marked willingness to resume payments to the Amazon Fund, the main fund to support prevention of Amazon deforestation, suspended by the Bolsonaro government. In delivering on environmental issues, the elected president will have an opportunity to reposition Brazil as a key protagonist and a leading voice among emerging countries in the global climate debate after years of international isolation under Mr. Bolsonaro.

However, the elected president will have to compose with a Congress dominated by the agribusiness caucus and will probably have to make compromises. Although 76% of surveyed Brazilian declared that protecting the Amazon should be a priority for the presidential candidates, this was not translated into voters' behavior in the 2022 elections for Congress. Environmentalists will likely have a hard time fighting setbacks in the next Legislature. An analysis by *Farol Verde*, a civil society initiative that assessed proposals from candidates on environmental issues, showed an increase of federal representatives opposed to the environmental and climate agenda, with 42,6% of the new Chamber of Deputies' members now falling in this category.

Disconcertingly, former Minister of Environment Ricardo Salles, who promoted the dismantling of environmental governance and who resigned amidst corruption probes related to illegal logging, was the fourth best voted federal representative for São Paulo state, amassing over 640.000 votes. In contrast, Ms. Marina Silva, a previous former Minister of Environment, internationally praised for a dramatic decrease in deforestation when she was in office, was elected with almost a third of his votes.

Key figures willing to connect anti-corruption to the environmental agenda in legislative endeavors, like representative Rodrigo Agostinho, current president of the Chamber of Deputies' Commission of the Environment, were not re-elected. Other failed election bids include Mr. Alexandre Saraiva's, a former federal police officer who gained national attention after blowing the whistle on Minister Ricardo Salles' alleged involvement in corruption, as well as Mr. Ricardo Galvão, former president of the Institute for Spatial Research (INPE), sacked after defending INPE deforestation data which President Bolsonaro tried to discredit. Despite this, environmentalists may find comfort in the political victories of two new indigenous leaders – Ms. Sonia Guajajara and Ms. Célia Xakriabá –, although former representative Joenia Wapichana, the first indigenous woman elected to Congress, in the 2018, was not re-elected.

As the Federal Senate shifted decisively to the right, it is less likely to restrain excesses by the Chamber of Deputies against the environment. During President Bolsonaro's first term, while federal representatives often acted in line with the government's anti-environmental agenda, the Senate acted as a moderating force and withheld the most worrying bills against the environment.

This foreshadows difficult tough fights pending for environmentalists, such as discussion about land regularization bills (PL 2.633/2020 and PL 510/2021), that could legalize recent land grabs and have been, until now, blocked in the Senate. Other crucial bills currently paralyzed in the Senate that could advance in the next Legislature include legislation that dismantles the environmental licensing process (PL 2.159/2021) and facilitates the use of pesticides (PL 1459/2022). A bill on legalizing mining and other economic activities in indigenous lands (PL 191/2020) could make progress in both Houses.

Election outcomes in the Amazon region are also worrying for environmentalists: according to *Farol Verde*, results in the Amazonian constituencies for the Chamber of Deputies were even worse than the average: only 11% of elected federal representatives are considered to be supportive of the socioenvironmental agenda. Prominent environmental leaders willing to defend preservation of the Amazon rainforest were not elected in constituencies within the Amazon Region, but rather in Brazil's southeastern states. The majority of municipalities located in the Amazon's Arc of Deforestation voted strongly in favor of Mr. Bolsonaro. The same phenomenon can be observed in the state of Roraima, where illegal mining has surged in the last few years.

Even though more research is needed to understand region electoral dynamics, areas where local economies are dominated by environmental crimes (illegal logging and mining, land grabbing, etc.) tend to support candidates that are willing to facilitate those illegal activities. Experts also suggest the "economy" of environmental crimes has been bolstered under Mr. Bolsonaro's government and that its entrepreneurs were able to increase their political articulation and fund the campaigns of their allies. This highlights the need to find economic and political strategies to break the grip of environmental crimes in those regions. In contrast, Amazonian regions where indigenous peoples and traditional communities represent a greater share of the population tend to support Mr. Lula.

