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Escola
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Pública

The Challenges of the Administrative State: Brazil and the United States in Comparative Perspective



The Endless Story of Civil Service Reforms

*The Failure of Bureaucracy, or the
Failure of Politics?*

*Luiz Alberto dos Santos
Washington, DC – May 23, 2018*



The Two Lions' Fable and the Civil Service



Peter Evans, Embedded Authonomy (1995, Princeton Univ Press)

(adapted from "*Fabula dos dois leões*" – Stanislaw Ponte Preta, in *Primo Altamirando e elas*, Ed. Do Autor, Rio de Janeiro, 1961.)

"A PERENNIALY popular Brazilian joke about two lions evokes one way of seeing the state. Escapees from the zoo, the two lions take different paths.

One goes to a wooded park and is apprehended as soon as he gets hungry and eats a passerby. The second remains at large for months. Finally captured, he returns to the zoo sleek and fat. His companion inquires with great interest, "Where did you find such a great hiding place?" "In one of the ministries" is the successful escapee's answer. "Every three days I ate a bureaucrat and no one noticed." "So how did you get caught?" "I ate the man who served coffee for the morning break," comes the sad reply.

- “The moral is clear: bureaucrats do nothing and are never missed; even other bureaucrats care more about their morning coffee than about anything their colleagues do. **The joke is popular because it affirms the conviction that Third World states deliver little of value.** It is also popular because it converts bureaucrats from predators to prey. Identifying with the lion, **listeners reverse their usual self-perception as victims of the state.**”

Historical Background

- USA institutions influenced heavily the political structure and design of Brazilian Presidencialism, but both countries have remarkable differences in terms of development and civic culture
- Differently from USA, Brazilian Federalism is far from balanced and very centralized.
- With **8 Constitutions** since 1822 and **99 amendments** on the 1988' Constitution, Brazilian institutions are very unstable.
- Em vários momentos, o Brasil contou com a colaboração dos EUA em seu processo de desenvolvimento institucional. At various points of the Republican Period, Brazil counted on US cooperation in its institutional development process.
- Despite its initial need and impetus, the different administrative reforms adopted in Brazil since then have not fulfilled their role, nor have they been carried out.

The 1930 Revolution and the Modernization

- 1930: a Revolution breaks the “pact” of the Old Republic – beginning of the industrialization
- 1930-1945: Getulio Vargas and the corporatist state
- 1936: First attempts of Public Administration Reform
- First organization of careers (Lei do Reajustamento), creation of the Federal Civil Service Council
- The Administrative Reform of 1936 and subsequent developments were directly influenced by the US civil service reforms
- Introduction of meritocratic recruitment, but preserving lateral entrances (pistolão, extranumerários)
- **1937**: the “New State” Regime (dictatorial regime, fascist inspiration) - **closing of Congress**
- 1938: Creation of DASP, 1st Federal Statute, Rationalization of public administration

The return of Democracy: 1946-1964

1946: Democratic Constitution

2nd Vargas Presidency (1951- 1954):

- Expansion of the public machine - state-owned companies (Petrobrás, Vale, BNDE)
- 1952: New Staff Regulations
- Preliminary draft of the General Reform of the Federal Administration, addressing for the first time the theme of decentralization, institutionalization of planning and intragovernmental coordination – Bill 3,583/1953.
- Beginning to the studies destined to the organization of a career framework, finally materialized in Law No. 3,780 /1960.
- Coexistence of formal rules and high degree of informality

JK Government: 1956-1961:

- Plan of Goals / Executive Groups
- 1956: Commission on Bureaucratic Simplification - COSB proposed new reform measures towards decentralization, delegation of powers and accountability
- 1958: Committee for Studies and Administrative Projects - CEPA
- 1961: **3 Reports** on Administrative Reform (Presidency, Ministerial structure and Budget Administration)

João Goulart 1961-1964

- 1963: CEPA Final Report - proposed **expansion of merit system** and the **strengthening and rehabilitation of DASP**.
- 1963: creation of the Extraordinary Ministry for Administrative Reform
- 1963: creation of the Commission for Administrative Reform (Comissão Amaral Peixoto)
- Draft Organic Law of the Federal Administrative System and bill for the Defense Council of the Merit System

Brazil and US cooperation in the 1940 to 1960's

- In the 1950s and 1960s, Brazil-US collaboration was extremely important in the implementation and **expansion of courses in business administration and public administration** in Brazil, and in the **diffusion of management methods in the public sector**.
- At that stage, the Public Administration Advisory Committee, in conjunction with the Joint Brazil/US Commission for Economic Development (CMBEU), played an important role in the search for improvement of public administration in Brazil and training of human resources.
- The Getulio Vargas Foundation –FGV (government funded institution created in 1944) has benefited greatly from this cooperation.
- US and UN support for the implementation of the EBAP / FGV was **the first initiative aimed at implanting superior courses in Administration in Brazil**.

1964-1985: The Authoritarian Rule (the 21 years night...)

- 1964: Authoritarian Regime
- 2nd Reform in a nondemocratic context
- Administrative centralization
- Statization: strong expansion of the state business sector (state capitalism)
- Developmentalism & Technocracy
- 1964: Special Commission for the Study of Administrative Reform - COMESTRA
- 1965: Draft Law on Administrative Reform
- 1967: Administrative Reform of the Military Government
 - Decree-Law 200/67, based on studies carried out by the Commission for Administrative Reform - Gov. João Goulart
 - Administrative reorganization and rationalization
 - Reorganization of civilian personnel – PCC Law 5645/70
 - Forbidden unionism and strike in public service

1985 and the “New Republic” Reform

- The return to democracy: the New Republic and the reframed conservative coalition
- Beginning of the “Coalition Presidentialism” and its patronage practices
- 1985: creation of Secretary of Public Administration of the Presidency - SEDAP; extinction of DASP; GERAP – Executive Group for Administrative Reform
- 1986: creation of ENAP
- **National Constitutional Assembly Elected**
 - Perspective of Parliamentarism
- New legislation on procurement (DL 2300)
- 1987: proposed the creation of a body of career Public Managers at the highest level of Government (approved in 1989; 1000 posts filled until 2017)
- Guidelines for Careers organization (DL 2403)

The 1988 Constitution and the Public Administration

- Broad re-democratization
- Extensive chapter dealing with the Public Administration
- Principles: morality, legality, impersonality, publicity
- Access to public office: universalization of the entrance examinations, except for commission offices declared by law
- Public bidding proceedings as general rule
- Objective State responsibility
- Rules on Compensation
- Unified legal regime and full retirement for all the permanent civil servants
- Definitions for the role of the state in the economy
- Definitions of State monopolies in electricity, oil, telecom
- Definitions on the responsibility of State in Public utilities and operation rules for concessions

The 1990 “Reform”: The “New Brazil Plan”

- Hyperinflation
- Collor: First Elected President after redemocratization
- High level of legitimacy
- Mediatic profile of the leadership: the President as a “Superhero”
- Antagonism with civil service – Hunter of “marajás”
- Oriented to minimal State
- Measures of impact
 - Extinction of ministries, autarchies and foundations
 - lost of administrative memory
 - Dismantle and disorganization of the Public Administration
 - Privatization of state owned enterprises
 - Dismissal of non-tenured civil servants
 - Reduction of wages of public servants
 - Freeze on recruitments
- Government failure
- Impeachment (1992)
- Return of the dismissed civil servants: from 1994 to 2014.

