

## COVID-19 AND CORRUPTION: CONTROL POLICIES REGARDING EMERGENCY MEASURES

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**ABSTRACT:** Due to the COVID-19 pandemic, many States, aiming to control the virus, ensure the treatment and mitigate the economic impacts have implemented emergency policies in their territories. However, previous experiences have demonstrated that despite of being necessary, these policies lead to a high risk of fraudulent and corrupt practices. Hence, this work intends to analyze recommendations of measures to mitigate the corruption risk in emergency situation both in national and international level, and then compare them to the measures that have been implemented in Brazil, in order to verify their sufficiency, and, if necessary, present suggestions to reduce the corruption risk and negative effects that this type of criminality can add to the recent crisis.

**KEYWORDS:** COVID-19; emergency health policies; fraudulent and corrupt practices.

### I. Introduction

After more than a year in pandemic situation, there identified 18.855.015 COVID-19 cases, 526.892 deaths were confirmed, and a sanitary crisis have been installed in Brazil.

According to early experiences during sanitary crisis, this emergency scenario, in general, contributes to enlarge the risk of fraudulent and corrupt conducts practice, because it enables the abuse of emergency situation in order to obtain illicit advantages (Banco de Desarrollo de América Latina [CAF], 2020).

These risks in times of crisis are higher in developing countries, in which the traditional anticorruption policies do not demonstrate to be effective. It is possible to mention, for instance, the fight to eradicate the Ebola epidemic in Africa, in 2014, which resulted in the loss of more than five million dollars donated by the International Federation of Red Cross and Red Crescent due to frauds and corruption (International Federation of Red Cross and Red Crescent Societies [IFRC], 2020).

According to studies, this risk is higher in countries of Latin America (Transparency International, 2020a), and, therefore, also Brazil which recently has reached its higher index of corruption (Transparency International, 2021).

In Latin America, particularly, most of the hospitals are unprepared to deal with the situation, because the lack of basic equipments as masks and Equipments of Individual Protection – (EPIs) and also sophisticated equipments such as respirators. Hence, these countries present weaknesses in their health system what makes it difficult for them to combat the crisis properly, and requires that the resources available are strategically used (Steingruber, Kirya, Jackson & Mullard, 2020, p.1).

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In Brazil, specifically, it was observed the initial negotiation to release resources from the National Congress, as well as from other funds and the authorization to emergency buying despite of biddings. These measures, although are crucial to face the recent pandemic, on the other side reinforce the risk that these resources are used in an inadvertently, to satisfy private interests. It means that from the emergency measures derives a high risk of occurrence of frauds and corrupt practices once they can favor some companies, bribery payment in order to obtain contracts with the Public Administration and the purpose deviation in using the resources that were made available (Transparency International, 2020a).

Also, the adoption of these measures can generate price rising, resale of products in the illicit market and the increase of falsified products in the market.

Corruption, in these cases, would prevent population from having a health care system with better conditions and results, then, in a threat to the combat COVID-19 (Steingruber et al., 2020, p.5).

This criminal offense also represents a phenomenon that in general has stronger impacts the less favored social classes, and specially in this crisis context, the lower classes would suffer especial, the consequences of the deviated public resources, because they depend on public hospitals that lack of a proper structure and have less access to the necessary equipments and supplies to face COVID-19 (Thomaz, 2020).

However, this situation is not insurmountable, and it is essential that in Brazil, where the corruption index (Transparency International, 2021) is very high, the pandemic issue is addressed to ensure the existence of effective corruption control polices, in order to avoid this phenomenon from spreading fast and making the effects of the crisis more burdensome to the society.

In addition, since this effective corruption control policies are directly related to price control, competition protection and economic development, they will be essential also in the post pandemic era, to keep ensuring transparency and integrity while Brazil tries to recover its economy.

Hence, this article aims to present data that could subsidize the mentioned purposes and also indicate the polices that have already been adopted in order to control the risk of high incidence of fraudulent and corrupt practices, by comparing them to the national and international recommendation and identifying if they are sufficient and compatible with the emergency measures or if they need to be reinforced, offer suggestions to make them effective and prevent that this type of economic criminality cause more serious effects to the society during and after the pandemic crisis.

