Can FIR-led Technologies be Game-Changers in the Fight against Corruption?

A Bottom-up Approach Exploration in Latin America and the Caribbean

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1. Introduction

The world has been witnessing a rapidly-evolving technological disruption for over more than half a century. As scientific advancements, social cohesion dynamics and globalization trends have been shaping behavioral patterns within societies during recent decades, the emergence of new technologies has been representing a catalytic role for systemic change.

Scholars and practitioners from various disciplines have been approaching the prospective effects of technologies arising in the twenty-first century. They have conceptualized the so-called Fourth Industrial Revolution (FIR) and Globalization 4.0 (G4.0) as forthcoming technological revolutions implying potential multidimensional disruptions in economic, social and political relations between and within countries and world regions.[1]

Costs and benefits have come along with every industrial revolution developed throughout history.[2] Policymakers, business leaders, civil society advocates, academics and citizens alike have commonly acknowledged that 'corruption' is the most pressing challenge facing the vast majority of nations across the globe.[3]

With a new industrial revolution ramping up in the planet progressively, a key question for policy discussion is to what extent FIR-led technologies can be game-changers in the fight against corruption around the world. By addressing this concern, the present essay argues that bottom-up approaches on the utilization of FIR-led technologies offer the potential to curb graft and enable further institutional platforms for anti-corruption actions. Promising cases in the Latin America and the Caribbean (LAC) region support the arguments of this essay.

2. Context

Corruption[4] has been an endemic and persistent challenge facing the LAC region. According to Transparency International (2017), 62% of people from 20 LAC countries surveyed for the latest *Global Corruption Barometer* affirmed that corruption had risen in their countries from 2016 to 2017.[5] Brazil, Peru, Chile and Venezuela have figured with even higher perception levels of corruption, with 78%-87% of surveyed citizens expressing so.[6]

LAC has also exhibited increasing corruption trends in well-known aggregate measures. Transparency International elaborates the Corruption Perception Index (CPI) that ranks countries according to their perception levels of corruption. It does so by assessing an aggregate score ranging from zero to one hundred, where zero indicates higher corruption and one hundred, lower corruption.[7]

In the latest CPI edition, Transparency International (2018) reported that LAC's aggregate score reduced from 42.7 points in 2012 to 41.6 points in 2018—an average 0.4% reduction per year, suggesting that corruption has indeed resulted in a widespread increase in the LAC region over the last five years.[8] Venezuela, Haiti and Nicaragua

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[1] Klausch Swab (2016) has written extensively on the FIR. For more information, see: Schwab, K. (2016). The Fourth Industrial Revolution. Geneva: World Economic Forum. On the other hand, Richard Baldwin (2019) offers a broad conceptualization of the G4.0 movement. For more information, see: Baldwin, R. (2019). The Globotics Upheaval: Globalization, Robotics, and the Future of Work. Oxford University Press.

[2] For example, see: Encyclopedia Britannica website. The Rise of the Machines: Pros and Cons of the Industrial Revolution. Retrieved from https://www.britannica.com/story/the-rise-of-the-machines-pros-and-cons-of-the-industrial-revolution

[3] For more information, see: IMF website. Tackling Corruption in Government. Retrieved from https://blogs.imf.org/2019/04/04/tackling-corruption-in-government/; Noveck, B. S. (2018, December 9). Innovations in the Fight against Corruption in Latin America. Forbes. Retrieved from https://www.forbes.com/sites/bethsimonenoveck/2018/12/09/innovations-in-the-fight-against-corruption-in-latin-america/#6fd15cf272bc

[4] Transparency International defines corruption as "the abuse of entrusted power for private gain". For more information, see: Transparency International website. What is Corruption? Retrieved from https://www.transparency.org/what-is-corruption#define

[5] Transparency International (2017, October 9). Corruption on the Rise in Latin America and the Caribbean. Transparency International. Retrieved from https://www.transparency.org/news/feature/corruption_on_the_rise_in_latin_america_and_the_caribbean

[6] Pring, C. (2017). People and Corruption: Latin America and the Caribbean – Global Corruption Barometer. Berlin: Transparency International. Retrieved from https://www.transparency.org/whatwedo/publication/global_corruption_barometer_people_and_corruption_latin_america_and_the_car