The Director Plan of State Apparatus Reform (1995)

- “New Public Management” style of Reform
- **“Reinventing Government”** movement influence: the search for efficiency and delegation (“steer, not row”)
- Paradigm: British model of reform (Next Steps Program) of the state apparatus
- Reconceptualization: direct administration and indirect administration.
- Division: nuclei and activities: criterion to define "what is" or continues to be “State”.

Efficiency ⇒ managerialism (private sector management techniques).

- Remuneration of state careers linked to performance bonus.
- Management and performance agreements
- Reintroduction of Labour Law in the public service
- Reduction of tenure protection
- Autonomy / flexibility of management - > performance and management contracts
 - Executive agencies.
 - Regulatory agencies
 - Social Organizations and Civil Society Organizations of Public Interest (OSCIP);

The 1998 Constitutional Reform of Public Administration

New constitutional amendment: 3 years in Congress before approval

- Economic Crises - Monetary Stabilization - Fiscal Adjustments / LRF (2000)
- EC 19/98: administrative "reform"
- Concept: Overcoming the bureaucratic paradigm and reduce legal barriers to public managers
- "Efficiency" erected as a constitutional principle
- **Several proposals never implemented or failed**

Materialization:

- EC 19 (Public Administration) and 20 (Social Security)
- Law 9647 (OSCIPS)
- Law 9717 (Public servants retirement regimes)
- Law 9801 (dismissal of public servants to reduce expenses)
- LRF - Fiscal Responsibility Law
- 9 Regulatory agencies
- Public Employment Law (suspended by Supreme Court)
- Possibility of dismissal of public servants for insufficient performance
- Wage tightening policies and cost reduction of the payroll
 - Ceiling for compensations: STF Justices
 - Permit to dismissal of tenured personnel to reduce costs

Dilma and Lula Policies for the Public Administration (2003-2016)

- Expansion of the Presidency structure
- Creation of new ministries, autarchies and SOEs
- Recovery of the Workforce
- Substitution of outsourced civil servants
- Reestruturing and creation of new careers
 - Population of Regulatory Agencies with meritocratic recruitment
- Recovery of compensations and distortions in personnel payment
 - **Increase on the payroll 2017/2002: 309%**
 - **2002 – R\$ 75,029 billions**
 - **2017 – R\$ 306,9 billions**
- Bill of Law - Reform of Regulatory Agencies (unfinished)
- Draft of Organic Law of Public Administration (unfinished)
- Reduction of commission offices freely appointed
 - Decree 5.497/2005; substituted by Decree 9021/2017
 - Law 13.346/2016 (following Lula's proposal of reduction of freely commissioned appointments)
- **Public-private partnerships**
- **Concessions of Airports, Ports and electricity**

The Neverending Story

- **The promises of an administrative reform** in the democratic context, notably between 1986 and 1989, and the attempts in 1990, 1995-2001 and since 2003, under different orientations and governments, sometimes seeking the full implementation of the bureaucratic model, sometimes aiming at reducing the size of the State, or under the inspiration of New Public Management, **were not fulfilled.**
- **None of the reforms planned were concluded or fully implemented.**
- The **political costs** involved in its implementation - and also the financial costs - **distanced** the results from what was **initially promised.**

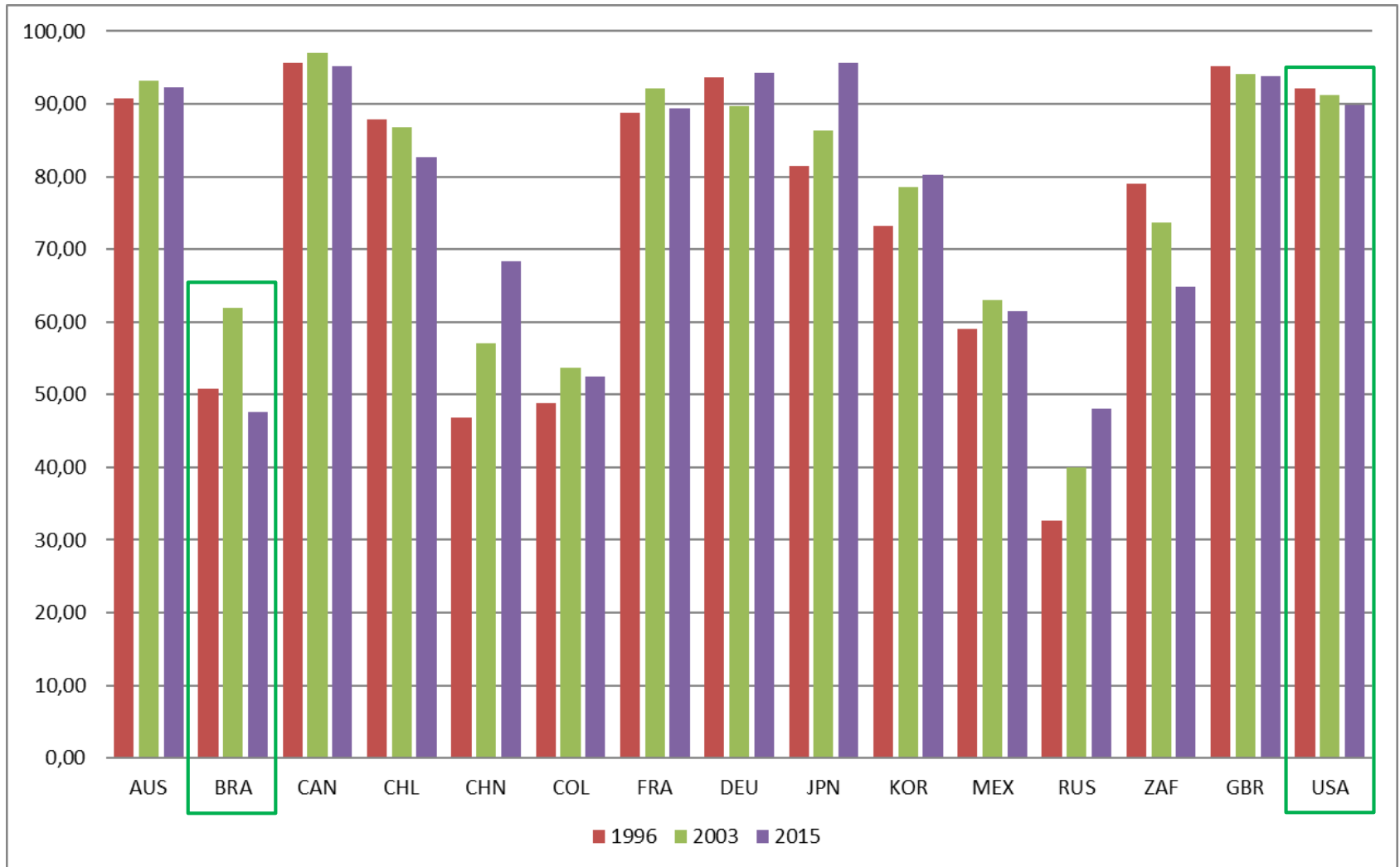
- Clientelism, patrimonialism, corruption, cronyism and nepotism, and the absence of a rooted culture of merit are characteristics present in Brazil that hinder an administrative reform capable of effectively assuring the State's capacity to answer to society demands.
- Bargains involving public jobs (specially “confidence appointments”) are still frequent and compromise moral and ethos of public service.
- **Performance appraisal is not a rule to define promotion and positions of responsibility in the public service.**
- The **lack of continued commitment** of governments with a reform agenda oriented to the **quality of public management** and the **reduction of patronage practices**, strengthen this resilience of old habits.

