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Understanding Odebrecht: Lessons for Combating Corruption in the Americas

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The Odebrecht case represents one of the largest transnational bribery schemes ever uncovered in Latin America, in which at least 10 countries were involved (Argentina, Brazil, Colombia, Dominican Republic, Ecuador, Guatemala, Mexico, Panama, Peru, and Venezuela).

Odebrecht, a Brazilian company dedicated to multiple industries in Brazil and abroad including construction, energy and real estate, paid at least US \$788 million in bribes to obtain multi-million dollar contracts from state-owned companies, between 2001 and 2016. Those payments were made through the company's Division of Structured Operations, which operated out of Odebrecht's accounting system and was dedicated to concealing, disguising and managing undocumented money to be used in improper payments to politicians, political parties and government officials throughout the region. The money was used mainly to support political campaigns and ensure the company undue advantages in future public biddings and contracts.

The case was a difficult blow for Latin American democracies and a big challenge for its judicial institutions, which were not well prepared to investigate and prosecute cases of this magnitude and reach. But this case is also important because it allowed us to understand how sophisticated criminal organizations have become in the 21st century and the way they operate. We are not talking about mafia-type organizations with a unique boss and multiple operators, but a much more complicated network of people, frontmen, companies, off-shore entities, banks, government

officials, judges, politicians, private operators, and others acting as a coordinated “operating system” designed to use state wealth for private gain.

This case also touched upon a very sensitive topic, which is how political campaigns are funded. The Odebrecht case showed that national norms regulating private funding for political parties are outdated and need to be revised and fine-tuned.

Latin America has robust international and national frameworks to combat corruption. In spite of that, the Odebrecht scandal occurred. What were the main factors that allowed this scheme -and others like it- to be carried out and to remain basically in impunity with few exceptions? What can we do? I will now present some ideas and lessons learned:

First, a strong legal framework alone is insufficient. Judicial institutions should be designed to address the challenges presented by grand corruption. Specifically, it would be wise to strengthen the units or bodies in charge of the investigation, prosecution and adjudication of these crimes. These should be composed of specialized judges and prosecutors, with the support of other specialists in economics, finance, and social sciences – fields which are necessary to fully understand the functioning of structures as complex as those currently presented in cases of grand corruption.

Second, judges and prosecutors in charge of the investigation, prosecution and adjudication of these crimes should be able to carry out their work with autonomy and free from undue pressure, conditions, or interference, either external or internal (that is, from within their own institution). This implies not only that these judges and prosecutors enjoy functional autonomy, including with regards to their superiors, but also that their work is protected with safeguards that prevent them from being unjustifiably removed from cases, fired without cause, transferred, or reassigned by government bodies for the purpose of hindering or delaying investigations.

Additionally, it is necessary to implement protection mechanisms for judges and prosecutors who carry out investigations and legal processes regarding grand corruption, who need to adequately

ensure their safety against possible threats and attacks on their lives and integrity, and that of their families. The investigations for which these prosecutors and judges are responsible often reach people and groups with economic and political power, who are part of organized criminal networks, and who can use threats and even carry out attacks against these justice sector officials in order to ensure their own impunity. Protection guarantees must also be given to witnesses and collaborators.

The *modus operandi* that has been brought to light by the Odebrecht case shows that large corruption networks seek to control the criminal investigations against them and thereby guarantee impunity for their illicit actions, through the control of high-level justice sector authorities, especially Attorneys General and the high courts. To this end, these networks exert their influence on appointment mechanisms, which is much simpler when the designations are in the hands of the political powers and have little guarantee of transparency and citizen participation.

For this reason, in countries where corruption has reached structural levels and has permeated the political system, the political mechanisms of selecting high-ranking justice sector officials are a vulnerable point in the democratic system – because it is through these that corrupt groups exercise the influence that subsequently translates into impunity. It is therefore essential that mechanisms for the appointment of high-ranking judicial authorities have enhanced guarantees of transparency, meritocracy, and publicity, and that there be spaces for maximum citizen scrutiny.

These same principles should apply regarding mechanisms for dismissal, especially when they are controlled by the political powers, because they can be used by corrupt operating systems to punish or fire those high officials who achieve significant advances in the investigation of their illicit actions.

To be clear, the strengthening of appointment and removal mechanisms, and the allowance for broad citizen scrutiny at both stages, is crucial to diminish the possibilities of undue influence of

corruption networks, and to permit those who accede to these positions to be well-qualified, capable individuals with the integrity and temperament to respect the law and pursue cases of grand corruption.

The Attorney General is a figure of fundamental importance in the fight against corruption in Latin America. The leader of a highly hierarchical institution with the ability to give general instructions to prosecutors in charge of corruption investigations, and with the authority to personally take on cases of high social impact, the Attorney General is an official with enormous power, but also one extremely vulnerable in the face of the influence of people and groups interested in shielding themselves from prosecution.

In Latin America, most prosecutors are independent from the executive branch, but aside from a few exceptions, the president and the legislature still have the almost exclusive power to appoint and remove the Attorney General. With few safeguards to counterbalance this power, these decisions could be -and in many cases are- arbitrary and motivated reasons other than strengthening the rule of law.

Prosecutors' offices tend to be institutions with little transparency and little control and accountability mechanisms *vis-à-vis* the citizenry. This institutional culture, which also suffers from an absence of strategic planning in the identification of high impact cases and a lack of criteria for the prioritization of the most important investigations to dismantle corruption networks, means that the successes that some Latin American prosecutors have managed to obtain (for example, in Brazil, Peru and Guatemala) are still precarious, and that they may be insufficient to attack the very heart of criminal networks, much less dismantle them.

In relation to the role of Attorneys General, the Odebrecht case has taught us important lessons: (i) that grand corruption networks are not indifferent to the election of Attorneys General; rather, they seek to influence such appointments, in order to have control over the investigations against

them; but also (ii) that autonomous Attorneys General allow for independent investigations that can significantly undermine corruption networks.

The aforementioned does not rule out the need for international support mechanisms to tackle Grand Corruption, as occurred in Guatemala and Honduras with CICIG and MACCIH, where there have been successes but where the resilience of corrupt networks and their capacity to respond aggressively when their interests are at risk has also been put on display. This shows that international cooperation and support is fundamental to attack grand corruption.

Although most of my comments have focused on the role of judicial systems in combating grand corruption, there are of course other lessons to be learned outside of this area. But the role of the justice sector is particularly important because we do believe that the best deterrent to the commission of corruption crimes is the successful prosecution of high-profile cases. As long as citizens see that corrupt actors do not enjoy impunity, the incentives to engage in corruption will be weakened.