Regarding methodology, the research will be conducted by the hypothetical-deductive method and will be based on updated and specific legislation and bibliography which will be compared to data publicly available.

## **II. Emergency Polices in Brazil**

Curiously, the evidences regarding the origins of COVID-19 virus are related to a criminal market engaged in illicit activities of exotic animals' commerce in China, before it has infected the human beings (Steingruber et al., 2020, p.1). In December of 2019 it was reported the first case of Coronavirus in the city of Wuhan, in China.

Soon the disease spread all over the world and in February of 2020, a month before it was recognized as a pandemic, it was identified the first case in Brazil and, according to the international practices, it was enacted the Law nº 13.979/2020 that addresses the measures to face the public health emergency of international relevance.

The referred Brazilian law makes it possible to the Health Ministry and health managers to adopt certain measures, among which it is possible to emphasize the quarantine, and social isolation. These measures aim to avoid the spreading of the virus. Additionally, there is also the

bidding waiver in relation to the acquisition of goods and services related to the emergency state and exceptionally the permission to estimate price and contract goods and services from suppliers which are declared disreputable or that have the right to take part in bidding processes suspended, since it is demonstrated to be the only supplier available (Brasil, 2020).

Later, in April, still according to international legislation, it was enacted the MP nº 936, which permits labor negotiation in order to maintain companies and jobs as well as creates an emergency monetary benefit which would be paid by the government.

At the same time, the federal government, states and municipalities have encouraged the private sector to donate goods and services to contribute to the COVID-19 combat.

A year later, it is possible to say that Brazilian institutions have enacted more than 4800 acts (among provisory measures, decrees and laws) (Centro de Estudos em Regulação e Infraestrutura [CERILAB], 2021) in order to facilitate COVID-19 combat. These acts seem to be very important to expedite procedures during emergency situations.

However, although the provisions of the law are necessary to face the emergency health situation, Transparency International has observed that throughout Latin America they have favored an increase in the level of corruption practices suspicions (Transparency International, 2020a).

In Peru, for instance, the Prosecution Offices which focus on tackling corruption are investigating 72 cases of corruption suspicion in at the acquisition and distribution of subsidies in delivering the emergency benefit, as well as in the acquisition of medical logistics (Coronavirus en Perú, 2020, April 08th).

In Ecuador, the Ecuatorian Insitute of Social Security was investigated due to its acquisitions related to the “masks” case (Consejo de Participación Ciudadana y Control Social, 2020).

In Brazil, where the level of the Corruption Perception index was already very high even before the emergency policies implementation, the facts seem to indicate that the situation does not seem different and there are possibilities for this index to increase. The Brazilian Judiciary police has conducted some investigation in regard to the overbilling health goods acquisition, at least in the states of Mato Grosso, Rio de Janeiro, Roraima, Pará, Santa Catarina and São Paulo (Polícia realiza operação, 2020, May 10th).

Recently, the federal government has paid 185% more than the real price for products destined to combat Covid-19, when contracting emergency services (Onofre, 2020). Similarly, the Accounting Prosecution’s Office of São Paulo’s Ministry represented to the Audit’s Office in order to conduct the investigation of possible irregularities committed by the São Paulo’s Government Health in the acquisition of 340.000 protective aprons (Ministério Público de Contas do Estado de São Paulo [MPC/SP], 2020).

In Pará, one of the centers responsible for the detection of the disease is being investigated in a joint operation involving the General Comptroller’s Office, the Prosecution’s Office and Federal Police (Controladoria Geral da União [CGU], Ministério Público [MP] e Polícia Federal [PF]), due to irregularities in bidding procedures to buy lab products before the enactment of the emergency policy (Ministério Público Federal [MPF], 2020).

In Mato Grosso, Rondonópolis, City Hall has invested R\$ 4 million to buy 22 mechanic respirators for the Emergency Care Unit (Unidade de Pronto Atendimento [UPA]) of the city. However, when the respirators were delivered, the doctors have found out that it was a fraud and the equipments were falsified (Rabello, 2020).