State and Society in Brazil

- Differently from US, the size and presence of the State in the life of the citizen are **still very expressive in Brazil**
- Medium-High income country, but medium wages are low, and poverty still very high.
- Besides the reduction since de 2000's, concentration of wealth is one of the highest in the world
- State depends heavily on the taxation to provide public services
- Public policies play an important role in access to health and education services, in the search for the reduction of income inequalities and greater social inclusion and participation in public life.
- The citizen does not want "less" State, but a **better and more present and effective State**, that guarantees the return by the taxes paid.
- The Welfare State provided for in the 1988 Constitution is a demand of society in Brazil.
- Efficiency of state and return to society are still much lower than desired

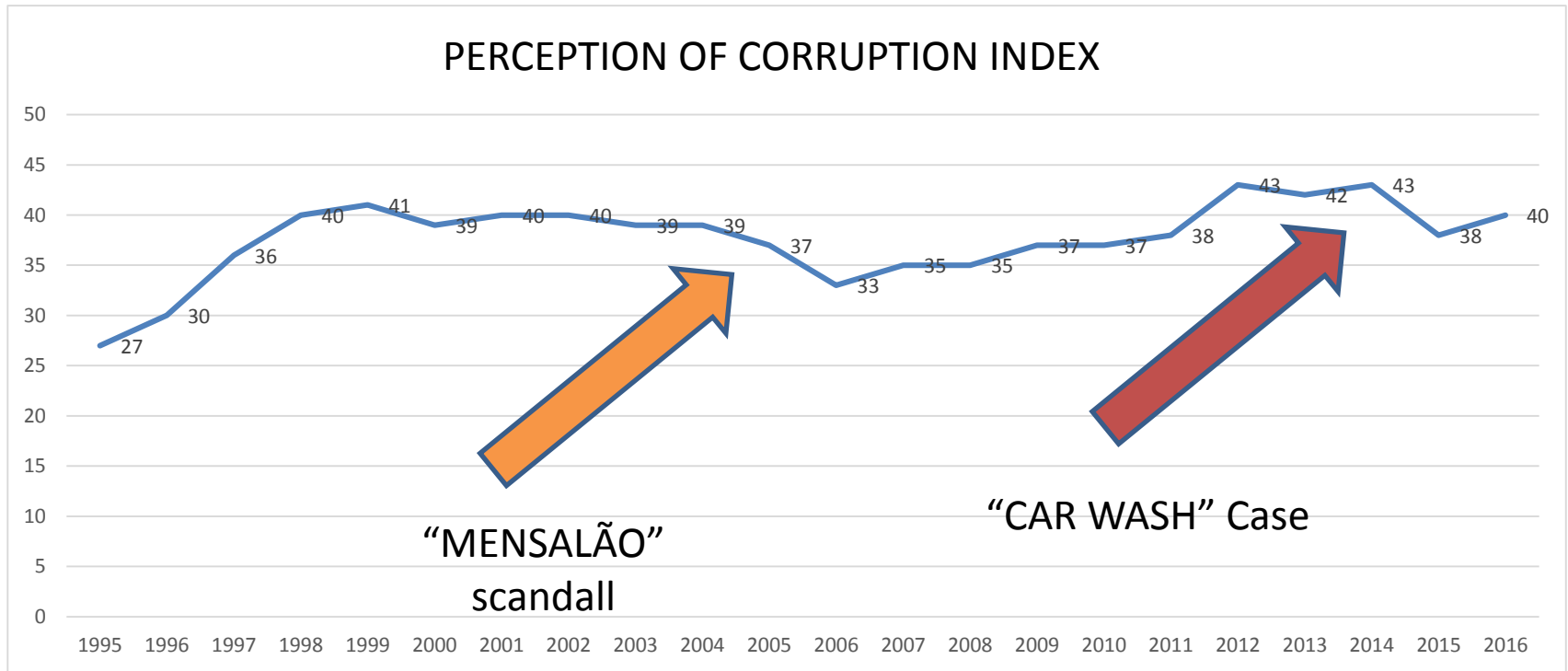


Government Effectiveness 1996-2003-2015



Corruption in Brazil

- Transparency International: perception of corruption in Brazil. 100 corresponds to the lower level of corruption:

