



**Understanding corruption through the analysis of court case content: research note**

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## Understanding corruption through the analysis of court case content: research note

### ABSTRACT

*Crime records have been discarded as a reliable measurement tool of corruption due to the fact that certain offences may go unreported and unrecorded. We move away from the intractable debate of the “dark figures” to concentrate our attention on the usefulness of court records to the study of corruption. We have analysed 838 court cases on corruption and related offences recorded in Portuguese First Instance Courts for the period 2004-2008. The available evidence is rich in quantitative and qualitative information both on the anatomy of corruption as a criminal offence and the judicial system’s capacity to investigate, prosecute and trial reported occurrences. This dataset provides an original set of variables that not only characterises the volume and distribution of corruption and related offences across the country; [but it](#) also gives insight on the corrupt exchanges and their processual features.*

### KEYWORDS

corruption; court cases; dataset; Portugal

## 1. INTRODUCTION: ON THE LIMITATIONS OF CRIME STATISTICS TO MEASURE THE EXTENSION OF CORRUPTION

Corruption is an intractable multidimensional policy problem with financial and reputational implications for both public and private institutions that requires a knowledge-based control approach. In order to address it with specific policy actions and instruments, it is important to know what we are fighting and how much of it there is by using different approaches and sources of information ([Hansen & Stachowicz-Stanusch, 2013](#)).

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5 The difficulties to address these problems were the main reason for coming up with a new  
6 dataset on corruption cases. The dataset we present in this research note is a novelty not only  
7 because of the extensive coding work that it entailed, but also, because it gives access to micro-  
8 information and characterisation of court cases of corruption for a several years period of time  
9 (2004-2008).  
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18 Datasets on corruption are not easy to find. Indicators to define and measure corruption are  
19 often classified in two groups (Lambsdorff, 2006; Langseth, 2006; Galtung, 2006): subjective  
20 and objective. Subjective data has been primarily collected through survey techniques  
21 nationally<sup>1</sup> and cross-nationally.<sup>2</sup> The two most cited cross-national measurements of  
22 corruption, Transparency International's Corruption Perception Index (CPI)<sup>3</sup> and the Control  
23 of Corruption indicator of the World Governance Indicators (WGI) (Kaufmann, ~~D.~~, Kraay, ~~A.~~,  
24 & Mastruzzi, 2009), use perception-based data. Objective indicators of corruption are primarily  
25 collected from official records on crime rates, such as the number of investigations,  
26 prosecutions, trials and convictions per type of criminal offence.  
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39 The dataset here presented uses the second type of information. However, we are aware that  
40 reliable statistical data is hard to get and when it exists it is not easily comparable across  
41 countries for a number of reasons. First, the credibility of official statistics varies across  
42 countries and over time for various reasons, ranging from data reporting/collection  
43 insufficiencies, methodological issues, and budget sustainability to ensure the existence of time  
44 series. The way crime statistics are organised, the type and quality of information collected and  
45 coded, the period covered and how the data is presented and made available to the public can  
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55 <sup>1</sup> See, for example, Mancuso, Atkinson, Blais, Greene, & Nevitte, 1998; Miller, Grodeland, & Koshechkina, 2001; Redlawks &  
56 McGann, 2005; De Sousa & Triães, 2008; Mazzoleni & Lascoumes, 2010.

57 <sup>2</sup> See, for example, Transparency International's *Global Corruption Barometer*, the European Commission's *Special and Flash*  
58 *Eurobarometers on Corruption*.

59 <sup>3</sup> Transparency International. 2012. "Corruption Perceptions Index 2012: An updated methodology."  
60 [http://cpi.transparency.org/cpi2012/in\\_detail/](http://cpi.transparency.org/cpi2012/in_detail/).

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3 be an obstacle to research. Second, crime statistics are likely to be a reflection, not only of a  
4 country's corruption levels, but also of two intertwined aspects of control (Cazzola, 1988: 22):  
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6 (1) the dominant reporting culture, which is a result of both the existence or absence of adequate  
7 whistleblowing procedures and mechanisms as well as the degree of permissiveness towards  
8 corruption; and (2) the existing institutional capacity and willingness to repress corruption, i.e.  
9 an efficient auditing and judicial system, to detect, investigate, prosecute, trial and eventually  
10 condemn corrupt conducts. For instance, "[a]n increase in the number of corruption cases  
11 brought to trial could indicate a higher incidence of corruption, an increased level of confidence  
12 in the court, or both." (June, Chowdhury, Heller, & Werve, 2008: 14)  
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24 Either because certain practices may have become a norm or because the judicial authorities  
25 demonstrate limited capacity or selective enforcement bias (Cazzola, 1988: 23) in dealing with  
26 complex crime, certain offences may go unreported and unrecorded in official statistics. These  
27 are the so-called "dark figures" of corruption (Piquero ~~and~~ & Albanese, 2011: 194), a suspected  
28 volume of corruption that falls under the radar of judicial authorities, making official figures  
29 look discrepant with observable social practices and organizational risks. Detection let alone  
30 prosecution or conviction of corruption can be extraordinarily difficult given the complex and  
31 obscure nature of these illicit exchanges (De Sousa, 2002).  
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43 Therefore, crime statistics may tell more about the efficiency and efficacy of the judicial sphere  
44 in defining, uncovering and prosecuting acts of corruption than the volume of manifestations  
45 in a particular political or administrative system (Mény, 1992: 219). A country that displays  
46 high figures on corruption may not necessarily be indicative of being "more corrupt", but more  
47 efficient in curbing its occurrence in society.  
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56 Third, there is also a time gap between the occurrences of corrupt conducts and their  
57 prosecution and/or conviction. This will be inevitable reflected in the way crime statistics are  
58 coded and presented. The prosecution of corruption is not an easy or expeditious process and  
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3 tends to become more complex when the offender is a political figure. Judicial proceedings can  
4 last for many years until a final decision is reached, given the difficulty of gathering and  
5 interpreting evidence and the possibility of appeals suspending execution deadlines at different  
6 stages of the judicial proceedings thus delaying court's final decision. This means that crime  
7 statistics will always display a hiatus between input and output objective indicators and  
8 therefore can only offer a very fragmented picture of the extension of corruption (as a criminal  
9 offence) in a given country.  
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20 Fourth, there is also a problem regarding the taxonomy of corruption as a criminal offence  
21 (Cazzola, 1988; De Sousa, 2002; Piquero & Albanese, 2011). Penal frameworks/laws vary  
22 across countries thus making it difficult to compare the volume of occurrences across different  
23 jurisdictions. When confronting statistical figures without paying due attention to the existing  
24 conceptual specificities of the offences, comparison (even if by juxtaposition) runs the risk of  
25 becoming spurious. The degree in which judicial action is framed will affect the extent in which  
26 crime statistics are more or less representative of those grey areas falling in the borderline of  
27 legality.  
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39 For all these reasons, attempts at developing cross-national measurements on corruption using  
40 official crime statistics have been systematically discredited (June et al., 2008: 14) or simply  
41 abandoned in favour of subjective approaches, which also have their limitations (Piquero &  
42 Albanese, 2011: 197). Nowadays, very few studies incorporate 'objective measurement  
43 methodologies of corrupt activities' (Brooks, Walsh, Lewis, & Kim, 2013: 28), despite recent  
44 noteworthy efforts (Escresa & Picci, 2017). Escresa and Picci (2017) have used judicial  
45 statistics on cross-border corruption, i.e. bribery between firms headquartered in a particular  
46 country and foreign public officials, to construct and compute a valid cross-national corruption  
47 index: the Public Administration Corruption Index (PACI).  
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3 Our approach regarding the usefulness of objective indicators provided by court records is  
4 slightly different. We are not interested in measuring corruption *per se* but interpreting ‘the way  
5 corruption as a criminal offence has been treated through repressive instruments [...] over a  
6 period of time’ by using court case narratives (De Sousa, 2002: 267). Court records are not just  
7 abstract statistics. These figures relate to concrete cases and judicial decisions that give detailed  
8 and objective indication as to who, what, when, where, why, and how the rules were broken  
9 (Chapman & Lindner 2016).  
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20 In this research note we attempt to explore the relevance of judicial materials. We focus on  
21 court cases to understand the sociology of corruption as a criminal offence, or to learn from the  
22 judicial system’s capacity to investigate, prosecute and trial reported occurrences. The data is  
23 available for open consultation at the Portuguese Archive of Social Information (APIS).<sup>4</sup>  
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## 33 **2. THE ANALYSIS AND CODING OF COURT CASES: A THREE-DIMENSIONAL** 34 **APPROACH** 35

