

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
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FEDERATIVE REPUBLIC OF BRAZIL

FINAL REPORT

(Adopted at the September 14, 2012 plenary session)

SUMMARY

This report contains a comprehensive review of the implementation in the Federative Republic of Brazil of Article III, paragraph 9, of the Inter-American Convention against Corruption, covering “oversight bodies, with a view to implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts,” which was selected by the MESICIC Committee of Experts for the fourth round; of the best practices reported by those bodies; and of the follow-up of the implementation of the recommendations formulated to the state in the First Round.

The review was conducted in accordance with the Convention, the Report of Buenos Aires, the Committee’s Rules of Procedure, and the methodologies it has adopted for conducting on-site visits and for the Fourth Round, including the criteria set out therein for guiding the review based on equal treatment for all states parties, functional equivalence, and the common purpose of both the Convention and the MESICIC of promoting, facilitating, and strengthening cooperation among the states parties in the prevention, detection, punishment, and eradication of corruption.

The review was carried out taking into account Brazil’s Response to the Questionnaire, information gathered by the Technical Secretariat, and, as a new and important source of information, the on-site visit conducted from March 20 to 23, 2012, by the members of the review subgroup for Brazil, comprising the Dominican Republic and Uruguay, with the support of the Technical Secretariat. During that visit, the information furnished by Brazil was clarified and expanded and the opinions of civil society organizations, the private sector, professional associations, academics, and researchers on issues of relevance to the review were heard. This provided the Committee with objective and complete information on those topics.

The review of the oversight bodies was intended, in accordance with the terms of the methodology for the Fourth Round, to determine whether they have a legal framework, whether that framework is suitable for the purposes of the Convention, and whether there are any objective results; then, taking those observations into account, the relevant recommendations were issued to the country under review.

The following bodies in Brazil are reviewed in this report: Office of the Comptroller General (CGU); the Federal Audit Court (TCU); the Federal Police Department (DPF); Federal Public Prosecutor’s Office (MPF); and the Supreme Federal Tribunal (STF).

Some of the recommendations formulated to Brazil for its consideration in connection with the aforementioned bodies are aimed toward objectives, such as the following:

With respect to the CGU, to strengthen that body and ensure that it has the necessary human and financial resources to perform its functions properly; and consider the possibility of making the necessary statutory amendments in order to broaden the effects of the declaration of ineligibility so that any legal person declared ineligible is prohibited for a reasonable period of time from engaging in competitive bidding, contracting, or keeping contracts with the public administration, in all three branches and in every sphere of government, and of making obligatory the submission of data to the National Register of Ineligible and Suspended Companies (CEIS) as well as compliance therewith.

As part of the analysis of the TCU, to consider the possibility of creating a National Council of Audit Courts; keep permanently updated the register of persons disqualified by the TCU from holding positions of trust and consider the possibility of making the necessary statutory adjustments to make it mandatory for the public administration to consult that register; and follow up and intensify the efforts of the Office of the Attorney General of the Union (AGU) as regards increasing the level of effective recovery for the Treasury of fines imposed and collections ordered by the TCU;

With regard to the DPF, to consider the possibility of adopting the organic law of the Federal Police; establish a unit of the DPF's Service for the Suppression of the Diversion of Public Resources in each of the Brazilian states without one; and enhance the technical and institutional capacity of the DPF to investigate cases of bribery of national and foreign government officials by individuals or corporations.

As regards the MPF, to establish an ombudsman within the organizational structure of the MPF together with a specialized unit to investigate and prosecute acts of corruption.

As regards the STF and the Judiciary, to consider the possibility of implementing reforms to the judicial appeals system or look for other mechanisms by which to expedite the conclusion of proceedings in the judiciary and the initiation of execution of the judgment, so as to avoid impunity for those responsible for acts of corruption; look for appropriate ways to ensure that the "forum by prerogative of office" is not used to enable members of parliament or high-level political appointees suspected of acts of corruption to evade justice; and consider, as one way to expedite the trial of acts of corruption and of administrative impropriety, the possibility of creating of specialized bodies in this area within the Judiciary.