[7] Transparency International website. Corruption Perception Index 2018. Retrieved from https://www.transparency.org/cpi2018

[8] Transparency International (2018). [Corruption Perception Index Full Dataset]. Transparency International. Retrieved from https://www.transparency.org/files/content/pages/2018_CPI_FullResults.zip

performed at the bottom of the 2018 CPI index, with respective scores of 18, 20 and 25 points.[9]

While corruption tends to occur in an endemic manner,[10] citizens across LAC countries have identified that corruption operates through concrete actions, including politicians and government authorities asking for bribes, low government's delivery of public services, and retaliation to complainant of corruption cases, among others. Regarding this, the latest Global Corruption Barometer revealed that around 90 million people in LAC paid bribes between 2016 and 2017. Nearly one out of ten bribe payers reported it to government authorities, though 28% of them suffered some degree of retaliation in doing so. Furthermore, 53% of surveyed people provided a low rating for government performance across the LAC region. [11]

3. Anti-Corruption Framework

Global Instruments. The international policy community has been widely addressing efforts to curb corruption with the pass of the years. The first global anti-corruption instrument entered into negotiations in 2003, when the United Nations (U.N.) General Assembly adopted the United Nations Convention against Corruption (UNCAC). UNCAC entered into force on 14 December 2005 and it has 140 country signatories and 186 state parties as of 26 June 2018.[12] The United Nations Office on Drugs and Crime (UNODC) refers that UNCAC is the only legally binding universal anti-corruption instrument, which covers five main areas: preventive measures, criminalization and law enforcement, international cooperation, asset recovery and technical assistance and information exchange. It targets multiple variations of corruption, including bribery, trading in influence, abuse of functions and private sector corruption.[13]

In addition to UNCAC, international organizations have developed complimentary global instruments to support the fight against corruption. The Organization for Economic Cooperation and Development (OECD) has also developed legally-binding anti-corruption standards. By 17 December 1997, all OECD countries and eight non-OECD countries signed the OECD Anti-Bribery Convention that set up the legal basis to criminalize bribery of foreign public officials in international businesses.[14] While the OECD

Anti-Bribery Convention entered into force in 15 February 1999, it was subjected to a comprehensive review in 2009, which resulted in a set of recommendations to enhance the ability of States Parties to prevent, detect and investigate allegations of foreign bribery.[15]

The International Monetary Fund (IMF, 2017) refers further key multilateral institutions and global instruments that support governance and counter corruption. Some of these include: the United Nations Development Program (UNDP) Global Anti-Corruption Initiative (2014-2016) and Global Project on Anti-Corruption for Peaceful and Inclusive Societies (ACPIS) 2016–20; the 2030 Agenda for Sustainable Development, emphasizing the role of Sustainable Development Goal (SDGs) No. 16 in reducing corruption and bribery in all their forms; the World Bank Group's Integrity Vice-Presidency and its institutional support to the Extractive Industries Transparency Initiative (EITI); the Financial Action Task Force (FATF); the G20 Anti-Corruption Action Plan.[16]

Regional Instruments. The Inter-American Convention against Corruption (IACAC)—also known as the Organization of American States (OAS) Convention—has been the backbone anti-corruption instrument in the LAC region. The OAS Convention was the first binding multilateral agreement on corruption. Twenty-two states, including the United States, signed the OAS Convention in 1996. Since then, 33 countries have ratified it.[17] Philippa Web (2005) refers that the OAS Convention stands in support for democratic government and reject of corruption in LAC.[18] It does so by addressing active and passive positions on bribery, which refer to the offences committed by the bribe-seeker and the bribe-taker respectively. Hence, the OAS Convention conveys a broader scope than the OECD and European anti-corruption instruments.[19]

In order to implement the IACAC along with the UNCAC and OECD Anti-Bribery Convention in LAC, the OECD with support of the Inter-American Development Bank (IDB) and the OAS established the OECD-Latin

[9] https://www.transparency.org/news/feature/cpi-2018-regional-analysis-americas

[10] Shaazka Beyerle (2014). Curtailing Corruption: People Power for Accountability & Justice (1st. ed). Lynne Rienner.