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39 The analysis and respective coding of court cases is, by no means, simple or trivial.  
40 Systematically reading and coding texts, in order to identify consistent features and drawing  
41 inferences about their use and meaning are both time-consuming and expensive research tasks.  
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43 The collection of court cases on a particular type of criminal offence is something that it is not  
44 within reach for most researchers, either because cases are not properly recorded and classified  
45 ~~in~~ online and thus broadly available databases or, to a more limited extent, because some case-  
46 law information is confidential and cannot be disclosed by law or by court rule.  
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59 <sup>4</sup> Online access to the dataset, codebook and final report is available at: <http://www.apis.ics.ulisboa.pt/en/>  
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3 The literature analysing the content of court cases and judicial opinions has grown considerably  
4 over the past forty years. US scholars have led the way. This approach has been used to study  
5 a broad range of issues in different legal subject areas (Hall & Wright, 2008: 70): (1) the  
6 creation of Lexis and Westlaw, the two largest databases on case law, statutes, codes, public  
7 records, law journals, legal treatises and other judicial documents; and (2) the development of  
8 computational tools and machine learning classifiers, which facilitated and automated the  
9 transcription, coding/labelling and interpretation of texts.  
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20 Our study is a contribution to this line of research. The project included an analysis of 838 court  
21 cases on corruption and related offences recorded in First Instance Courts for the period 2004-  
22 2008 in Portugal.  
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28 The two main objectives of this project were to advance knowledge about the way corruption  
29 and related offences are structured and operate in society and to draw inferences on the  
30 efficiency and efficacy of the judicial authorities in handling reported offences with the ultimate  
31 goal of improving and effecting control policies.  
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39 The data collected and coded enabled us to understand the reported crime of corruption and  
40 related offences at three levels of analysis:  
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### 54 3. METHODOLOGICAL ISSUES 55 56 57

58 Before discussing selectively some of the results obtained in this study, it is useful to review  
59 some methodological aspects related to the collection and processing of information.  
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### 3.1. Case selection

This dataset is the outcome of a pilot project commissioned by the Central Department of Criminal Investigation and Prosecution (CDCIP) of the Portuguese Attorney-General's Office. Although the period covered (2004-2008) was determined by the project's funding programme, it was nevertheless a very interesting time span to study corruption in Portugal, since it coincided with a set of changes in the legal provisions and instruments to fight corruption<sup>5</sup> and the launching of a series of criminal investigations on political corruption and large scale banking fraud under the coordination of the CDCIP. Given that the CDCIP has access to all relevant cases from First Instance Courts, we counted with all the official cases, not having to deal with sampling biases. All court cases on corruption and similar offences recorded in First Instance Courts, from 2004 until 2008, were included in this database.

Nevertheless, we had to define a set of criteria for delimiting our universe of analysis. We included all processes, regardless of their procedural stage at the time of analysis (i.e. investigation, prosecution, instruction/pre-trial, trial, appeal or closure).

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<sup>5</sup> Seventeen new projects of law on corruption were presented and debated in parliament during the 10<sup>th</sup> legislature (2005-2009), the highest number of draft bills registered so far. This period also coincided with the ratification of the [United Nations Convention against Corruption](#). Several draft bills had to do with the transposition of international treaty provisions and other [European Union legal norms in the domain of the fight against corruption](#).



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3 The universe of analysis covers information collected from court cases, available in the  
4 country's 255 judicial counties organized in four districts<sup>6</sup> – Lisbon, Oporto, Coimbra and  
5 Évora – annually for the years 2004 to 2008. A total of 838 court cases were considered (table  
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7 1), distributed among the three types of criminal offences under scrutiny: corruption (active and  
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9 passive), economic participation in business and embezzlement (illegal misappropriation or  
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11 misuse of entrusted assets). In 141 cases, there were facts that integrated simultaneously two or  
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13 three types of criminal offences.  
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For the period of analysis, the total number of complaints (979) showed the following distribution: 531 allegations of corruption, 43 of economic participation in business and 356 of embezzlement. With regard to the parties involved in the proceedings, a total of 941 defendants (natural and legal persons, active and passive) were enrolled. With regard to natural persons identified in the proceedings, it was decided to treat only those individuals formally constituted as defendants. In relation to legal persons, all parties were included, irrespective of whether or not they had been formally constituted as defendants, in order to overcome disparities resulting from the criminal liability regimes applicable to legal persons during the period under review. Since the penal responsibility of legal persons only came into force with the Law 59/2007, this would exclude from the universe of analysis all court cases in which companies had been involved prior to 2007.

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58 <sup>6</sup> With the Law 62/2013, of August 26 (Law of the Organization of the Judicial System), a new judicial map of Portugal was  
59 adopted. Under this new judicial reform, the former territorial organisation of courts was replaced by 23 new large judicial districts,  
60 which coincide, in most cases, with the existing administrative districts.

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3 Given that the study focused on the analysis of court cases on corruption and related criminal  
4 offences reported to First Instance Courts, it was necessary to clarify our object of analysis. In  
5 strict legal terms, an agent can only be considered to have committed a particular crime after a  
6 final and unappealable decision in a court of law. So, to avoid linguistic misunderstandings,  
7 when we use the term “corruption and related criminal offences” we are referring to  
8 occurrences/facts that gave rise to criminal proceedings. Public prosecutors come to knowledge  
9 of crime related facts by their own means, via reports from investigative and auditing authorities  
10 or as a result of public complaints (Article 241 of the Portuguese Criminal Procedure Code,  
11 henceforth CPC). This gives rise to the opening of an investigation by the Public Prosecutor  
12 (Article 262 CPC), which will then either dismiss the case or file an indictment. The case, if  
13 instructed at the pre-trial phase, will then be brought to a trial stage, which will then result in  
14 either conviction or acquittal of the natural or legal persons charged.  
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### 33 **3.2. The coding of cases**

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37 Three methodological steps were given consideration when coding the cases: the selection of  
38 indicators; the training of coders; and the actual coding of cases.  
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#### 45 ***i) Selecting indicators***

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49 A tentative set of coding categories was created *a priori* through an iterative discussion with  
50 senior prosecutors and colleagues working in the field. The draft list of indicators (see Table 1  
51 below) focused on concrete case-law elements and the respective set of coding instructions.  
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3 The multi-dimensional analytical framework adopted allowed to identify and classify, four  
4 types of information that could be obtained and coded from ~~reading and interpreting~~ the court  
5 case narratives:  
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11 1) *Information about the corrupt act* – The characterization of the criminal act was based on  
12 the following variables: the date of the reported occurrence; the place where the corrupt  
13 exchange took place; the number of corrupt agents involved in the exchange; their motivations  
14 and objectives; the resources/amounts used or promised as inducements; the illicit advantages  
15 promised or obtained; the mode of engagement ~~ete~~.  
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24 2) *Information about the corrupt agents* – The corrupt agents were grouped into four categories:  
25 active and passive legal person and active and passive natural person. The first categories refer  
26 to crimes allegedly committed by companies and public bodies; whereas the second to crimes  
27 allegedly committed by individuals (private agents or office holders). Whereas for the first  
28 group, we coded information regarding the nature and type of organization, its mission and  
29 sector of activity, for the second group we retained all the necessary information that enabled  
30 us to characterise the corrupt agents according to standard sociographic variables;  
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41 3) *Information about the complaint* – Corruption, as a criminal offence, is a hidden pact. The  
42 reporting of facts conducive to criminal investigations is quintessential to the detection of  
43 corruption. In order to characterize the context or circumstance that gives rise to such public  
44 denunciation of criminal acts, we tried to retain procedural information about the complaint  
45 itself (where and to whom the complaint was filled, reason for the complaint, how the complaint  
46 was made, etc.);  
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55 4) *Information on the dynamics of criminal proceedings* – Lastly, the framework for analysis  
56 comprised a set of indicators relating to procedural dynamics, which enabled us to assess: the  
57 status of the case, i.e., with dated for various stages of the criminal proceedings; the reasons  
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3 that led to case dismissal and acquittal in the First Instance courts; and the type of sanction  
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### 10 11 ***ii) Training coders*** 12