Yet, there is a conflict of interests related to the Health Ministry in hiring a company connected to the election campaign financing of the Minister, and making use of a bidding waiver based on COVID-19 combat and emergency situations (Rezende, 2020).

Moreover, approximately a year after the beginning of the pandemic in Brazil this problematic situation seems to continue. In April, Federal Police started another investigation regarding public resources destined to COVID-19 deviation in São Paulo. There is suspicion of

a fraud scheme involving contracts and health care services that together would represent R\$ 100,000.00 (PF, 2021).

All the facts abovementioned, among others, need to be investigated, especially from the criminal perspective, in order to identify the possible existence of corrupt practices related to them.

Corruption is a polysemic concept, which means it can be perceived from several points of view and there is no unique corruption theory (Filgueiras, 2009).

However, although there are different conceptions through the socio-political aspect, in Brazil there is an objective definition of the acts that can be considered corrupt, because, from the criminal law perspective, corruption, according the legal reserve principle is a crime and hence is defined in specific criminal types that describe the conducts which represent it (Florencio, Medeiros & Zanon, 2019, p. 6).

In this context, even though that the facts abovementioned do not constitute a specific criminal type related to corruption, according to the Brazilian Criminal Code (Bitencourt, 2015, pp. 113-246)<sup>80</sup>, all of them present potential risk of revealing solicitations, receiving and offering of undue advantages. This could occur also among private parties, which could lead to an increase of the medical products prices and constitute a private corruption, a fact that is not criminalized in Brazil, but still can have serious consequences for the socio-economic development.

Therefore, it is relevant to think about preventive measures that could be taken in order to avoid the materialization of the potential corruption risks.

Policies to control corruption in Brazil are implemented and executed by multiple institutions (Carneiro, 2014, p.24), because there is no unique anticorruption agency responsible for combating corruption. Thus, it is relevant to analyze some initiatives that have been taken by these institutions considering the national and international recommendation with the aim to promote measures and additional policies to control corruption in the emergency scenario.

The Federal Government has made available a digital platform that makes it possible to consult the special acquisitions that use bidding waivers related to the pandemic scenario and provides recommendation on the public hiring (Compras públicas para o COVID-19, 2020).

The Prosecution's Office in state level has recommended to its members to require transparency from the public managers in regard to the contingency plans and the policies adopted to resolve the lack of material, as well as information related to the resources used, contracts and acquisitions conducted in the context of emergency, and this would include justifications, identification of the hired companies and monitoring of the execution. Moreover, the Prosecution's has also filed Public Civil Actions against governors, mayors and Health Secretaries, demanding transparency in public contracts and regarding the disclosure of coronavirus data. These initiatives have provided positive results (Ministério Público do Estado do Piauí [MPPI], 2020).

The General Comptrollers Office has directed its efforts to ensuring public transparency. The institution entered into a Technical Cooperation Agreement with the Citizenship Minister, in order to monitor the payment of the emergency monetary benefit of R\$ 600,00 through the national territory, which is destined to the informal workers microentrepreneurs, freelancers, and unemployed (CGU, 2020a). Also, the institution has created an internet page that present

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<sup>80</sup> According to Cezar Bitencourt, passive corruption consists of requesting, receiving or accepting a promise of undue advantage, for oneself or for others, due to the public function performed by the agent, even if outside it, or before assuming it, but, of any sort, because of it. In turn, active corruption consists in offering or promising undue advantage of any nature, whether material or moral, to a public official to determine him to practice, omit or delay the practice of an official act included in the employee's sphere of competence. Once again, according to the author, and, contrary to what Zaffaroni defends, the advantage will not necessarily be patrimonial. Bitencourt, C. R. (2015). *Tratado de Direito Penal: Parte Especial 5 Dos crimes praticados contra a administração pública e dos crimes praticados por prefeitos*. (9 ed. pp. 113-246). São Paulo, SP: Saraiva.

updated information about the federal government actions regarding the COVID-19 combat and has been encouraging the citizens to exercise the social control in monitoring the public resources and making use of the Transparency Page where the Federal Government discloses the federal expenditures related to COVID-19 (CGU, 2020b). Furthermore, the institution has created an exclusive channel for receiving manifestation regarding the COVID-19 (fala.BR platform)<sup>81</sup>. Then, the citizens are able to inform the lack of supplies and the disrespect of the policies adopted (CGU, 2020c).