[11] Pring, C. (2017). People and Corruption: Latin America and the Caribbean – Global Corruption Barometer. Berlin: Transparency International. Pp. 6. Retrieved from https://www. transparency.org/whatwedo/publication/global_corruption_ barometer_people_and_corruption_latin_america_and_the_car

[12] For more information, see: UNODC website. United Nations Convention against Corruption. Retrieved from http://www.unodc.org/unodc/en/corruption/uncac.html

[13] Ibid.

[14] OECD website. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Retrieved from

http://www.oecd.org/corruption/oecdantibriberyconvention.htm

[15] OECD website. OECD Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions. Retrieved from http://www.oecd.org/daf/anti-bribery/oecdantibriberyrecommendation2009.htm

[16] For a more extensive list of global and regional anti-corruption instruments, see: IMF (2017). The Role of the Fund in Governance Issues – Review of the Guidance Note – Preliminary Considerations – Background Notes. Washington, D.C.: International Monetary Fund. Retrieved from https://www.imf.org/en/Publications/Policy-Papers/Issues/2017/08/01/pp080217-background-notes-the-role-of-the-fund-in-governance-issues-review-of-the-guidance-note

[17] OAS website. Inter-American Convention against Corruption. Retrieved from http://www.oas.org/en/sla/dil/inter_american_treaties_B-58_against_Corruption_signatories.asp

[18] Webb, P. (2005). The United Nations Convention against Corruption: Global Achievement or Missed Opportunity? *Journal of International Economic Law*, 8(1), 191–229. https://doi.org/10.1093/jielaw/jgi009

[19] Ibid. Pp. 193 – 194.

America and Caribbean Anti-Corruption Initiative in 2007. This initiative engages seven LAC countries—Argentina, Brazil, Chile, Colombia, Costa Rica, Mexico and Peru—in sharing a discussion platform to exchange knowledge, experiences and strategies in the fight against foreign bribery.[20] By 2018, the OECD-LAC Anti-Corruption Initiative contemplated more engagement for countries from the region by proposing the launch of a LAC Anti-Corruption Law Enforcement Network. This network foresees to continue building institutional capacity to investigate and prosecute transnational corruption countries effectively.[21]

4. Civil Society and New Technologies

While top-down, government-driven commitments have occupied the vast majority of anti-corruption instruments, a growing attention has been placed in the role of civil society. For instance, a recent panel of experts invited by the IDB formulated a first-of-its-kind report in 2018 to state the key contributions civil society can foster in the fight against corruption. The authors of this report, Eduardo Engel, et.al (2018), acknowledged that "... civil society has led innovation in anti-corruption tools and has been on the front lines of advocating for reforms for decades. They are allies of anti-corruption champions and are key actors in the work that lies ahead."[22] To this end, the IDB also notes that "There is no doubt that the active participation of citizens is fundamental to prevent corruption and promote transparency."[23]

Experts have been increasingly recognizing the potential gains citizens and civil society organizations (CSOs) can reap in the fight against corruption by mastering the use of new technologies. For instance, Beth Simone Noveck (2018) has widely written about the need and urgency for the use of new technologies, e.g., big data, blockchain and collective intelligence, to identify fraud in both public and private institutions.[24]

In recent regional anti-corruption summits in LAC, scholars, practitioners and civil society advocates have also approached the disruptive power of technologies to tackle graft. Regarding this, the Inter-American Dialogue (2019) referenced that the commitment no. 17 resulted from the 2018 Summit of the Americas titled "Democratic Governance against Corruption" addresses fostering the use of new technologies to strive transparency and government accountability in the LAC region.[25]

5. Bottom-up Approaches on Anti-Corruption Technologies

The engagement of citizens and CSOs with the use of new technologies—FIR-led technologies—offers promising pathways of success for the anti-corruption fight in the LAC region. Scholars and practitioners have been already approaching solutions of citizen-led anti-corruption technologies across LAC countries. For instance, Beth Simone Noveck, et.al (2018) in their report titled "Smarter Crowdsourcing for Anti-corruption" formulated numerous innovative solutions leveraging the use of data analysis and technology to tackle graft in Mexico's public sector. Noveck, et.al (2018) identified six issue areas where citizen-led anti-corruption technologies may contribute to the fight against corruption.[26]

1. Corruption Measurement: Citizens may partner with government and business to develop open-source search tools, e.g., MEMEX, and predictive analytic tools capable of revealing high-frequency incidents of corruption while estimating corruption costs in government contracting.