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15 Given the technical nature of the materials at hand, and in order to reinforce coding reliability,  
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17 we opted to combine coding experience with legal expertise (Hall & Wright, 2008: 110).  
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22 The team of coders included four researchers with different disciplinary backgrounds – one  
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24 principal researcher with legal training and three graduate students (two in sociology and one  
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26 in political science) with coding practice and advanced knowledge in statistical methods –  
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28 working under the direct supervision of the two project coordinators, a CDCIP's senior  
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30 prosecutor and a research fellow in political science.  
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34 Coders were given initial training to ensure a consistent categorisation of content. We also  
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36 carried out regular meetings and a few reliability checks by asking the two researchers to code  
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38 the same court cases, in order to assess whether they were interpreting and following the coding  
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40 protocol in a consistent manner (Lacy, Watson, Riffe, & Lovejoy, 2015: 13).  
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### 45 ***iii) Coding*** 46

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49 Cases were identified and coded by their court reference number. The cases were then classified  
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51 according to three most expressive types of criminal offences under scrutiny (active and passive  
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53 corruption, economic participation in business and embezzlement).  
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58 The court case narratives were read, interpreted and coded according to the following analytical  
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60 framework (table 2):

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5 [Table 2 about here]  
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10 Since most indicators concerned only factual information on the attributes of the corrupt  
11 exchange and on specific procedural aspects, not covering issues pertaining to legal doctrine or  
12 judicial method, tracking down this information and classifying it according to the codebook  
13 was a lengthy task with few difficulties.  
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#### 22 **4. THE ANALYSIS OF CASES CODED: MOST RELEVANT FINDINGS**

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26 There are two main types of data that may be extracted and analysed from these datasets: (1)  
27 general information (descriptive) of the volume and distribution of corruption and related  
28 criminal offences; and (2) systematized and codified information resulting from the  
29 interpretation of court case narratives.  
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37 The first dataset maps the distribution of court cases on corruption and similar offences over  
38 time, jurisdictionally (across judicial districts and counties), and by sector of activity of the  
39 passive and active corrupt agents.  
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45 The second dataset provides systematized and codified information that enables to (1)  
46 understand corruption as a criminal offence (its context, actors, resources, and mechanisms of  
47 exchange); and (2) highlight specific issues regarding the dynamics of criminal proceedings,  
48 such as the average duration of investigations, the type of reporting practices and the extent to  
49 what-which extent these are likely to impact on procedural efficiency and judicial outcomes.  
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57 Our main descriptive findings illustrate the relevance of this type of datasets for a knowledge-  
58 based and integrated corruption control policy approach.  
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#### 4.1. The volume and distribution of corruption and related crimes

~~Let us begin with the distribution of court cases.~~ Almost all cases of corruption and related criminal offences in Portugal concern illegal exchanges between the public and private spheres. This finding came as no surprise, since the OECD has systematically criticized Portuguese judicial authorities for not clarifying and using the corporate liability provisions to fight corruption under the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.<sup>7</sup>

Financial impropriety deriving from a conflict of interest (crime of “economic participation in business by a public official”) and facilitation payments (crime of “corruption for a lawful conduct”) are practically non-existent. In the first case, this may be related to the way this criminal offence is framed and in the second case, it is probably a consequence of the high degree of social tolerance in relation to this practice, as demonstrated by a survey study on corruption and ethics in public life conducted to a sample of the Portuguese population in 2006 (De Sousa & Triães, 2008).

We were also able to observe, ~~for the period in question,~~ an increase in criminal offences with lower complexity, such as embezzlement, which is often more easily detectable by forensic audits in detriment of more complex cases of corruption or financial impropriety. This observation seems to contradict *prima facie* the hypothesis of improved repressive capacity in dealing with this type of criminality.

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<sup>7</sup> OECD (2015) Portugal: Follow-Up to the Phase 3 report & Recommendations. November 2015. Available online: <http://www.oecd.org/daf/anti-bribery/Portugal-Phase-3-Written-Follow-Up-Report-ENG.pdf> (accessed on January 14, 2019).

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3 It was possible to observe a north-south divide regarding the jurisdictional distribution of cases  
4 by type of crime (figure 2).  
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9 [Figure 2 about here]  
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13 Notwithstanding the judicial map does not coincide with the political map of the country, it still  
14 is observable an uneven distribution of corruption cases across the 308 municipalities (*Figure*  
15 2). The lighter areas are those with higher incidence of corruption. A quick overview of the  
16 data distribution across the whole map suggests that the northwest municipalities are those most  
17 targeted by corruption. However, if we take a closer look at the data, it becomes clearer that the  
18 municipalities with higher incidence of corruption cases are coincidental with two largest cities:  
19 Lisbon, with 78 cases, and Oporto, with 72 cases. This is not surprising for two reasons: (1) the  
20 distribution of resources and expertise across the prosecutor's offices is uneven, with a greater  
21 specialization on complex crimes concentrated in the prosecutor offices of Lisbon, Porto and  
22 Coimbra; and (32) these two metropolitan areas concentrate the higher percentage of public  
23 officials, population and businesses.  
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39 The two judicial districts of the north and centre of Portugal, i.e., Oporto and Coimbra  
40 respectively, displayed the highest number of cases of corruption, while the two judicial  
41 districts of the South, Lisbon and Évora, registered the highest number of cases of  
42 embezzlement. We are not in a position to gauge whether or not this trend is verifiable over  
43 time, but it is an interesting pattern that must be interpreted in conjunction with other  
44 governance indicators, such as the quality of regulatory frameworks. Much of the corruption  
45 cases that took place in the metropolitan area of Oporto, involved municipalities and  
46 construction companies and had to do with rapid urban sprawl and land management policies.  
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56 The fact that embezzlement figures are higher in Lisbon could be related to the fact that most  
57 central administration services and public companies are located in this metropolitan area. But  
58 these are mere speculative conjectures.  
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#### 4.2. The anatomy of corruption and related crimes

The sociographic profile of the individual actors was not indicative of any pattern or prevalent feature that would allow the construction of a “facial composite” of the corrupt agent. According to our dataset, the passive corrupt agent has the profile of a common citizen and this is valid for all types of criminal offences analysed. Nevertheless, some patterns were identified that may be worth exploring in future studies: the majority of defendants were middle-aged male employees, with a permanent position and some decisional power. Corruption is an abuse of entrusted power, often of a decisional nature. Hence, it is not surprising that those public officials with discretionary and concentrated decisional capacity on the interpretation of norms and allocation of goods and services, in a context of poor supervision and organizational ethics (Klitgaard, 1988), may seek to take their chances and act illegally. Abrupt changes in the lifestyle of the defendant were one of the reasons for engaging in rent-seeking behaviour. Individuals more exposed to household financial impairments were also more likely to act corruptly.

Court data also allowed us to gauge the areas or sectors of activity more exposed to corruption risks. Generally speaking, these tend to be those areas or sectors characterized by high levels of informality and clientelism, high profitability ratios deriving from political decisions, unbalanced supply-demand of decisional goods and services, disorganized and fragmented regulation, low levels of transparency and insufficient or misguided supervision.