Conselho de Controle de Atividades Financeiras (COAF) is the Brazilian Financial Intelligence Unit, which is responsible for receiving, analyzing and retransmitting to the investigation and prosecution authorities the strategic information that constitute signs of money laundering. Although the institution is observing the emergency measures and policies, it has ensured the continuity of its essential services. For instance, it has determined remote working, alternated shifts and flexibility of the working hours (Minsitério da Economia, 2020).

Estratégia Nacional de Combate à Corrupção e à Lavagem de Dinheiro (ENCCLA) is a forum created to encourage anticorruption and anti-money laundering public policies. The institution kept executing not only its own activities remotely, but as well as the ones conducted by the Technology Lab National Network (Rede-Lab), developed in its context (Estratégia Nacional de Combate à Corrupção e à Lavagem de Dinheiro [ENCCLA], 2020).

Nevertheless, it is important to question if the actions of the mentioned institutions is enough to control a complex crime as corruption, or if it is still necessary to adopt further complementary measures or even to improve the ones that already have been implemented.

### **III. Recommendations and corruption control policies in Brazil**

This article intends to contribute to answering the question posed in the section above by presenting national and international recommendation of institutions interested in tackling corruption, in order to point out the suggestions and make a comparative analysis to conclude if there are measures that could reinforce the control of this type of criminality in Brazil during the pandemic.

Nevertheless, considering the broadness and the complexity of the theme, it is important to emphasize that this work does not intent to exhaust all the possibilities, but it does aim to bring some alternatives that can contribute to the debate.

Regarding the measures and policies suggested to combat corruption it was found that: the European States Group Against Corruption, concerned about the possibility of corruption dissemination during pandemic crisis and the adoption of emergency measures, has identified some risks connected to corruption: i) public contracts; ii) bribery possibility in medical sector and iii) fraud in the development of researches and new products, as well as product falsification. As a result, the Council has published some guidance, among which is important to highlight as relevant measures to mitigate the referred risks: i) transparency and ii) trustworthy information disclosure by the government, specially by making use of digital platforms (Council of Europe, 2020).

Norwegian researchers have warned that the traditional anticorruption policies during critical times such as the one we have been facing due to the pandemic, are not enough. This would be true specially developing where corruption poses a double threat. As an example, they mention the Ebola's pandemic crisis. At this moment they policies should be built since the intervention's sector design. Thus, they recommend: i) strict regulatory procedures policies for development and new medicines researches, in which the decision-making power is under Public Power scrutiny and access equality; ii) the donation must be made through existing channels and destined to these purposes, which already are strictly regulated in regard

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<sup>81</sup> <https://www.gov.br/cgu/pt-br/falabr>

anticorruption and iii) management and recruitment in health sector must follow protocols and defined procedures. Yet, it is recommended for the civil society to take part in monitoring the health care services system, as well as in regard to the public contracts. Finally, it is suggested that the professionals involved in building integrity in health care services sector are aware about the social forces that perpetuate corrupt practices (Steingruber et al., 2020).

For the non-governmental organization, *Transparency International*, transparency is also an essential tool of anticorruption policies during crisis that must be applied altogether with government auditing and independent auditors, as well as the implementation and the reinforcement of anti-money laundering framework. Regarding transparency it is emphasized the disclosure about vaccines researches and medical treatment, the need to protect the persons who disclose irregularities in health care system services, and the need to ensure equality in access to services and products (Transparency International, 2020b).