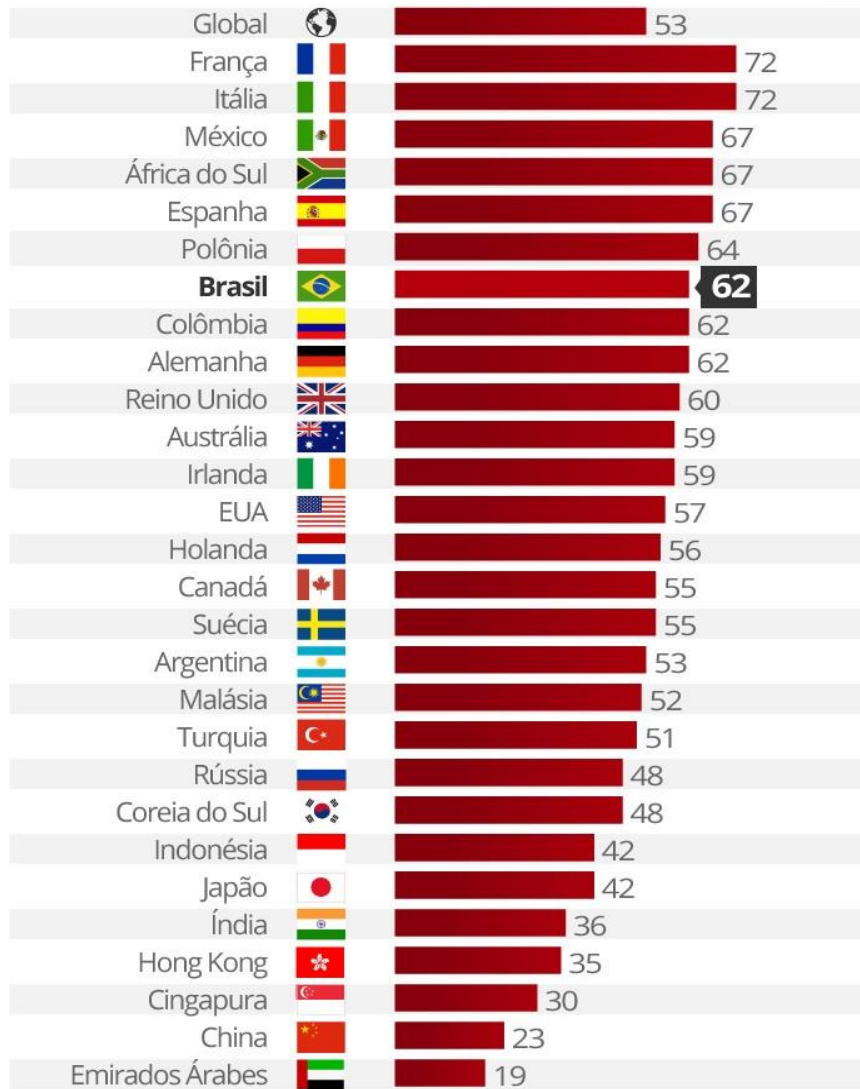


- The index shows that Brazil did not have changed its situation, remaining as a country affected by high levels of corruption
- Perception of corruption doesn't mean necessarily increase on corruption, but, sometimes, the increment in corruption punishment and criminal persecution