During the period under review, most occurrences were related to corruption cases involving small monetary exchanges (below EUR 1,500 for almost 40% of cases). There were, however, some cases of greater complexity, involving amounts above EUR 50,000. Most corrupt acts resulted from state-market interactions and were pursued by the legal representative of an



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3 organization with the intent to obtain or retain business or a competitive advantage. For the  
4 majority of case analysed (52.5%), the private agent was the initiator of the corrupt exchange,  
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6 which seems to confirm the indication by victimisation surveys that the problem of corruption  
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8 in Portugal does not result from predatory practices by public officials.  
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13 Most bribery exchanges are pursued in a reserved context that ensures anonymity to both parties  
14 to the transaction, but in more complex cases, some degree of socialisation between the actors  
15 was needed before sealing the pact. Meetings outside the workplace often took place discretely  
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17 in selective restaurants and bars or more openly in places of mass concentration of people, such  
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19 as shopping ~~moles~~ malls, due to the functional anonymity they offer to the parties involved.  
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### 28 **4.3. Evidence on judiciary performance**

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32 The data suggests a pattern of judiciary performance across a large number of cases without  
33 necessarily raising a discussion of the legal doctrine and judicial reasoning that presided the  
34 court's decision for each case in particular. Accordingly, most interventions were not initiated  
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36 as a result of a risk assessment or forensic audit, which means that repression is reactive,  
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38 casuistic, dependent on whistleblowing as a source of information and detached from  
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40 prevention.  
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47 Most corruption allegations were reported anonymously, without documentary support, thus  
48 partly explaining the high rates of case dismissal. Whistleblowing is largely dependent on the  
49 degree of tolerance towards corruption in a given society and/or organisational context as well  
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51 as the adequacy of reporting mechanisms. The way in which the judicial system collects, and  
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53 processes complaints offers very few guarantees of protection to whistle-blowers. The judicial  
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55 authorities encourage the complainants to file written and identifiable statements in order to  
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57 avoid being charged with slander. Fearing reprisals (~~De Sousa & Triães 2008~~), complainants  
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3 opt to send anonymous letters to the authorities with insufficient evidence ([De Sousa & Triães](#)  
4 [2008](#)).  
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10 Most cases were closed without further action (53.1%); ~~only~~ [Only](#) a handful led to conviction  
11 (6.9%) and fewer led to an effective prison sentence. Although other factors may concur to the  
12 explanation of the poor record of condemnation of corruption-related offences in Portugal, the  
13 inadequacy of reporting practices and procedures appears to be a relevant determinant. In fact,  
14 the court narratives confirm that in cases where the complaint is complemented by  
15 documentary, audio, video and photographic evidences collected by special investigative means  
16 (such as lawful interception of communications, computer forensics, access to bank accounts,  
17 letters rogatory to foreign jurisdictions), the subsequent production of proof in court is more  
18 effective.  
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30 The data also shows that cases reported from inside the organisation where the offence takes  
31 place are likelier to reach the trial phase, thus reinforcing the need for diversifying and  
32 strengthening reporting mechanisms and procedures and the guarantees to those who are willing  
33 to collaborate with the auditing and investigative authorities.  
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### 43 **5. CONCLUDING REMARKS**

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47 This research note introduces a novel dataset on corruption court cases in Portugal. The policy  
48 significance of this dataset is threefold: (1) it provides decision-makers a more detailed  
49 mapping of the volume and distribution of corruption and related offences across the country  
50 than that provided by standard judicial statistics; (2) it fosters knowledge on key sociological  
51 aspects of the corrupt fact, thus helping decision-makers to understand better the type of actors,  
52 objectives, contexts, resources and exchanges involved; (3) it helps to understand the dynamics  
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3 of judicial proceedings and how certain procedural and institutional features impact on  
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5 outcomes.  
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9 The dataset offers a unique characterisation of the legal offences from formal complains to their  
10 indictment in first instance courts; hence it looks at specific factual elements within legal texts  
11 that enable to discern patterns across cases.  
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18 There are limits as to how much can we infer about the efficiency and efficacy of the judicial  
19 system in addressing corruption and similar offences through an analysis of the court cases.  
20 This type of analysis does not enable to distil and interpret the legal principles and judicial  
21 method a case embodies. For such a fine-grained analysis we suggest a case study approach of  
22 selective court cases covering in more detail the judicial method and argumentative techniques  
23 used, the normative sources cited and the interpretations of the social relevance of the offence(s)  
24 expressed in the final decisions.  
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34 The academic and policy relevance of empirical studies on court case narratives, in particular  
35 judicial decisions, is known and has largely been discussed in the literature (Jordan, 1998): not  
36 only it produces descriptive information about what type of corruption related offences the  
37 judicial system is able to detect, prosecute and trial; it also provides useful insights of judicial  
38 performance and procedural dynamics that help to tentatively answer bigger policy questions  
39 and uncover issues for further research.  
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49 This type of analysis is of particular importance for judicial authorities or specialised anti-  
50 corruption agencies with investigative and/ inquiry coordination competences since it treats in  
51 a systematic manner relevant qualitative information about the crime of corruption and related  
52 offences that official statistics fail to capture, taking as its starting point the criminal  
53 proceedings, relegating to the background fruitless discussions about the “actual” volume of  
54 corruption. Firstly, the data enables judicial authorities to enhance their investigative,  
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3 coordination and prevention capacity by offering case-by-case statistical information on  
4 corruption and related offences. Secondly, it is also useful for reporting purposes, both  
5 internally and externally, in response to specific requests for criminal information from  
6 international bodies and foreign judicial cooperation arrangements. Thirdly, it fosters the  
7 production of policy-oriented scientific knowledge for repression and prevention purposes. Last  
8 but not least, it helps to raise standards of transparency and accountability of the judiciary and  
9 contribute, when complemented with a proactive communication and educational strategy, to  
10 enhance the public's understanding and trust in the judicial system.

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22 The dataset has been used by recent studies on corruption. Stockemer & Calca (2013) used  
23 some of the variables of this dataset to study the relationship between turnout and corruption at  
24 the municipal level. Lima (2011), using a subsample of 345 criminal proceedings and 352  
25 defendants presented to the courts between 2004 and 2008, explored the anatomy of corruption  
26 in local government.

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35 We believe that this type of data collection, treatment and analysis should be encouraged across  
36 European Union Member States, where there has been an unprecedented effort of  
37 harmonization of penal norms and convergence of judicial performance, and other territorial  
38 areas. Such data would enable policymakers to have a better understanding of the nature of  
39 corruption as a crime as well as the efficiency of the judicial system in detecting, prosecuting,  
40 judging and eventually condemning its occurrence, thus contributing to restoring citizens'  
41 confidence in the rule of law as well as strengthening the Member States' governance reputation  
42 and the fair operation of the internal market.

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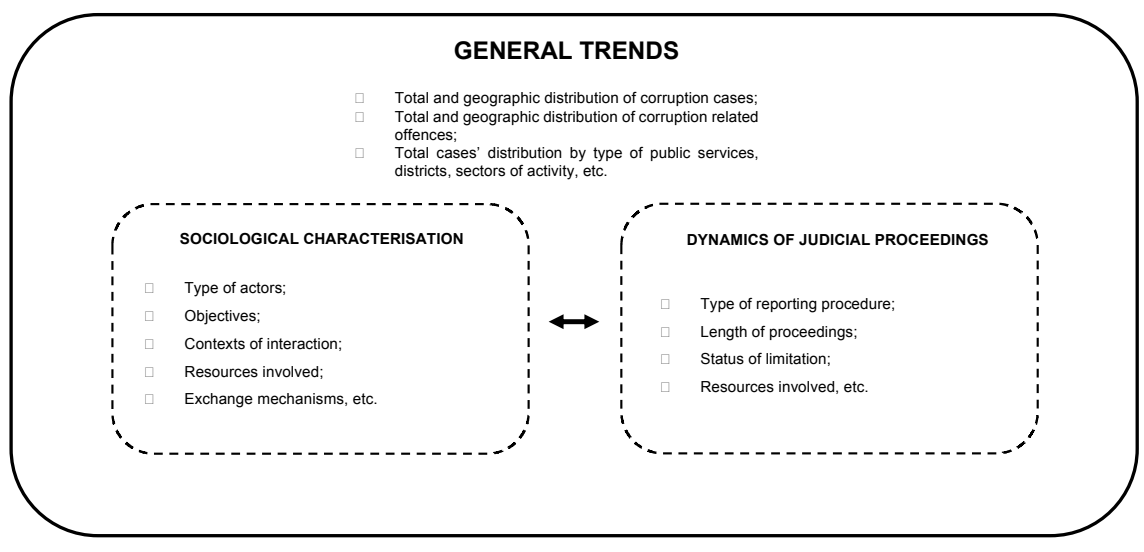
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**FIGURE 1 Structure of the Dataset**



e Research Journal



TABLE 1 Distribution of court cases by type of criminal offence (2004-2008)