Succinctly, the best practices on which Brazil provided information are the "Pro-Ethics Corporate Register," which aims to encourage the creation of an environment of integrity in the private sector; and the "Public Spending Observatory", which contributes to the aim of helping to improve public administration by boosting the efficiency of government programs, procedures, and spending, as well as identifying situations of risk or that jeopardize the integrity of processes and services.

With regard to follow-up on the recommendations formulated to Brazil in the First Round and with respect to which, the Committee, in the Second and Third Round reports, found required additional attention, based on the methodology for the Fourth Round and bearing in mind the information provided by Brazil in its Response to the Questionnaire and during the on-site visit, a determination was made as to which of those recommendations had been satisfactorily implemented, which required additional attention, and which required reformulation. A list of those still pending was also prepared, and has been included in Annex 1 of the report.

Three important advances noted by the Committee in the implementation of the recommendations were the promulgation and entry into force of the Access to Information Law; the preparation and holding of the local, municipal, state, regional, and national stages of the First National Conference on Transparency and Societal Oversight (CONSOCIAL); and the efforts of the AGU in the effective recovery of fines imposed by the TCU, which rose from 2.10% in 2008 to 25.08% in 2011.

In addition, some of the recommendations formulated to Brazil in the First Round that remain pending or were reformulated, address issues such as: to introduce a law that establishes a system of rules on conflict of interests that applies across all three branches and each level of government, including, as applicable, appropriate restrictions on persons who leave public service; regulate conditions, procedures, and other aspects related to publication, where appropriate, of records of income, assets, and liabilities of public servants; continue working with states and municipalities, as well as with the judiciary and the legislature, in order to provide them with their own regulations on the implementation of the Access to Information Law; and strengthen the archives policy, especially at the state and municipal level, as a means to ensure that information requests are not denied simply because of the absence of information that the state ought to produce and maintain.

**COMMITTEE OF EXPERTS OF THE MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST
CORRUPTION**

**REPORT ON IMPLEMENTATION IN THE FEDERATIVE REPUBLIC OF BRAZIL OF THE
CONVENTION PROVISION SELECTED FOR REVIEW IN THE FOURTH ROUND, AND
ON FOLLOW-UP TO THE RECOMMENDATIONS FORMULATED TO THAT COUNTRY
IN THE FIRST ROUND¹**

INTRODUCTION

1. Content of the Report

[1] This report presents, first, a comprehensive review of the Federative Republic of Brazil's implementation of the provision of the Inter-American Convention against Corruption that was selected for review by the Committee of Experts of the Follow-up Mechanism (MESICIC) for the Fourth Round. That provision appears in Article III (9) of the Convention, pertaining to "Oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts."

[2] Second, the report will examine the best practices that the country under review has voluntarily expressed its wish to share in regard to the oversight bodies under review in this report.

[3] Third, as agreed by the Committee of Experts of the MESICIC at its Eighteenth Meeting, in compliance with recommendation 9(a) of the Third Meeting of the Conference of States Parties to the MESICIC, this report will address the follow-up of implementation of the recommendations that the Committee of Experts of MESICIC formulated to the Republic of El Salvador in the First Round and that it deemed to require to require additional attention in the reports it adopted for that country in the Second and Third Rounds, which are available at: <http://www.oas.org/juridico/english/bra.htm>

2. Ratification of the Convention and adherence to the Mechanism

[4] According to the official records of the OAS General Secretariat, the Federative Republic of Brazil ratified the Inter-American Convention against Corruption on July 10, 2002 and deposited its instrument of ratification on July 24, 2002.

[5] In addition, the Federative Republic of Brazil signed the Declaration on the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption on August 9, 2002.