Various of President Bolsonaro's allies in favor of the legalization of environmental crimes were re-elected at state level. The governor of Acre state, Mr. Gladson Cameli, who has weakened environmental state agencies and encouraged environmental offenders to not pay fines, won a second term in a state that, paradoxically, gave birth to world-famous environmental defenders Chico Mendes and Marina Silva. In Roraima, governor Antonio Denarium was also re-elected after outlawing the destruction of equipment used for illegal mining and making commitments to legalize those illicit activities. Environmentalists will likely face obstacles to find political allies and cooperate with public authorities at state level in order to make progress on the environmental agenda and revert setbacks that took place over the past few years.

04

TI Brazil's month



TI BRAZIL PROMOTES DEBATE ABOUT CLIMATE CHANGE, ENVIRONMENTAL CRIME AND CORRUPTION AT COP27

The debate held during the panel “How corruption affects climate change”, promoted by Transparency International Brazil at the Brazil Climate Action Hub at the UN Conference on Climate Change (COP27), highlighted the need to recover the capacity of Brazilian institutions to fight environmental crimes and the associated corruption, and to regulate the sector, which was dismantled in the last four years, as crucial steps to move forward with climate policy in Brazil from now on.

The former Minister of Environment and Co-Chair of the UN Environment International Panel on Natural Resources, Izabella Teixeira, classified the recent deterioration of Brazilian institutions as intolerable and defended the urgency for these institutions to regain the capacity to confront illicit acts. “When we talk about corruption, it means that what we are experiencing in Brazil today, this meltdown, this erosion of institutions, that this political will to fight corruption is not portrayed in the institutions and in the political hierarchy of the country. And this is important to be observed when we talk about mechanisms, credibility, access to resources [for environmental and climate policies],” said Teixeira.

Laura Waisbich, senior researcher of the Igarapé Institute’s Climate Security Program, highlighted the need for political will, both in the Executive and Legislative branches of the federal government, to improve regulation of the sector and to repeal what she called “acts of normative corruption”, the damage done by the current government to the set of regulations for environmental protection. “The very idea of fighting corruption has to be in the government’s cross-cutting strategy, because if it is not, the objective of fighting deforestation, of zero deforestation, will not be achieved,” said Waisbich.

Another guest on the panel, Sanjeev Narrainen, Integrity and Compliance Manager at the Green Climate Fund, highlighted that the fight against corruption needs to be everyone’s concern, and that integrity has no place while there is no awareness about the impacts of this problem in communities, among climate project implementers, and in civil society itself.

Commenting on solutions to reverse the current dismantling of environmental protection, former minister Izabella Teixeira said she saw climate processes as an opportunity to achieve a society with more integrity and “see this agenda as [one of] political integrity”.

Renato Morgado, Program Manager of Transparency International Brazil, highlighted that, for climate action to be really effective, a series of corruption practices need to be fought. “We have fraud, undue influence, payment of bribes, misinformation, diversion of resources, money laundering.... A family tree of bad practices that unfortunately is part and parcel of climate policy, whether in the public or private sector. We need to combat these practices so that climate action can be effective”, said Morgado.

Climate and Corruption Atlas – In November, during COP27, TI Brazil released a new report describing the interrelationship between corruption and climate in Brazil, identifying five impacts, 15 corruption practices and ten concrete cases, spread across national territory, which negatively affect the climate agenda in the country. Based on the mapping of impact and corruption practices, the study identified a list of actions to be pursued, such as the regulation of lobbying, integrity policies and practices in public agencies and companies related to the climate agenda, the transparency of carbon markets and climate finance, and the fight against fake news. Responsibility for implementing these proposals is wide ranging, including federal, state and municipal governments and legislatures, anti-corruption and anti-laundering bodies, control bodies, and the private sector.