Corruption	Economic advantage in public office	Embezzlement	Two or more crimes	n.a.	Total
387 46.3%	54 6.4%	276 32.9%	115 13.7%	6 0.7%	<b>838</b> <b>100,0</b> <b>%</b>

Qualitative Research Journal

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**FIGURE 2 Map of Corruption Cases by Municipality**



Qualitative Research Journal

**TABLE 2 List of indicators**

CATEGORIES	INDICATORS	CATEGORIES	INDICATORS
<b>About the corrupt act</b>	Date of occurrence Place of occurrence Characterization of the corrupt act (licit or illicit) Objectives of the corrupt act Corrupt payment/reward involved Moment in which the payment is made Initiator of corrupt exchange Context of corrupt exchange Mode of corrupt exchange	<b>About the complaint</b>	Complainant Nature of complaint Date of complaint Mode of complaint Motive of complaint Where was the complaint made To whom the complaint was made Complaint status
<b>About the corrupt agent (active and passive)</b>	<i>Legal person:</i> Type of organization Sector of activity Organizational size Legal representative of the organization <i>Natural person:</i> Gender Education Civil status Household size Age (at the date of occurrence) Birthplace Nationality Place of residence Nominal monthly wage Years of employment Employment situation Professional Category Employer (entity) Type of contractual employment relationship Previous criminal record (type of offence)	<b>About the dynamics of criminal proceedings</b>	Process Status Date of prosecution Date of indictment Date of closing the case without further action Where was the case closed without further action Reason for closing the case without further action First Instance Court Date of trial Type of decision (conviction, acquittal, annulment) Type of sanction Appeal to the Court of Appeal (yes/no) Date of decision Type of decision (conviction, acquittal, annulment) Type of sanction Appeal to the Supreme Court of Justice (yes/no) Date of decision Type of decision (conviction, acquittal, annulment) Type of sanction Appeal to the Constitutional Court (yes/no) Date of decision Type of decision (conviction, acquittal, annulment) Type of sanction

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## Understanding corruption through the analysis of court case content: research note

### ABSTRACT

*Crime records have been discarded as a reliable measurement tool of corruption due to the fact that certain offences may go unreported and unrecorded. We move away from the intractable debate of the “dark figures” to concentrate our attention on the usefulness of court records to the study of corruption. We have analysed 838 court cases on corruption and related offences recorded in Portuguese First Instance Courts for the period 2004-2008. The available evidence is rich in quantitative and qualitative information both on the anatomy of corruption as a criminal offence and the judicial system’s capacity to investigate, prosecute and trial reported occurrences. This dataset provides an original set of variables that not only characterises the volume and distribution of corruption and related offences across the country but also gives insight on the corrupt exchanges and their processual features.*

### KEYWORDS

corruption; court cases; dataset; Portugal

## 1. INTRODUCTION: ON THE LIMITATIONS OF CRIME STATISTICS TO MEASURE THE EXTENSION OF CORRUPTION

Corruption is an intractable multidimensional policy problem with financial and reputational implications for both public and private institutions that requires a knowledge-based control approach. In order to address it with specific policy actions and instruments, it is important to know what we are fighting and how much of it there is by using different approaches and sources of information (Hansen & Stachowicz-Stanusch, 2013).

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5 The difficulties to address these problems were the main reason for coming up with a new  
6 dataset on corruption cases. The dataset we present in this research note is a novelty not only  
7 because of the extensive coding work that it entailed, but also, because it gives access to micro-  
8 information and characterisation of court cases of corruption for several years (2004-2008).  
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16 Datasets on corruption are not easy to find. Indicators to define and measure corruption are  
17 often classified in two groups (Lambsdorff, 2006; Langseth, 2006; Galtung, 2006): subjective  
18 and objective. Subjective data has been primarily collected through survey techniques  
19 nationally<sup>1</sup> and cross-nationally.<sup>2</sup> The two most cited cross-national measurements of  
20 corruption, Transparency International's Corruption Perception Index (CPI)<sup>3</sup> and the Control  
21 of Corruption indicator of the World Governance Indicators (WGI) (Kaufmann, Kraay, &  
22 Mastruzzi, 2009), use perception-based data. Objective indicators of corruption are primarily  
23 collected from official records on crime rates, such as the number of investigations,  
24 prosecutions, trials and convictions per type of criminal offence.  
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37 The dataset here presented uses the second type of information. However, we are aware that  
38 reliable statistical data is hard to get and when it exists it is not easily comparable across  
39 countries for a number of reasons. First, the credibility of official statistics varies across  
40 countries and over time for various reasons, ranging from data reporting/collection  
41 insufficiencies, methodological issues, and budget sustainability to ensure the existence of time  
42 series. The way crime statistics are organised, the type and quality of information collected and  
43 coded, the period covered and how the data is presented and made available to the public can  
44 be an obstacle to research. Second, crime statistics are likely to be a reflection, not only of a  
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56 <sup>1</sup> See, for example, Mancuso, Atkinson, Blais, Greene, & Nevitte, 1998; Miller, Grodeland, & Koshechkina, 2001; Redlawks &  
57 McGann, 2005; De Sousa & Triães, 2008; Mazzoleni & Lascombes, 2010.

58 <sup>2</sup> See, for example, Transparency International's *Global Corruption Barometer*, the European Commission's *Special and Flash Eurobarometers on Corruption*.

59 <sup>3</sup> Transparency International. 2012. "Corruption Perceptions Index 2012: An updated methodology."  
60 [http://cpi.transparency.org/cpi2012/in\\_detail/](http://cpi.transparency.org/cpi2012/in_detail/).

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3 country's corruption levels, but also of two intertwined aspects of control (Cazzola, 1988: 22):  
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5 (1) the dominant reporting culture, which is a result of both the existence or absence of adequate  
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7 whistleblowing procedures and mechanisms as well as the degree of permissiveness towards  
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9 corruption; and (2) the existing institutional capacity and willingness to repress corruption, i.e.  
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11 an efficient auditing and judicial system, to detect, investigate, prosecute, trial and eventually  
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13 condemn corrupt conducts. For instance, "[a]n increase in the number of corruption cases  
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15 brought to trial could indicate a higher incidence of corruption, an increased level of confidence  
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17 in the court, or both." (June, Chowdhury, Heller, & Werve, 2008: 14)  
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23 Either because certain practices may have become a norm or because the judicial authorities  
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25 demonstrate limited capacity or selective enforcement bias (Cazzola, 1988: 23) in dealing with  
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27 complex crime, certain offences may go unreported and unrecorded in official statistics. These  
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29 are the so-called "dark figures" of corruption (Piquero & Albanese, 2011: 194), a suspected  
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31 volume of corruption that falls under the radar of judicial authorities, making official figures  
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33 look discrepant with observable social practices and organizational risks. Detection let alone  
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35 prosecution or conviction of corruption can be extraordinarily difficult given the complex and  
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37 obscure nature of these illicit exchanges (De Sousa, 2002).  
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42 Therefore, crime statistics may tell more about the efficiency and efficacy of the judicial sphere  
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44 in defining, uncovering and prosecuting acts of corruption than the volume of manifestations  
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46 in a particular political or administrative system (Mény, 1992: 219). A country that displays  
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48 high figures on corruption may not necessarily be indicative of being "more corrupt", but more  
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50 efficient in curbing its occurrence in society.  
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54 Third, there is also a time gap between the occurrences of corrupt conducts and their  
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56 prosecution and/or conviction. This will be inevitable reflected in the way crime statistics are  
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58 coded and presented. The prosecution of corruption is not an easy or expeditious process and  
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60 tends to become more complex when the offender is a political figure. Judicial proceedings can