2. Judiciary Integrity: 'open courts' portals and integrating public oversight into judicial selection evaluation offer citizen engagement platform to increase transparency and accountability in the judicial system.

3. Public Engagement: Mobile technology, human-centered design and prize-backed challenges may encourage increasing citizen engagement efforts to shape anti-corruption policies for a more diverse audience.

4. Whistleblowing: Citizens may be more likely to report corruption cases by receiving training for using online

[20] OECD (2018). Fighting Transnational Corruption in Latin America and the Caribbean. Paris: OECD Publishing. Retrieved from http://www.oecd.org/corruption/anti-bribery/OECD-Brochure-Latin-America-Caribbean-Anti-Corruption-Initiative-ENG.pdf

[21] Ibid.

[22] Engel, E., Ferreira Rubio, D., Kaufmann, D., Lara Yaffar, A., Londoño Saldarriaga, J., Noveck, B. S., Pieth, M., & Rose-Ackerman, S. (2018). Report of the Expert Advisory Group on Anti-Corruption, Transparency, and Integrity in Latin America and the Caribbean. Washington, D.C.: Inter-American Development Bank. Pp. 2. Retrieved from https://publications.iadb.org/en/report-expert-advisory-group-anti-corruption-transparency-and-integrity-latin-america-and-caribbean

[23] IDB website. How could we end corruption? Retrieved from https://www.iadb.org/en/improvinglives/how-could-we-end-corruption

[24] Noveck (2018) refers to the use of new technologies in the FIR context conceptualized by Schwab (2016). For more information, see: Noveck, B. S. (2018, December 9). Innovations in the Fight against Corruption in Latin America. *Forbes*. Retrieved from https://www.forbes.com/sites/bethsimonenoveck/2018/12/09/innovations-in-the-fight-against-corruption-in-latin-america/#26425d2072bc; Schwab, K.

(2016). The Fourth Industrial Revolution. Geneva: World Economic Forum

[25] María Pérez and Tamar Ziff (2019) identified that some of the new technologies offering empowerment opportunities for citizens to curb corruption includes: open data and e-procurement, smartphones and civil tech apps, big data and artificial intelligence algorithms, and distributed ledger technologies. For more information, see: Pérez Argüello, M. F., & Ziff, T. (2019). Hacking Corruption: Tech Tools to Fight Graft in the Americas. Washington, D.C.: Inter-American Dialogue. Pp. 6 – 8. Retrieved from https://www.thedialogue.org/wp-content/uploads/2019/05/HackingCorruption_final.pdf

[26] Noveck, B. S., Koga, K., Aceves García, R., Deleanu, H., & Cantú-Pedraza, D. (2018). Smarter Crowdsourcing for Anti-corruption. A Handbook of Innovative Legal, Technical and Policy Proposals and a Guide to their Implementation. Washington, D.C.: Inter-American Development Bank. Retrieved from http://anticorruption.smartercrowdsourcing.org/files/scac_web.pdf

reporting systems and feeling encouraged to do so in a supportive environment. Encryptions technologies may contribute to optimizing these systems with enhance security and accountability features.

5. Effective Prosecution: Building an "open justice" community among anti-corruption prosecutors with interactive citizen participation mechanisms may allow monitoring progress on transparency and accountability actions more effectively.

6. Money Flows Analysis: CSOs may collaborate closely with governments to develop financial incentives and legal requirements for financial integrity disclosures and map the demand for blockchain technologies in the procurement process.

6. Conclusion

In sum, new technologies led by the FIR or G4-0 disruptions represent invaluable game-changers in the fight against corruption. Citizens and CSOs are key anti-corruption actors with an enormous potential to harness the power of digital tools to combat graft in its multiple dimensions. While their role has been less emphasized in the bulk of anti-corruption instruments established up to date, they offer the most promising benefits in making new technologies work for nation-wide transparency, accountability and integrity.