ENCCLA's efforts to tackle environmental crimes – The National Strategy against Corruption and Money Laundering (ENCCLA), Brazil's main forum gathering public institutions to tackle corruption and money laundering, has increased its focus on environmental crimes and related corruption, in part a response to TI Brazil's advocacy efforts. In November, the Working Group on environmental crimes (Ação 10/2022) concluded its activities by issuing sensible recommendations endorsed by ENCCLA's plenary. ENCCLA incentivized: (1) Internal control bodies to strengthen integrity and transparency in the environmental governance; (2) Provide COAF (Brazilian Financial Intelligence Unit) with direct access to data from the federal environmental agency to bolster the production of financial intelligence related to environmental crimes; (3) Including environmental crimes in the National Capacity and Training Program for the fight Against Corruption and Money Laundering; (4) Integration of tax and timber control systems so that timber origin must be checked when an invoice is issued for timber products; and (5) Development of anti-fraud measures in timber control and traceability systems.

Although the recommendations still need to be implemented, ENCCLA enjoys strong legitimacy due to its broad composition, which includes bodies target of its recommendations. ENCCLA has also established a new promising Working Group that will look at leveraging the digital transformation of the land administration system to tackle corrupt practices that make land grabbing possible in Brazil. It will look at the digitalization, integration and transparency of land records and cadasters to facilitate the inspection by public authorities and civil society.

TI Brazil at the International Anti-Corruption Conference – Transparency International Brazil was present at the International Anti-Corruption Conference, the main event on the fight against corruption, which took place in December, in Washington D.C. TI Brazil participated in four different panels to present its research results on the relationship between corruption, environmental crimes and climate change:

- Workshop “A Call to Action on Environmental Corruption”
- Session “Climate Crimes and Strategies to Combat Them in Latin America and the Caribbean”
- Session “How Corruption is Enabling Land Grabbing and Exacerbating the Effects of Climate Change Across the Global South”
- Session Environmental Crime, Corruption and Climate Crisis”

TI Brazil highlighted the importance of talking about corruption in socioenvironmental issues and emphasized the current window of opportunity, in face of a new Brazilian government committed to environmental policies, to work on institutional integrity and to strengthen environmental and climate governance.

TI Brazil proposals for retaking the fight against corruption – Faced with the weakening of legal and institutional frameworks and public policies for preventing and confronting corruption and promoting integrity, which took place in recent years, Transparency International Brazil has presented its suggestions for legislative reforms and good institutional practices in order to resume the progress of this agenda, so fundamental for a sustainable and socially fair development. Among the 25 proposals in the “Agenda de Transparência e Integridade – Propostas para o Quadriênio 2023-2026”, are: respecting the shortlist for the appointment of the Prosecutor-General (PGR), extinction of the “secret budget” scheme, lobbying regulation, reduction of the privileged forum, protection of whistleblowers, extinction of the criminal competence of the Electoral Justice, a national policy of open data and compatibility with the General Data Protection Law (LGPD), and the democratic control of the Public Prosecution Service and the Judiciary.

Book unravels weaknesses that reduce transparency and open space for corruption in health policies – The COVID-19 pandemic showed the impact that lack of transparency and corruption have on health systems, in particular the Brazilian universal and public health system (the SUS). Understanding the correlation between corruption and health requires realizing the impact of different factors on the system, which include both structural and conjunctural issues: 1) The lack of quality and the insufficiency of information, which undermine social accountability and the activities carried out by state control bodies ; 2) Disinformation; 3) The overlap between public and private interests in the area; 4) The undue use of parliamentary amendments do the federal budget, which allocates a high and dispersed volume of resources to states and municipalities; 5) Obstacles to social participation; 6) Practices that pave the way for corruption schemes, which are repeated over the years; and 7) In the case of the pandemic, specific conditions that favored corruption, such as the necessary relaxation of rules for purchasing emergency supplies.

In the new book “Corrupção e Saúde”, Transparency International Brazil, with the support of the Konrad Adenauer Foundation office in Brazil (KAS Brasil), brought together academics, activists, civil servants and journalists to shed light on this complex scenario and seek ways to expand transparency and fight corruption in health, taking into account the particularities and vulnerabilities of the area.



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