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3 last for many years until a final decision is reached, given the difficulty of gathering and  
4 interpreting evidence and the possibility of appeals suspending execution deadlines at different  
5 stages of the judicial proceedings thus delaying court's final decision. This means that crime  
6 statistics will always display a hiatus between input and output objective indicators and  
7 therefore can only offer a very fragmented picture of the extension of corruption (as a criminal  
8 offence) in a given country.  
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18 Fourth, there is also a problem regarding the taxonomy of corruption as a criminal offence  
19 (Cazzola, 1988; De Sousa, 2002; Piquero & Albanese, 2011). Penal frameworks/laws vary  
20 across countries thus making it difficult to compare the volume of occurrences across different  
21 jurisdictions. When confronting statistical figures without paying due attention to the existing  
22 conceptual specificities of the offences, comparison (even if by juxtaposition) runs the risk of  
23 becoming spurious. The degree in which judicial action is framed will affect the extent in which  
24 crime statistics are more or less representative of those grey areas falling in the borderline of  
25 legality.  
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37 For all these reasons, attempts at developing cross-national measurements on corruption using  
38 official crime statistics have been systematically discredited (June et al., 2008: 14) or simply  
39 abandoned in favour of subjective approaches, which also have their limitations (Piquero &  
40 Albanese, 2011: 197). Nowadays, very few studies incorporate 'objective measurement  
41 methodologies of corrupt activities' (Brooks, Walsh, Lewis, & Kim, 2013: 28), despite recent  
42 noteworthy efforts (Escresa & Picci, 2017). Escresa and Picci (2017) have used judicial  
43 statistics on cross-border corruption, i.e. bribery between firms headquartered in a particular  
44 country and foreign public officials, to construct and compute a valid cross-national corruption  
45 index: the Public Administration Corruption Index (PACI).  
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58 Our approach regarding the usefulness of objective indicators provided by court records is  
59 slightly different. We are not interested in measuring corruption *per se* but interpreting 'the way  
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3 corruption as a criminal offence has been treated through repressive instruments [...] over a  
4 period of time' by using court case narratives (De Sousa, 2002: 267). Court records are not just  
5 abstract statistics. These figures relate to concrete cases and judicial decisions that give detailed  
6 and objective indication as to who, what, when, where, why, and how the rules were broken  
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12 (Chapman & Lindner 2016).

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16 In this research note we attempt to explore the relevance of judicial materials. We focus on  
17 court cases to understand the sociology of corruption as a criminal offence, or to learn from the  
18 judicial system's capacity to investigate, prosecute and trial reported occurrences. The data is  
19 available for open consultation at the Portuguese Archive of Social Information (APIS).<sup>4</sup>  
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## 28 29 **2. THE ANALYSIS AND CODING OF COURT CASES: A THREE-DIMENSIONAL** 30 **APPROACH** 31

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34 The analysis and respective coding of court cases is, by no means, simple or trivial.  
35 Systematically reading and coding texts, in order to identify consistent features and drawing  
36 inferences about their use and meaning are both time-consuming and expensive research tasks.  
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38 The collection of court cases on a particular type of criminal offence is something that it is not  
39 within reach for most researchers, either because cases are not properly recorded and classified  
40 online and thus broadly available databases or, to a more limited extent, because some case-  
41 law information is confidential and cannot be disclosed by law or by court rule.  
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51 The literature analysing the content of court cases and judicial opinions has grown considerably  
52 over the past forty years. US scholars have led the way. This approach has been used to study  
53 a broad range of issues in different legal subject areas (Hall & Wright, 2008: 70): (1) the  
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59 <sup>4</sup> Online access to the dataset, codebook and final report is available at: <http://www.apis.ics.ulisboa.pt/en/>  
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3 creation of Lexis and Westlaw, the two largest databases on case law, statutes, codes, public  
4 records, law journals, legal treatises and other judicial documents; and (2) the development of  
5 computational tools and machine learning classifiers, which facilitated and automated the  
6 transcription, coding/labelling and interpretation of texts.  
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13 Our study is a contribution to this line of research. The project included an analysis of 838 court  
14 cases on corruption and related offences recorded in First Instance Courts for the period 2004-  
15 2008 in Portugal.  
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22 The two main objectives of this project were to advance knowledge about the way corruption  
23 and related offences are structured and operate in society and to draw inferences on the  
24 efficiency and efficacy of the judicial authorities in handling reported offences with the ultimate  
25 goal of improving and effecting control policies.  
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32 The data collected and coded enabled us to understand the reported crime of corruption and  
33 related offences at three levels of analysis:  
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### 48 **3. METHODOLOGICAL ISSUES**

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51 Before discussing selectively some of the results obtained in this study, it is useful to review  
52 some methodological aspects related to the collection and processing of information.  
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#### 60 **3.1. Case selection**

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6 This dataset is the outcome of a pilot project commissioned by the Central Department of  
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8 Criminal Investigation and Prosecution (CDCIP) of the Portuguese Attorney-General's Office.  
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10 Although the period covered (2004-2008) was determined by the project's funding programme,  
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12 it was nevertheless a very interesting time span to study corruption in Portugal, since it  
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14 coincided with a set of changes in the legal provisions and instruments to fight corruption<sup>5</sup> and  
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16 the launching of a series of criminal investigations on political corruption and large scale  
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18 banking fraud under the coordination of the CDCIP. Given that the CDCIP has access to all  
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20 relevant cases from First Instance Courts, we counted with all the official cases, not having to  
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22 deal with sampling biases. All court cases on corruption and similar offences recorded in First  
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24 Instance Courts, from 2004 until 2008, were included in this database.  
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30 Nevertheless, we had to define a set of criteria for delimiting our universe of analysis. We  
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32 included all processes, regardless of their procedural stage at the time of analysis (i.e.  
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34 investigation, prosecution, instruction/pre-trial, trial, appeal or closure).  
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38 The universe of analysis covers information collected from court cases, available in the  
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40 country's 255 judicial counties organized in four districts<sup>6</sup> – Lisbon, Oporto, Coimbra and  
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42 Évora – annually for the years 2004 to 2008. A total of 838 court cases were considered (table  
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44 1), distributed among the three types of criminal offences under scrutiny: corruption (active and  
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46 passive), economic participation in business and embezzlement (illegal misappropriation or  
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48 misuse of entrusted assets). In 141 cases, there were facts that integrated simultaneously two or  
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50 three types of criminal offences.  
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55 <sup>5</sup> Seventeen new projects of law on corruption were presented and debated in parliament during the 10<sup>th</sup> legislature (2005-2009),  
56 the highest number of draft bills registered so far. This period also coincided with the ratification of the United Nations Convention  
57 against Corruption. Several draft bills had to do with the transposition of international treaty provisions and other European Union  
58 legal norms in the domain of the fight against corruption.

59 <sup>6</sup> With the Law 62/2013, of August 26 (Law of the Organization of the Judicial System), a new judicial map of Portugal was  
60 adopted. Under this new judicial reform, the former territorial organisation of courts was replaced by 23 new large judicial districts,  
which coincide, in most cases, with the existing administrative districts.

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7 [Table 1 about here]  
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14 For the period of analysis, the total number of complaints (979) showed the following  
15 distribution: 531 allegations of corruption, 43 of economic participation in business and 356 of  
16 embezzlement. With regard to the parties involved in the proceedings, a total of 941 defendants  
17 (natural and legal persons, active and passive) were enrolled. With regard to natural persons  
18 identified in the proceedings, it was decided to treat only those individuals formally constituted  
19 as defendants. In relation to legal persons, all parties were included, irrespective of whether or  
20 not they had been formally constituted as defendants, in order to overcome disparities resulting  
21 from the criminal liability regimes applicable to legal persons during the period under review.  
22 Since the penal responsibility of legal persons only came into force with the Law 59/2007, this  
23 would exclude from the universe of analysis all court cases in which companies had been  
24 involved prior to 2007.  
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39 Given that the study focused on the analysis of court cases on corruption and related criminal  
40 offences reported to First Instance Courts, it was necessary to clarify our object of analysis. In  
41 strict legal terms, an agent can only be considered to have committed a particular crime after a  
42 final and unappealable decision in a court of law. So, to avoid linguistic misunderstandings,  
43 when we use the term “corruption and related criminal offences” we are referring to  
44 occurrences/facts that gave rise to criminal proceedings. Public prosecutors come to knowledge  
45 of crime related facts by their own means, via reports from investigative and auditing authorities  
46 or as a result of public complaints (Article 241 of the Portuguese Criminal Procedure Code,  
47 henceforth CPC). This gives rise to the opening of an investigation by the Public Prosecutor  
48 (Article 262 CPC), which will then either dismiss the case or file an indictment. The case, if  
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3 instructed at the pre-trial phase, will then be brought to a trial stage, which will then result in  
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5 either conviction or acquittal of the natural or legal persons charged.  
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### 10 11 **3.2. The coding of cases** 12