Executive Decrees: The American Executive Order and the Brazilian Medida Provisória (Provisional Measure), A Comparative Analysis

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Abstract

The evolution of how the Executive branch of both Brazil and the United States issue Executive decrees has changed over time. American Presidents have consistently increased the number of executive orders issued over the course of the last 50 years. The Brazilian Executive has also seen a resurgence in the government's power to conduct Legislative deliberation. This paper aims to compare and contrast both the medida provisória issued by Brazilian Presidents and the executive order issued by U.S. Presidents through a historic and analytical lens.

1. Introduction

The American press normally refers to Brazilian medidas provisórias as executive orders. To be fair, academia and think tanks also commit the same mistake. It is a comprehensible error. Journalists have a day-to-day approach regarding the news; they have *carte blanche* when dealing with technicalities. Academics may also receive a free pass on the subject, as long as they are not lawyers or jurists. In their case, law is a source of information, not a perspective or methodology.

There are major differences concerning executive orders and medidas provisórias. In fact, they differ in nature, definition, characteristics, usage and historical features among other things. Their differences shine a light on the very distinction between American constitutional foundations and Brazil's search for the rule of law.

Most of Latin America is said to have been born in blood and fire. Brazil largely escaped a bloody beginning; however, it was not free of dictatorship nor presidential strongmen. The presidential systems in many countries in the Western Hemisphere have pushed for a some type of executive decree or pronouncement. In the United States there is the executive order whereas in Brazil there is the medida provisória. This paper seeks to conceptualize and compare both American executive orders and the Brazilian medida provisoria.

2. American Executive Orders

Historical background

Several of the most well known executive orders have shaped the history of the United States, sometimes they have yielded a better social fabric for the nation or at times caused a dark stain on the American consciousness. The desegregation of the armed forces by Harry S. Truman pioneered the way to complete desegregation across the country. Franklin D. Roosevelt's executive order to intern Japanese Americans was a clear dark mark on the history of the nation while Dwight Eisenhower's executive order desegregating schools in 1957 generated the push that was needed to further *Brown vs. Board of Education.*

George Washington started issuing executive orders to prepare reports for inspection as well as one instituting the Thanks-giving holiday. Abraham Lincoln is notoriously infamous for suspending the writ of habeas corpus during the American Civil War. Lincoln cited the Constitution's Suspension Clause to justify his order, "the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion and invasion the public safety may require it." President Lincoln issued the first presidential directive to be formally designated as an "executive order." That directive was issued on October 20, 1862; however, it was not numbered as "Executive Order No. 1" until 1907.

The phrase "stroke of a pen" is now virtually synonymous with executive prerogative, and it is often used specifically to refer to the president's ability to make policy via executive order.[1] *Safire's Political Dictionary* defines the phrase as "by executive order; action that can be taken by a Chief Executive without legislative action."[2] Safire traces the political origins of the phrase to a nineteenth-century poem by Edmund Clarence Stedman, but it was in use long before this, at least as a literary metaphor signifying discretionary power or fiat.[3] The phrase became mostwidely known during the 1960 presidential election campaign, when Democrats made an issue of Eisenhower's refusal to issue an executive order banning discrimination in housing and federal employment.[4] Kennedy committed to ending discrimination in housing by executive order. During the second Kennedy-Nixon debate on October 7, 1960, Kennedy continued his criticism,"What will be the leadership of the President in these areas," he asked, "to provide equality of opportunity for employment?[5] Equality of opportunity in the field of housing, which could be done in all federal-supported housing by a stroke of the President's pen."[6] Kennedy eventually issued the fair housing order in November 1962.

Another demonstration of Executive Prowess regarding executive orders heralds from President Reagan's Execu-

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[1] Kenneth R. Mayer, *With the Stroke of a Pen: Executive Orders and Presidential Power* (Princeton, NJ: Princeton University Press, 2001), Pg. 8.

[2] Ibid, 8.

[3] Ibid, 8.

[4] Ibid, 8.

[5] Ibid, 8.

[6] Ibid, 8.