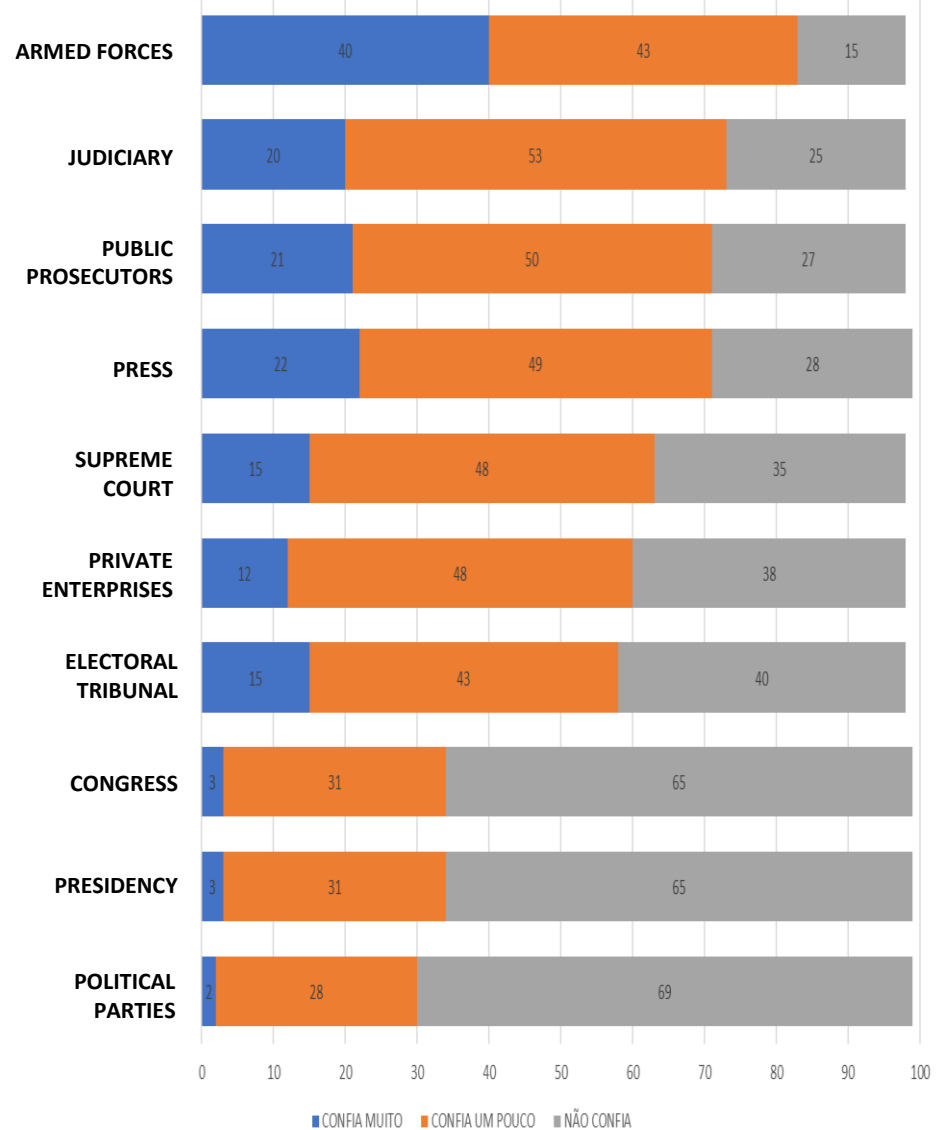
Confidence Crisis

Majority of Brazilian and US citizens do not trust in country institutions

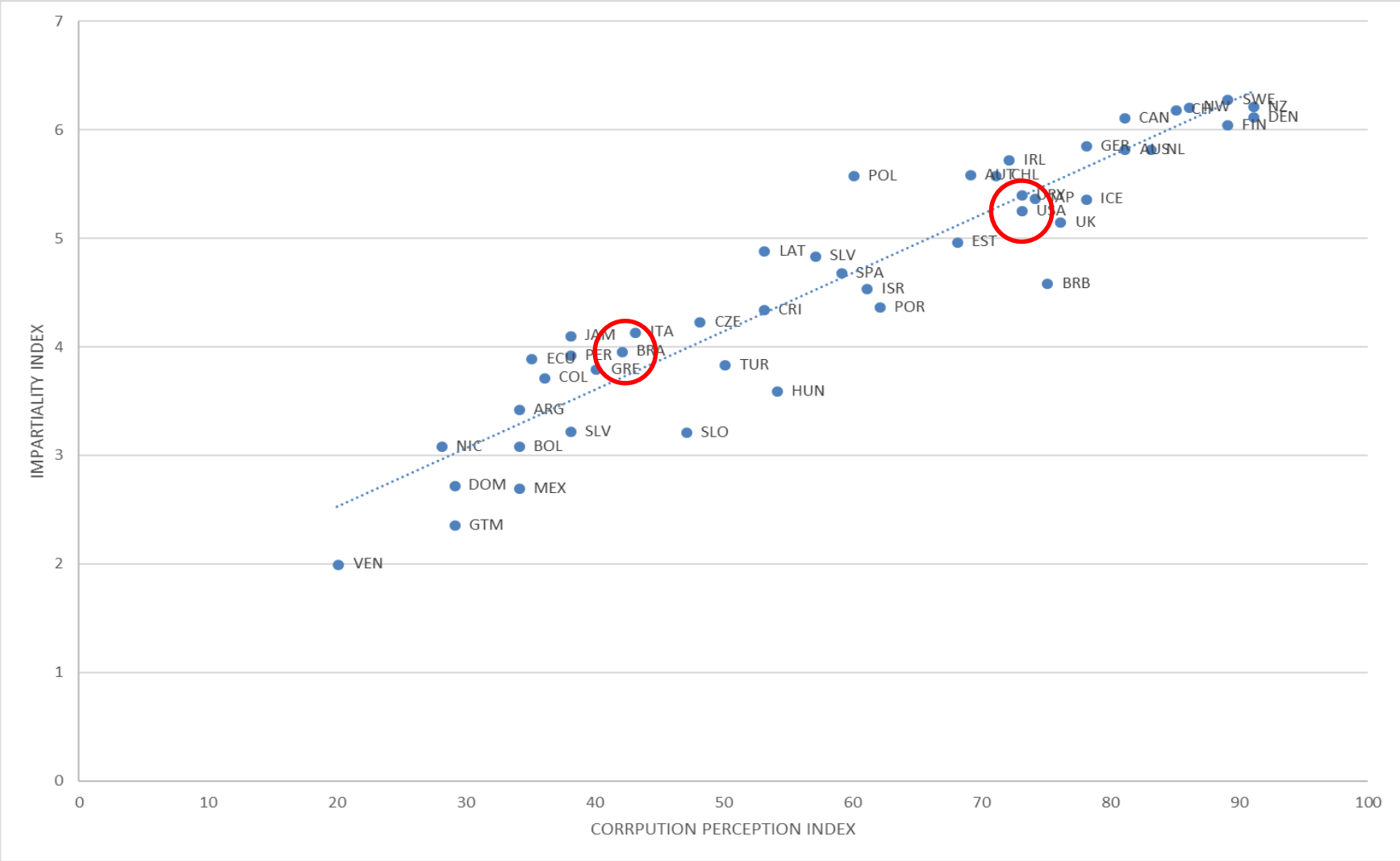
% of population that has lost trust in the system



BRAZIL: TRUST ON INSTITUTIONS



Public administration impartiality and corruption perception, 2017



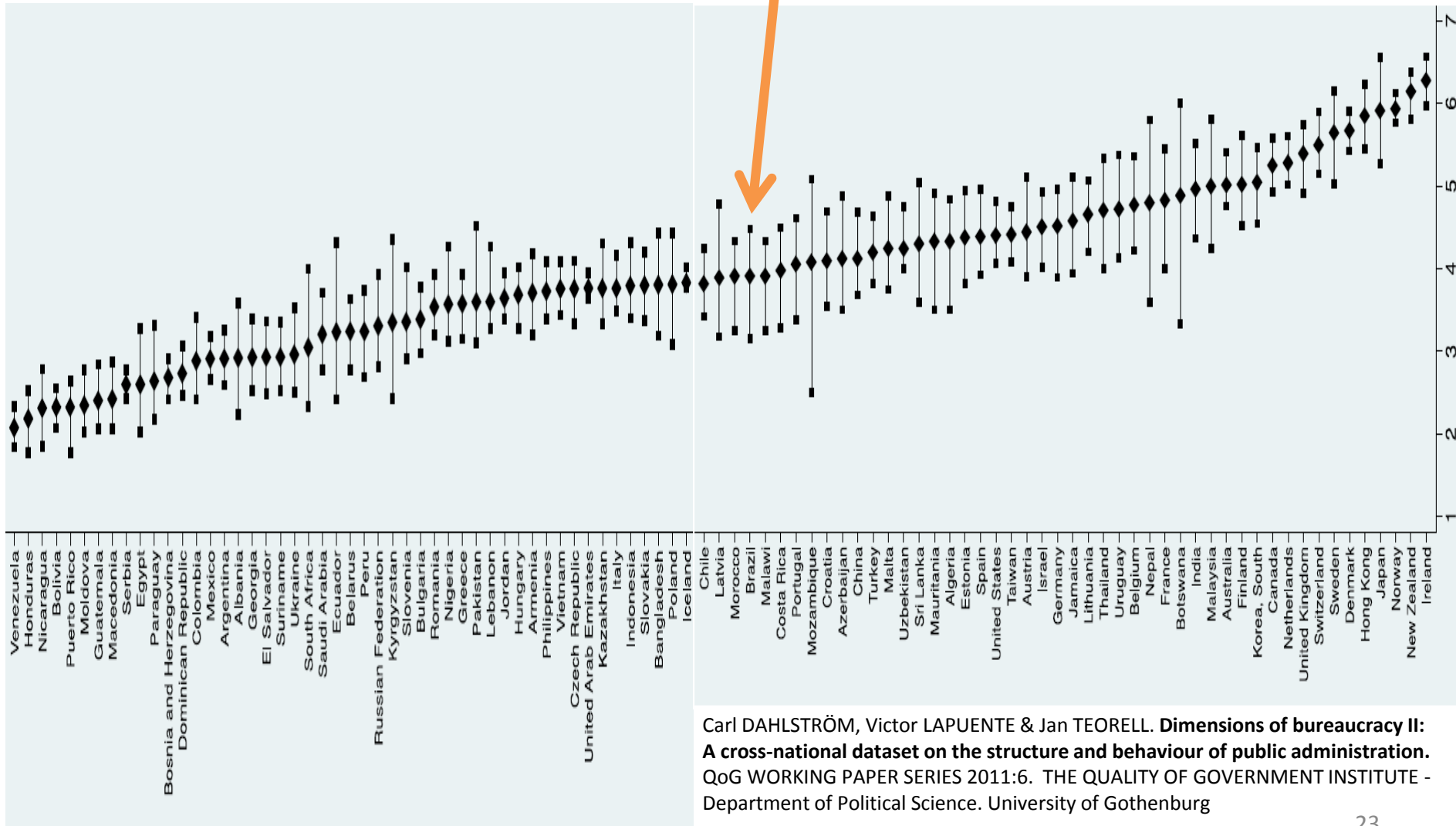
Source: OECD/ECLAC/CAF based on Gallup 2017

Some problems remain...