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15 Three methodological steps were given consideration when coding the cases: the selection of  
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17 indicators; the training of coders; and the actual coding of cases.  
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#### 23 24 ***i) Selecting indicators*** 25

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28 A tentative set of coding categories was created *a priori* through an iterative discussion with  
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30 senior prosecutors and colleagues working in the field. The draft list of indicators (see Table 1  
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32 below) focused on concrete case-law elements and the respective set of coding instructions.  
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37 The multi-dimensional analytical framework adopted allowed to identify and classify; four  
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39 types of information that could be obtained and coded from the court case narratives:  
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43 1) *Information about the corrupt act* – The characterization of the criminal act was based on  
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45 the following variables: the date of the reported occurrence; the place where the corrupt  
46  
47 exchange took place; the number of corrupt agents involved in the exchange; their motivations  
48  
49 and objectives; the resources/amounts used or promised as inducements; the illicit advantages  
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51 promised or obtained; the mode of engagement.  
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55 2) *Information about the corrupt agents* – The corrupt agents were grouped into four categories:  
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57 active and passive legal person and active and passive natural person. The first categories refer  
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59 to crimes allegedly committed by companies and public bodies; whereas the second to crimes  
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3 allegedly committed by individuals (private agents or office holders). Whereas for the first  
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5 group, we coded information regarding the nature and type of organization, its mission and  
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7 sector of activity, for the second group we retained all the necessary information that enabled  
8  
9 us to characterise the corrupt agents according to standard sociographic variables.  
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14 3) *Information about the complaint* – Corruption, as a criminal offence, is a hidden pact. The  
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16 reporting of facts conducive to criminal investigations is quintessential to the detection of  
17  
18 corruption. In order to characterize the context or circumstance that gives rise to such public  
19  
20 denunciation of criminal acts, we tried to retain procedural information about the complaint  
21  
22 itself (where and to whom the complaint was filed, reason for the complaint, how the complaint  
23  
24 was made, etc.).  
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28 4) *Information on the dynamics of criminal proceedings* – Lastly, the framework for analysis  
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30 comprised a set of indicators relating to procedural dynamics, which enabled us to assess: the  
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32 status of the case, i.e., with dated for various stages of the criminal proceedings; the reasons  
33  
34 that led to case dismissal and acquittal in the First Instance courts; and the type of sanction  
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36 applied.  
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#### 39 40 41 42 43 ***ii) Training coders*** 44 45

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47 Given the technical nature of the materials at hand, and in order to reinforce coding reliability,  
48  
49 we opted to combine coding experience with legal expertise (Hall & Wright, 2008: 110).  
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53 The team of coders included four researchers with different disciplinary backgrounds – one  
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55 principal researcher with legal training and three graduate students (two in sociology and one  
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57 in political science) with coding practice and advanced knowledge in statistical methods –  
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3 working under the direct supervision of the two project coordinators, a CDCIP's senior  
4 prosecutor and a research fellow in political science.  
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9 Coders were given initial training to ensure a consistent categorisation of content. We also  
10 carried out regular meetings and a few reliability checks by asking the two researchers to code  
11 the same court cases, in order to assess whether they were interpreting and following the coding  
12 protocol in a consistent manner (Lacy, Watson, Riffe, & Lovejoy, 2015: 13).  
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### 19 *iii) Coding*

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24 Cases were identified and coded by their court reference number. The cases were then classified  
25 according to three most expressive types of criminal offences under scrutiny (active and passive  
26 corruption, economic participation in business and embezzlement).  
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32 The court case narratives were read, interpreted and coded according to the following analytical  
33 framework (table 2):  
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39 [Table 2 about here]  
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43 Since most indicators concerned only factual information on the attributes of the corrupt  
44 exchange and on specific procedural aspects, not covering issues pertaining to legal doctrine or  
45 judicial method, tracking down this information and classifying it according to the codebook  
46 was a lengthy task with few difficulties.  
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## 56 **4. THE ANALYSIS OF CASES CODED: MOST RELEVANT FINDINGS**

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3 There are two main types of data that may be extracted and analysed from these datasets: (1)  
4 general information (descriptive) of the volume and distribution of corruption and related  
5 criminal offences; and (2) systematized and codified information resulting from the  
6 interpretation of court case narratives.  
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13 The first dataset maps the distribution of court cases on corruption and similar offences over  
14 time, jurisdictionally (across judicial districts and counties), and by sector of activity of the  
15 passive and active corrupt agents.  
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21 The second dataset provides systematized and codified information that enables to (1)  
22 understand corruption as a criminal offence (its context, actors, resources, and mechanisms of  
23 exchange); and (2) highlight specific issues regarding the dynamics of criminal proceedings,  
24 such as the average duration of investigations, the type of reporting practices and the extent to  
25 which these are likely to impact on procedural efficiency and judicial outcomes.  
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33 Our main descriptive findings illustrate the relevance of this type of datasets for a knowledge-  
34 based and integrated corruption control policy approach.  
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#### 43 **4.1. The volume and distribution of corruption and related crimes**

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47 Almost all cases of corruption and related criminal offences in Portugal concern illegal  
48 exchanges between the public and private spheres. This finding came as no surprise, since the  
49 OECD has systematically criticized Portuguese judicial authorities for not clarifying and using  
50 the corporate liability provisions to fight corruption under the 1997 OECD Convention on  
51 Combating Bribery of Foreign Public Officials in International Business Transactions.<sup>7</sup>  
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59 <sup>7</sup> OECD (2015) Portugal: Follow-Up to the Phase 3 report & Recommendations. November 2015. Available online:  
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5 Financial impropriety deriving from a conflict of interest (crime of “economic participation in  
6 business by a public official”) and facilitation payments (crime of “corruption for a lawful  
7 conduct”) are practically non-existent. In the first case, this may be related to the way this  
8 criminal offence is framed and in the second case, it is probably a consequence of the high  
9 degree of social tolerance in relation to this practice, as demonstrated by a survey study on  
10 corruption and ethics in public life conducted to a sample of the Portuguese population in 2006  
11 (De Sousa & Triães, 2008).  
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22 We were also able to observe an increase in criminal offences with lower complexity such as  
23 embezzlement, which is often more easily detectable by forensic audits in detriment of more  
24 complex cases of corruption or financial impropriety. This observation seems to contradict  
25 *prima facie* the hypothesis of improved repressive capacity in dealing with this type of  
26 criminality.  
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35 It was possible to observe a north-south divide regarding the jurisdictional distribution of cases  
36 by type of crime (figure 2).  
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41 [Figure 2 about here]  
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45 Notwithstanding the judicial map does not coincide with the political map of the country, it still  
46 is observable an uneven distribution of corruption cases across the 308 municipalities (*Figure*  
47 2). The lighter areas are those with higher incidence of corruption. A quick overview of the  
48 data distribution across the whole map suggests that the northwest municipalities are those most  
49 targeted by corruption. However, if we take a closer look at the data, it becomes clearer that the  
50 municipalities with higher incidence of corruption cases are coincidental with two largest cities:  
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59 <http://www.oecd.org/daf/anti-bribery/Portugal-Phase-3-Written-Follow-Up-Report-ENG.pdf> (accessed on January 14, 2019).  
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Lisbon, with 78 cases, and Oporto, with 72 cases. This is not surprising for two reasons: (1) the distribution of resources and expertise across the prosecutor's offices is uneven, with a greater specialization on complex crimes concentrated in the prosecutor offices of Lisbon, Porto and Coimbra; and (2) these two metropolitan areas concentrate the higher percentage of public officials, population and businesses.

The two judicial districts of the north and centre of Portugal, i.e., Oporto and Coimbra respectively, displayed the highest number of cases of corruption, while the two judicial districts of the South, Lisbon and Évora, registered the highest number of cases of embezzlement. We are not in a position to gauge whether or not this trend is verifiable over time, but it is an interesting pattern that must be interpreted in conjunction with other governance indicators, such as the quality of regulatory frameworks. Much of the corruption cases that took place in the metropolitan area of Oporto, involved municipalities and construction companies and had to do with rapid urban sprawl and land management policies. The fact that embezzlement figures are higher in Lisbon could be related to the fact that most central administration services and public companies are located in this metropolitan area. But these are mere speculative conjectures.