Additionally, the organization points out the need that the bidding processes avoid price abuse; ensure competition among companies and broad public accountability that include monitoring the resources used during the emergency crisis. Then, the organization suggests that the nation leaders should activate competition protection agencies<sup>82</sup>, in order to prevent collusions, implement real time audits in public acquisitions, specially due to the magnitude and the exceptional nature; develop one only platform to disclose information regarding public contracts in order to ensure adequate accountability (Transparency International, 2020a).

In Latin America, CAF, a development bank have conducted a study on anticorruption policies in which is emphasized the use of data and new technology as catalysts to increase transparency in public acquisitions to face the emergency situation. It was highlighted the digitalization process that allows to increase the level of government actions exposure and also to track the resources use in real time. According to the study, these technologies would not only decrease the risk of corruption, but also incorporate data as essential elements to manage a sanitary crisis (CAF, 2020).

Along the same lines, in Brazil, Ethos Institute considers fundamental that transparency is increased both to combat possible deviation due to the control flexibility in public contract process and other pandemic exceptional measures, as well as to contribute to facing COVID-19. Then, the Institute suggests to make data and information related to research, technologies, protocols and contract, among others, available actively, in open source format (Instituto Ethos, 2020).

Furthermore, the private sector has a lot to contribute to corruption prevention by reinforcing its compliance policies, ensuring that third parties are in compliance with the Code of Conducts, investigating any internal disclosure regarding suppliers suspect conducts, conducting strict audits in third parties which already have contracts in force. These measures would make it possible to identify any sign of illegality and increase caution when registering operations. Besides, the companies also can consider auditing third parties from countries which were more affected by COVID-19 and pay double attention to interactions and contracts with public sector, regardless of the procedures flexibility (Câmara de Comércio França-Brasil [CCFB], 2020).

In summary, the research results show that the following measures would be recommended to tackle corruption during pandemic: transparency, which would include disclosure, open data, digital platforms and technology; conducting audits; competition protection and compliance policies reinforcement in private sector.

When comparing the suggested measures to the ones that the Brazilian institutions have implemented, it is possible to observe the convergence regarding transparency investment and resources data disclosure.

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<sup>82</sup> In Brazil there is the Conselho Administrativo de Defesa Econômica (CADE) – the Administrative Council of Economic Defense.

However, it must be considered the multi-institutional characteristics of corruption control system in Brazil, which although can contribute to mitigate the capture risk one or more institutions, can also imply a risk of inconsistent decisions, double work and waste of public resources (Machado & Paschoal, 2016, p. 13) due to institutional overlaps, which could be interpreted as inefficient allocation of resources, especially in developing countries where the scarce tax resources are not enough to implement social rights (Carson & Prado, 2014, p. 9).

In this context, studies have demonstrated that the different organizations when acting within a network, favor the achievement of more concrete results connected to the prevention and combat of corruption because the diversity of actors and shared work create interactive articulation spaces and consequently, generating synergy, which is essential to the control of this crime (Medeiros & Rocha, 2017, pp. 20-22).

It is always important to maintain institutions articulation (and specifically in this case, among the data they collect and use), maybe using a unique platform, as suggested by *Transparency International*, in order to avoid information overlapping and asymmetries and facilitate the monitoring. Also an articulated system would add more clarity to the attributions of each institution in the disclosure and data collection, besides facilitating the participation of civil society.

This articulation could even be negotiated within ENCCLA, which is a Center to create anticorruption public policies and that aims to coordinate institutions related to combat and prevention of corruption and money laundering.

Moreover, as aforementioned, it is essential that the anticorruption measures are directly articulated with anti-money laundering policies and competition protection policies, because this type of crimes are always connected.

Corruption generates a significant amount of resources that need to be “cleaned” in order to enter the financial system without the illegal mark being visible. On the other hand, money laundering can be facilitated by the corrupt public officials that allow the money laundering agents escape from control and sanctions (Kryakos-Saad, Esposito & Schwarz, 2012, p. 163).

Regarding corruption and competition, it is a fact that corruption adds 10% in the costs of business closing globally, and until 25% in acquisition contracts in developing countries. Hence, the practice reduces significantly the fair competition and corruption becomes systemic, pushing investors and business partners away (Makinwa, 2018).