- Bureaucratic capacity is not evenly distributed among government agencies in Brazil
- The decision to professionalize the bureaucracy was taken by political actors as one of the results of redemocratisation, but only increased in the end of 1990's
- Merit-based selection through competitive entrance examinations only consolidated after 1992 as the only way to access career positions.
- Professional and Weberian bureaucracy still not complete.
- High bureaucratic quality present in all dimensions at Federal Level, but when the dimensions are disaggregated by policies and agencies, one of the characteristics of a professional bureaucracy - existence of a stable career - is not as positive as expected

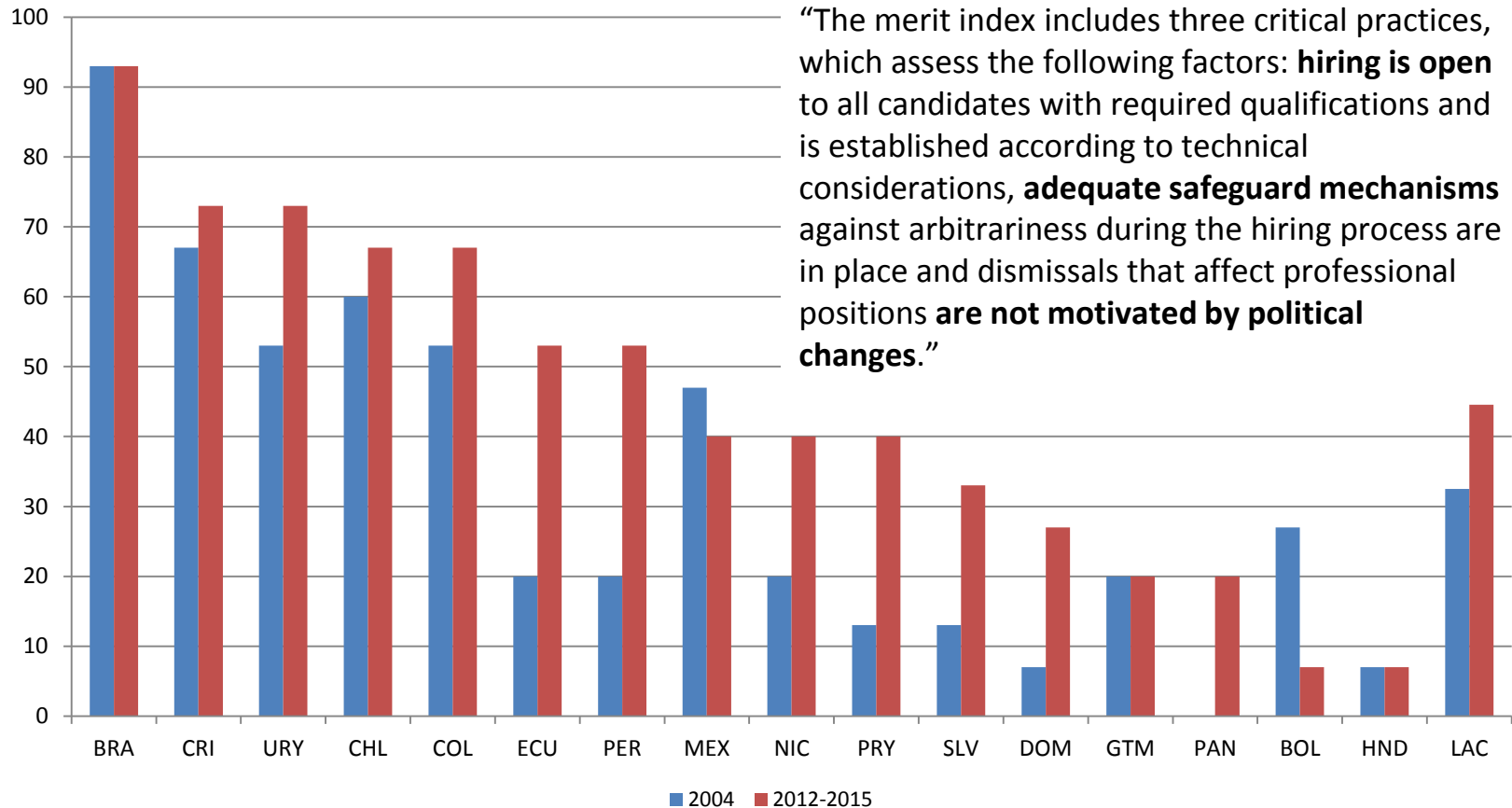
(Adapted from SOUZA, Celina, I SEMINÁRIO BRASILEIRO SOBRE IMPLEMENTAÇÃO DE POLÍTICAS PÚBLICAS. ENAP, 2018)

Bureaucratic Professionalism in comparative perspective



Carl DAHLSTRÖM, Victor LAPUENTE & Jan TEORELL. **Dimensions of bureaucracy II: A cross-national dataset on the structure and behaviour of public administration.** QoG WORKING PAPER SERIES 2011:6. THE QUALITY OF GOVERNMENT INSTITUTE - Department of Political Science. University of Gothenburg

Merit in the Civil Service– 2004-2015 (Latin America & Caribbean)



Fonte: Banco Interamericano de Desarrollo (2014) in Panorama de las Administraciones Públicas: AL y el Caribe 2017. OECD, 2017.

Merit on Recruitment and Responsibility of Public Officials



O Filho de Wlad, de 22 anos, é indicado para

CARGOS PÚBLICOS

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Vagas abertas nas agências

Partidos disputam 16 postos de direção e até presidência em 11 órgãos reguladores

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BRASÍLIA. Em ano eleitoral, com obstáculos legais à liberação de verbas e de olho na montagem de alianças e no atendimento aos caciques partidários, as agências reguladoras são "minas" na palheta de negociações do Palácio do Planalto. Serão abertas 16 vagas de diretores em oito dos 11 órgãos reguladores. Nessa conta, estão seis vagas para presidentes, posto considerado fundamental na definição da agenda e da pauta regulatória.

Criadas por leis específicas, as agências são responsáveis por controlar a qualidade dos serviços prestados à população nos seus segmentos de atuação, como energia elétrica, telecomunicações, petróleo, recursos hídricos, rodovias, ferrovias e aeroportos. Elas também definem regras para exploração da atividade por parte do setor privado, participam da elaboração de editais de licitação, firmam e fiscalizam contratos em setores que representam quase 60% do Produto Interno Bruto (PIB).