I. SUMMARY OF THE INFORMATION RECEIVED

1. Response of the Federative Republic of Brazil

[6] The Committee wishes to acknowledge the cooperation that it received, throughout the review process from the Federative Republic of Brazil and in particular from the Office of the Comptroller General of the Union (CGU), which was evidenced, inter alia, in the Response to the Questionnaire and in the constant willingness to clarify or complete its contents, and in the support for the on-site visit to which the following paragraph of this report refers. Together with its Response, the Federative Republic

1. This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on September 14, 2012, at its Twentieth meeting, held at OAS Headquarters, September 10-14, 2012.

of Brazil sent the provisions and documents it considered pertinent. The Response as well as the provisions and documents may be consulted at: www.oas.org/juridico/portuguese/mesicic4_bra.htm

[7] The Committee would also like the record to show that the country under review gave its consent for the on-site visit, in accordance with provision 5 of the *Methodology for Conducting On-Site Visits*.² As members of the preliminary review subgroup, the representatives of the Dominican Republic and Uruguay conducted the on-site visit from March 20 through 23, 2012, with the support of the MESICIC Technical Secretariat. The information obtained on that visit is included in the appropriate sections of this report, and its agenda of meetings is appended thereto, in keeping with provision 34 of the *Methodology for Conducting On-Site Visits*.

[8] For its review, the Committee took into account the information provided by the Federative Republic of Brazil up to March 23, 2012, as well as that provided and requested by the Secretariat and the members of the review subgroup to carry out its functions, in keeping with the *Rules of Procedure and Other Provisions*; the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round*; and the *Methodology for Conducting On-Site Visits*. This information may be consulted at the following webpage: <http://www.oas.org/juridico/english/FightCur.html>

2. Information received from civil society organizations and/or, *inter alia*, private sector organizations; professional associations; academics and researchers

[9] The Committee did not receive any documents from civil society organizations within the time period established by the Committee in the schedule, in accordance with Article 34(b) of the Committee's *Rules of Procedure*.

[10] Nonetheless, during the on-site visit to the country under review that took place March 20 – 23, 2012, information was gathered from civil society and private sector organizations, professional associations, academics and researchers, who were invited to participate in the meetings held for that purpose, pursuant to provision 27 of the *Methodology for Conducting On-Site Visits*. A list of invitees is included in the agenda of the on-site visit, which has been annexed to this report. This information is reflected in the appropriate sections of this report.

II. REVIEW, CONCLUSIONS AND RECOMMENDATIONS ON IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE FOURTH ROUND:

OVERSIGHT BODIES WITH A VIEW TO IMPLEMENTING MODERN MECHANISMS FOR PREVENTING, DETECTING, PUNISHING AND ERADICATING CORRUPT ACTS (ARTICLE III (9) OF THE CONVENTION)

2. Document SG/MESICIC/doc.276/11 rev. 2, which may be consulted at the following webpage: http://www.oas.org/juridico/english/met_onsite.pdf

[11] The Federative Republic of Brazil has a set of oversight bodies³ with a view to implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts, among which the following are highlighted: the Office of the Comptroller General (CGU), the Federal Audit Court (TCU), the Federal Police Department (DPF), the Federal Public Prosecutor's Office (MPF), the Supreme Federal Tribunal (STF), the National Council of Justice (CNJ), the National Council of the Federal Prosecutor's Office (CNMP), the Office of the Attorney General of the Union (AGU), the Public Ethics Commission (CEP) and the Ministry of Justice (MJ).

[12] The following is a brief description of the purposes and functions of the five bodies selected by the Federative Republic of Brazil that are to be examined in this report.

[13] The Office of the Comptroller General of the Union (CGU) is the agency of the federal executive branch, directly linked to the Secretariat of the Office of the President of the Republic, which is responsible for the tasks of internal oversight, inspections, ombudsman units, and preventing corruption. In addition to overseeing the use of public funds and initiating audits, the CGU is also responsible for pursuing actions to promote transparency and to prevent corruption. The purpose of the CGU is not only to detect instances of corruption; it must also anticipate them and work to develop ways to prevent their occurrence. The CGU also performs inspection functions, which consist of activities related to the investigation of possible wrongdoing by public servants and to the imposition of the appropriate penalties. In addition to its central offices, located in the Federal District, the CGU also has offices in all the other states of the federation, on account of its decentralized functions.