#### 4.2. The anatomy of corruption and related crimes

The sociographic profile of the individual actors was not indicative of any pattern or prevalent feature that would allow the construction of a "facial composite" of the corrupt agent. According to our dataset, the passive corrupt agent has the profile of a common citizen and this is valid for all types of criminal offences analysed. Nevertheless, some patterns were identified that may be worth exploring in future studies: the majority of defendants were middle-aged male employees, with a permanent position and some decisional power. Corruption is an abuse of entrusted power, often of a decisional nature. Hence, it is not surprising that those public

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3 officials with discretionary and concentrated decisional capacity on the interpretation of norms  
4 and allocation of goods and services, in a context of poor supervision and organizational ethics  
5 (Klitgaard, 1988), may seek to take their chances and act illegally. Abrupt changes in the  
6 lifestyle of the defendant were one of the reasons for engaging in rent-seeking behaviour.  
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8 Individuals more exposed to household financial impairments were also more likely to act  
9 corruptly.  
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18 Court data also allowed us to gauge the areas or sectors of activity more exposed to corruption  
19 risks. Generally speaking, these tend to be those areas or sectors characterized by high levels  
20 of informality and clientelism, high profitability ratios deriving from political decisions,  
21 unbalanced supply-demand of decisional goods and services, disorganized and fragmented  
22 regulation, low levels of transparency and insufficient or misguided supervision.  
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30 During the period under review, most occurrences were related to corruption cases involving  
31 small monetary exchanges (below EUR 1,500 for almost 40% of cases). There were, however,  
32 some cases of greater complexity, involving amounts above EUR 50,000. Most corrupt acts  
33 resulted from state-market interactions and were pursued by the legal representative of an  
34 organization with the intent to obtain or retain business or a competitive advantage. For the  
35 majority of case analysed (52.5%), the private agent was the initiator of the corrupt exchange,  
36 which seems to confirm the indication by victimisation surveys that the problem of corruption  
37 in Portugal does not result from predatory practices by public officials.  
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49 Most bribery exchanges are pursued in a reserved context that ensures anonymity to both parties  
50 to the transaction, but in more complex cases, some degree of socialisation between the actors  
51 was needed before sealing the pact. Meetings outside the workplace often took place discretely  
52 in selective restaurants and bars or more openly in places of mass concentration of people, such  
53 as shopping malls, due to the functional anonymity they offer to the parties involved.  
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### 4.3. Evidence on judiciary performance

The data suggests a pattern of judiciary performance across a large number of cases without necessarily raising a discussion of the legal doctrine and judicial reasoning that presided the court's decision for each case in particular. Accordingly, most interventions were not initiated as a result of a risk assessment or forensic audit, which means that repression is reactive, casuistic, dependent on whistleblowing as a source of information and detached from prevention.

Most corruption allegations were reported anonymously, without documentary support, thus partly explaining the high rates of case dismissal. Whistleblowing is largely dependent on the degree of tolerance towards corruption in a given society and/or organisational context as well as the adequacy of reporting mechanisms. The way in which the judicial system collects, and processes complaints offers very few guarantees of protection to whistle-blowers. The judicial authorities encourage the complainants to file written and identifiable statements in order to avoid being charged with slander. Fearing reprisals, complainants opt to send anonymous letters to the authorities with insufficient evidence (De Sousa & Triães 2008).

Most cases were closed without further action (53.1%). Only a handful led to conviction (6.9%) and fewer led to an effective prison sentence. Although other factors may concur to the explanation of the poor record of condemnation of corruption-related offences in Portugal, the inadequacy of reporting practices and procedures appears to be a relevant determinant. In fact, the court narratives confirm that in cases where the complaint is complemented by documentary, audio, video and photographic evidences collected by special investigative means (such as lawful interception of communications, computer forensics, access to bank accounts, letters rogatory to foreign jurisdictions), the subsequent production of proof in court is more effective.

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5 The data also shows that cases reported from inside the organisation where the offence takes  
6 place are likelier to reach the trial phase, thus reinforcing the need for diversifying and  
7 strengthening reporting mechanisms and procedures and the guarantees to those who are willing  
8 to collaborate with the auditing and investigative authorities.  
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## 13 14 15 16 17 18 **5. CONCLUDING REMARKS** 19

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22 This research note introduces a novel dataset on corruption court cases in Portugal. The policy  
23 significance of this dataset is threefold: (1) it provides decision-makers a more detailed  
24 mapping of the volume and distribution of corruption and related offences across the country  
25 than that provided by standard judicial statistics; (2) it fosters knowledge on key sociological  
26 aspects of the corrupt fact, thus helping decision-makers to understand better the type of actors,  
27 objectives, contexts, resources and exchanges involved; (3) it helps to understand the dynamics  
28 of judicial proceedings and how certain procedural and institutional features impact on  
29 outcomes.  
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41 The dataset offers a unique characterisation of the legal offences from formal complains to their  
42 indictment in first instance courts; hence it looks at specific factual elements within legal texts  
43 that enable to discern patterns across cases.  
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49 There are limits as to how much can we infer about the efficiency and efficacy of the judicial  
50 system in addressing corruption and similar offences through an analysis of the court cases.  
51 This type of analysis does not enable to distil and interpret the legal principles and judicial  
52 method a case embodies. For such a fine-grained analysis we suggest a case study approach of  
53 selective court cases covering in more detail the judicial method and argumentative techniques  
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3 used, the normative sources cited and the interpretations of the social relevance of the offence(s)  
4 expressed in the final decisions.  
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9 The academic and policy relevance of empirical studies on court case narratives, in particular  
10 judicial decisions, is known and has largely been discussed in the literature (Jordan, 1998): not  
11 only it produces descriptive information about what type of corruption related offences the  
12 judicial system is able to detect, prosecute and trial; it also provides useful insights of judicial  
13 performance and procedural dynamics that help to tentatively answer bigger policy questions  
14 and uncover issues for further research.  
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24 This type of analysis is of particular importance for judicial authorities or specialised anti-  
25 corruption agencies with investigative and/ inquiry coordination competences since it treats in  
26 a systematic manner relevant qualitative information about the crime of corruption and related  
27 offences that official statistics fail to capture, taking as its starting point the criminal  
28 proceedings, relegating to the background fruitless discussions about the “actual” volume of  
29 corruption. Firstly, the data enables judicial authorities to enhance their investigative,  
30 coordination and prevention capacity by offering case-by-case statistical information on  
31 corruption and related offences. Secondly, it is also useful for reporting purposes, both  
32 internally and externally, in response to specific requests for criminal information from  
33 international bodies and foreign judicial cooperation arrangements. Thirdly, it fosters the  
34 production of policy-oriented scientific knowledge for repression and prevention purposes. Last  
35 but not least, it helps to raise standards of transparency and accountability of the judiciary and  
36 contribute, when complemented with a proactive communication and educational strategy, to  
37 enhance the public’s understanding and trust in the judicial system.  
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56 The dataset has been used by recent studies on corruption. Stockemer & Calca (2013) used  
57 some of the variables of this dataset to study the relationship between turnout and corruption at  
58 the municipal level. Lima (2011), using a subsample of 345 criminal proceedings and 352  
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3 defendants presented to the courts between 2004 and 2008, explored the anatomy of corruption  
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5 in local government.  
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9 We believe that this type of data collection, treatment and analysis should be encouraged across  
10  
11 European Union Member States, where there has been an unprecedented effort of  
12  
13 harmonization of penal norms and convergence of judicial performance, and other territorial  
14  
15 areas. Such data would enable policymakers to have a better understanding of the nature of  
16  
17 corruption as a crime as well as the efficiency of the judicial system in detecting, prosecuting,  
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19 judging and eventually condemning its occurrence, thus contributing to restoring citizens'  
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21 confidence in the rule of law as well as strengthening the Member States' governance reputation  
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23 and the fair operation of the internal market.  
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