Os diretores desses órgãos são nomeados pelo presidente da República, sabatinados e precisam ter a indicação aprovada pelo Senado. Os mandatos de diretor são fixos, podendo ser reconduzidos uma vez, e só saem do cargo mediante renúncia ou condenação judicial. A administração federal tem hoje 11 agências reguladoras.

Num momento em que o governo terá de negociar com o Congresso a privatização da Eletrobras — item prioritário da pauta econômica em 2018, bem como pretende mudar a regulamentação do setor elétrico, a Agência Nacional de Energia Elétrica (Aneel) terá sua composição totalmente alterada. Serão três vagas abertas em agosto, incluindo a de diretor-geral. Uma cadeira no colegiado já está vaga, e a outra teve indicação do presidente Michel Temer enviada ao Senado no fim de 2017.

EMPREGOS COBIÇADOS



Ao todo, serão
16 vagas disponíveis
neste ano

PROCESSO DE NOMEAÇÃO

É o mesmo processo para os presidentes e diretores do Banco Central, do procurador-geral da República e de ministros do Supremo Tribunal Federal, por exemplo



Fonte: Agências reguladoras

Editoria de Arte

Aquaviários (Antaq) também termina no próximo domingo. Ele é indicado do PMDB do Amazonas e pode ser reconduzido. O Partido da República (PR) também tem influência no órgão e conseguiu indicar, em 2016, o diretor Francisval Mendes.

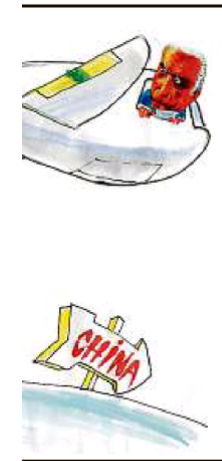
No setor da saúde, a Anvisa (vigilância sanitária) e a ANS (que cuida dos planos de saúde) também estarão com cargos disponíveis. No caso da Anvisa, o diretor-presidente Jarbas Barbosa termina o mandato 1º de julho e pode ser reconduzido. Enquanto o Congresso discute mudanças nas regras dos planos de saúde, a ANS tem um cargo de diretor vago desde maio de 2017 e, em julho, vence o mandato da diretora, Karla Cruz Coelho. Também há uma vaga para diretor na Agência Nacional do Cinema (Ancine).

ESCOLHAS SERÃO CONDUZIDAS PELO PRESIDENTE

Enquanto são alvos de disputas políticas e loteamento partidário, está parada na Câmara uma proposta de Lei Geral das Agências Reguladoras, que já foi aprovada no Senado, há mais de um ano. O projeto unifica a gestão e consolida regras para atuação das 11 entidades federais. Define critérios para a indicação da diretoria de forma a reduzir a interferência política e fixa mandato de cinco anos, sem previsão de recondução, entre outras previsões.

O projeto traz mais autonomia administrativa e financeira às agências, mas transfere totalmente ao Executivo a execução de políticas públicas. Em relação a itens como governança e transparência, a proposta busca impor princípios similares à Lei das Estatais, que entrou em vigor em junho de 2016 e veda, por exemplo, que ministros de Estado e ocupantes de cargos em partidos e sindicatos façam parte da diretoria e dos conselhos de administração das empresas públicas.

O ministro da Secretaria-Geral da Presidência da República, Moreira Franco, disse que, diferentemente das indicações para minis-



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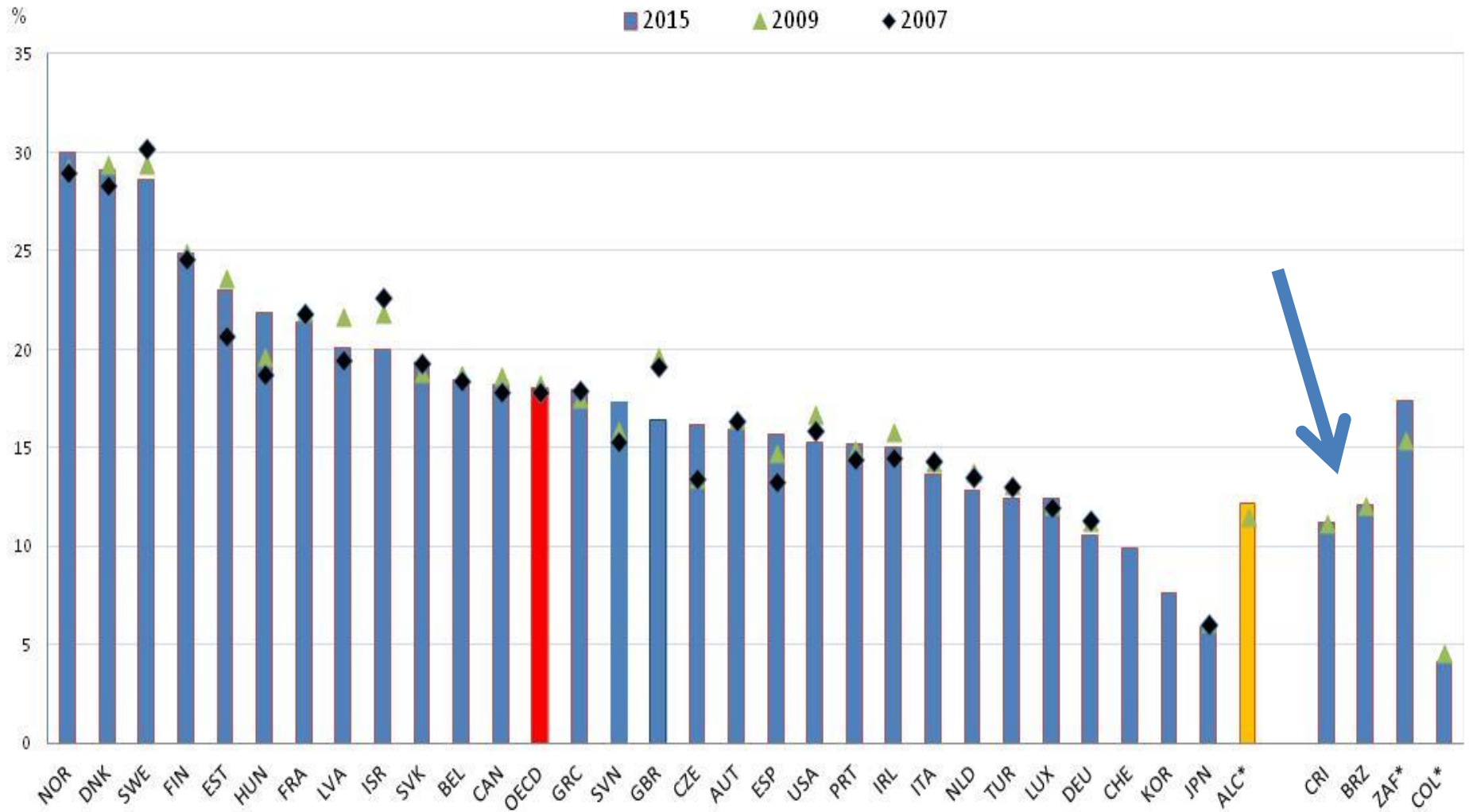
A nomeação política foi publicada no Diário Oficial da União desta sexta-feira

(26). A portaria é a Nº 40, de 25 de janeiro de 2018.