[14] Regarding the Federal Audit Court (TCU), the 1988 Constitution empowers Congress, with the support of the TCU, to conduct external control of the federal public administration. The Federal Audit Court assists the National Congress in two ways. First, it prepares prior opinions on the government's accounts for the Joint Committee on Plans, Public Budgets, and Monitoring. The audit report must be prepared 60 days before Congress receives the government accounts. Second, the Audit Court provides Congress with permanent advice on the execution of the budget. The Federal Constitution of 1988 grants the National Congress and the congressional committees the power to request that the Audit Court conduct specific visits and audits. Congress often asks the Audit Court to appoint auditors from among its officers to assist it with its investigations. The TCU also participates in public hearings, when so requested by different congressional committees.

[15] The Federal Audit Court has the power to impose penalties. The penalties it may impose include fines and disqualifications from holding public office or public positions for a specified period of time, and it can also declare the unfitness of suppliers who commit irregularities in public bidding processes. The TCU can impose financial penalties for violations committed by public employees and hold them accountable for any losses arising from misconduct by applying fines and by ordering indemnification for the applicable losses. Since the Federal Audit Court has no powers of

3. The Methodology adopted for the Fourth Review Round (document SG/MESICIC/doc.289/11 rev.2) states the following in Section IV with reference to Article III, paragraph 9 of the Convention: *"With respect to the foregoing provision, the review shall consider if the measures adopted by the States Parties in this respect are designed "to create, maintain and strengthen" oversight bodies, with a view to implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts, as provided in Article III (9) of the Convention.- To that end, first, note will be made of the oversight bodies in the country concerned that would be relevant for the purposes of the above provision of the Convention, that is, for preventing, detecting, punishing, and eradicating corrupt acts.- Second, bearing in mind that in the States Parties to the MESICIC there are numerous oversight bodies that have been assigned the aforementioned purposes, each country will select four or five such bodies, taking into account their institutional importance and that their assigned functions encompass one or more of the purposes of preventing, detecting, punishing, and eradicating corrupt acts that trigger disciplinary; administrative; financial or civil; and criminal responsibility."*

criminal enforcement, the agency maintains close ties with the Federal Public Prosecutor's Office to ensure that cases of administrative misconduct involving public funds are properly dealt with.

[16] The Federal Police Department (DPF) is responsible for determining the commission of criminal offenses against the political and social order or against property, services, and interests of the federation or of its autonomous agencies and public companies, as well as other offenses that have an impact across state lines or international borders and require uniform punishment, as established by law.

[17] It is also responsible for policing waterways, airports, and border areas, and it also serves as the federation's judicial police. Since its creation in 1944, it has been responsible for carrying out actions to prevent drug trafficking and smuggling and for investigating federal crimes, crimes involving two or more states, and land disputes. Despite being an agency of the Ministry of Justice, the Federal Police Department has full autonomy to investigate crimes over which it has jurisdiction.

[18] The Federal Public Prosecutor's Office (MPF) is a part of the Public Prosecutor's Office of the Union (MPU), which also contains the Labor Prosecutor's Office, the Military Prosecutor's Office, and the Prosecutor's Office of the Federal District and Territories (MPDFT). The MPU and the state prosecutors' offices make up the Public Prosecutor's Office of Brazil (MP).

[19] The MP is responsible for defending inalienable social and individual rights, the legal order, and the democratic system. The MP's functions also include overseeing the enforcement of laws, the protection of public property, and the effective respect by the branches of government of the rights guaranteed in the Constitution. The institution initiates actions on behalf of society, files criminal complaints, and must be heard in all proceedings before the federal judiciary that involve significant public interest that is not part of the action.