Yet, despite of the apparent investments in transparency, a recent research conducted in 11 Brazilian states and Federal Government shows that 90% of the assessed still do not disclosure enough data that would enable the society to have full knowledge about pandemic dissemination. Almost 40% of the states still have an opaque level of disclosure (0 - 19) and more than 80% of the assessed do not disclosure data in open source (only on newsletters). According to the research, only Pernambuco has a high level of transparency (81 from 100). Next, Ceará (69) and Rio de Janeiro (64) also present a good level of information, although there still are issues to improve (Open Knowledge Brasil [OKBR], 2020).

Corroborating with the concerns about the level of transparency in public sector, a recent study from Transparency International indicates that more than 60% of the commission of COVID-19 federal expenditure monitoring in the congress have judicial pendencies. Four of them were convicted or are charged with administrative improbity, one was mentioned in a Car Wash collaboration agreement and the rest had electoral or political party accounts disapproved (Atoji, 2020). Thus, it seems that the transparency policies in Brazil need to be revisited in order to become effective and able to control corruption.

In relation to the audits, of course they are important, nevertheless, it would be important implementing means to supervise and monitor its execution and results. Then, it would be relevant the existence of a supervising function similar of the Tribunal de Contas da União (TCU) purposes in its operational audits with the aim to analyze the measures taken within the

institution or audited program as an answer to the its recommendations, interacting with the responsible managers and maximizing the probabilities that this recommendation are properly adopted (Tribunal de Contas da União [TCU], 2002).

Concerning compliance policies in private sector it is relevant that there is an incentive from the Government to provide clear guidance to the companies so that they can understand the risks are being exposed to and can conduct the proper and necessary modification. A suggestion would be considering the cooperation among institutions to create a Guide to orientate private sector to conduct its compliance activities specifically in this crisis and emergency time, similarly to the integrity guidelines provided by CGU (CGU, 2015).

Furthermore, generally, on the subject of the implementation of the suggested measures and policies in the context of a multi-institutional system, it is necessary to pay attention to the coordination among the federative levels, within the government and among the several departments, as well as between the members of civil society and State (Bucci, 2006, p. 39).

#### **IV. Conclusion**

The emergency measures and policies are of great importance and the measures to control corruption exist to corroborate and ensure its effectiveness, decreasing the risk of criminal offenses, as well as ensuring that the resources are spent correctly and result in the improvement of the health services, reducing inequality and favoring the development, objectives of a Social Estate (Duarte, 2015, p.15).

According to data analyzed, Brazil seems to be evolving in the adoption of the suggested measures to control this type of economic criminality. It is working in providing transparency in relation to the acquisitions of goods and services and creating irregularities disclosure channels.

However, it is important to emphasize some actions that need to be taken in order to ensure the effectiveness of the measures already in force.

Considering the multiplicity of institutions involved in corruption control and transparency enforcement, it would be relevant coordinate and articulate the several institutions, so that they could share data avoiding overlapping, loopholes and rivalries that tend to be contraproductive and facilitate the information monitoring (Coutinho, 2012, p. 115).

Additionally, it is important a public incentive that instigate the private sector adherence and adequation of integrity policies, especially in public contracts.

Although some of these measures can be considered as public policies, because they constitute a State decisions and actions flow aiming to combat corruption, and consolidate Democracy and Republic (Carneiro, 2014, p. 244), it would be possible to think about broadening this concept so that the decisions and actions would integrate a unique program of governmental action (Bucci, 2006, p. 39)<sup>83</sup> that established the aforementioned aspects, organizing, unifying and making the emergency implementation binding.

The creation of a unique governmental program could provide unity and consequently would facilitate articulation in horizontal and vertical level.

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<sup>83</sup> According to Bucci: [...]government action program that results from a set of legally regulated processes - electoral process, planning process, government project, budget process, administrative process, legislative process, judicial process - aiming to coordinate the means available to the State and private activities for achievement of socially relevant and politically determined goals. (BUCCI, 2006, p. 39).



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