Administrative Reform: still a policy issue

- Public service reforms remain on the agenda.
- Important discussions have not yet been completed, such as
 - the dismissal of Servers for insufficient performance
 - the regulation of management contracts
 - the governance of state-owned enterprises
 - the revision of legislation on the "social organizations"
 - the implementation of new institutional models, such as public foundations
- The New Fiscal Regime and its constraints to public expenses imposes a more efficient, more responsive public administration

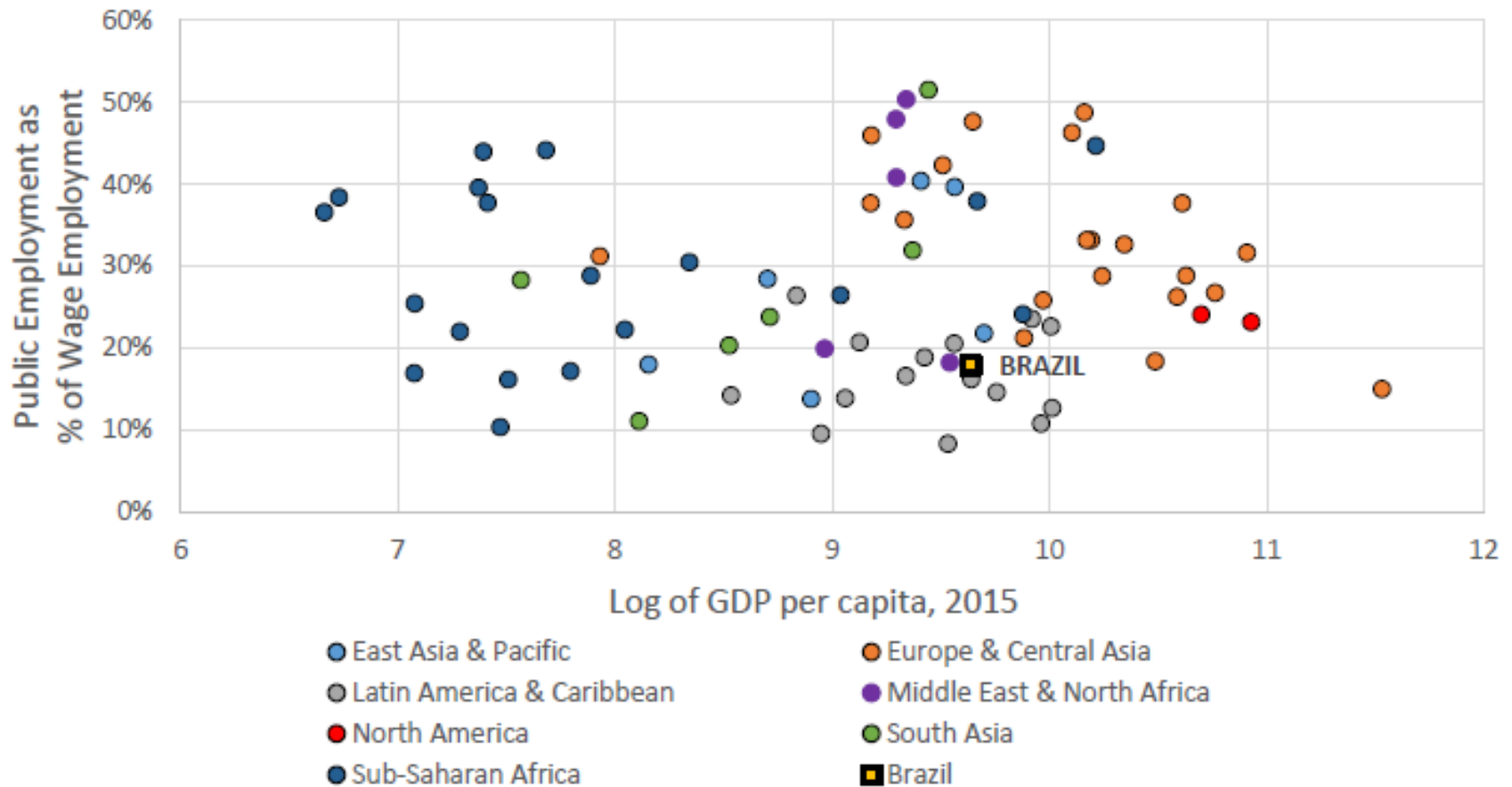
Public Employment as % of total Employment



Source: Database ILOSTAT 2015 International Labor Organization (ILO). * 2014.

“The number of civil servants in Brazil is not unusually high, and similarly, the relative size of the federal government does not appear excessive. Using data from the International Labor Organization (ILO), the share of public sector employees in the population in Brazil at 5.6 percent is higher than the Latin American average of 4.4 percent. However, it is much lower than in OECD, European and African countries (Figure 14). **Similarly, public employment as a share of wage employment in Brazil appears to be relatively small at 18 percent (or 24 percent as a share of formal employment) (Figure 15).** This suggests that the driver of Brazil’s large public sector wage bill is **high cost of public servants (high salaries), rather than an excessive number of public sector employees.** The share of public servants employed by the Federal Government in Brazil is **only about 10 percent,** which is below that of other federal countries (such as the U.S., Canada and Australia), where most personnel intensive public services are also provided by state or local governments.”

Public employment as share of formal wage employment by country



Source: Worldwide Bureaucracy Indicators, World Bank Bureaucracy Lab

Note: Various years between 2009 to 2015, depending on the country. Data for Brazil refers to 2014.

2018...

- The 2018 elections will be a unique moment to evaluate the future of democracy in Brazil and the resumption of an agenda of reforms that assures answers to the citizen in terms of less bureaucracy, greater efficiency of the State, to adjust the capacity of the State to provide goods and services to citizens, promote infrastructure development and investment, promote broad tax reform, improve the business environment and implement agile, meritocratic and transparent management.
- **The Brazil-US dialogue and cooperation will continue to be important for the improvement of public administration and democracy.**



Thank You!

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