[20] The National Council of the Federal Public Prosecutor's Office (CNMP) is responsible for the external administrative and financial control of the Public Prosecutor's Office, both at federal and state levels. It is chaired by the Prosecutor General of the Republic and consists of members of the federal and state Public Prosecution Services, lawyers and external advisors appointed by the National Congress.

[21] The CNMP exercises administrative and financial control of the Federal Public Prosecutor's Office and of the performance by its members of their official duties, charging it, *inter alia*, with the following duties: i) to safeguard the functional and administrative autonomy of the Federal Public Prosecutor's Office, it having the authority to issue regulatory decisions within its sphere of competence, or to recommend measures; ii) to safeguard observance of Article 37 of the Federal Constitution and examine, ex officio or at third-party behest, the legality of administrative decisions issued by members or organs of the Public Prosecution Service of the Union or of the States, it having the authority to quash them, review them, or set a deadline for the adoption of measures necessary to ensure faithful compliance with the law, without prejudice to the jurisdiction of the courts of accounts; and iii) to receive and examine complaints against members or organs of the Federal Public Prosecutor's Office, including those against their auxiliary services, without prejudice to the correctional and disciplinary powers of the institution, it having the authority to take up ongoing disciplinary proceedings; order removal, vacation of position, or retirement with remuneration commensurate with the length of service; and apply other administrative penalties while fully ensuring the rights of defense.

[22] The Federal Supreme Tribunal (STF) is the supreme agency of the judicial branch and is responsible, primarily, for safeguarding the Federal Constitution, as established therein.

[23] The Federal Supreme Tribunal is composed of 11 justices who are appointed for life by the President and ratified by the Senate. Its main tasks include judging direct unconstitutionality actions brought against federal and state laws and regulations, ruling on the constitutionality federal laws or regulations, determining breaches of fundamental precepts contained in the Constitution, and ruling on extraditions requested by foreign states.

[24] In the criminal area, it has jurisdiction over common criminal offenses committed by the President of the Republic, the Vice President, members of Congress, its own justices, the Federal Attorney General, and others. The highlights of its appeal duties include resolving, through regular appeals, writs of habeas corpus, mandamus, and habeas data and writs of injunction decided on at single instance by the Superior Courts with a decision to deny, and, through extraordinary appeals, cases decided at the sole or final instance when the decision is contrary to a provision of the Constitution.

[25] The National Council of Justice (CNJ) is a key body for increasing transparency and oversight in the judiciary. The CNJ is responsible for external control of administrative and financial operations of all judicial authorities. Its main functions are to ensure the independence of the judiciary without disregarding the rules applicable to judges and courts.

[26] The CNJ may establish rules, recommendations and guidelines to regulate the administrative and financial operations of the courts. It is also responsible for the investigation and punishment of irregularities in judiciary (e.g. misuse of public funds, irregularities in public procurement and improper access). Disciplinary administrative procedures in the judiciary are instituted by the National Council of Justice. Such actions can be initiated from complaints or disciplinary investigations ex officio that arise with respect to judges and magistrates.

1. THE OFFICE OF THE COMPTROLLER GENERAL (CGU)

1.1. Existence of provisions in the legal framework and/or other measures

[27] The Office of the Comptroller General (CGU) has a set of provisions in its legal framework and other measures concerning, among others, the following:

[28] Law 10.683 of May 28, 2003, states that it is incumbent upon the CGU, a body that comprises part of the structure of the Office of the Presidency of the Republic, to provide direct and immediate assistance to the President of the Republic in the performance of his or her functions with respect to matters and issues that, within the executive branch, concern protection of public property; internal control; public audits; inspections; and prevention of and fight against corruption; audit activities; and increased transparency in federal public administration (Law 10.683/03, Art. 17).

[29] Law 10.683/2003 also provides that it is incumbent upon the CGU to ensure that all reasoned statements or complaints that it receives concerning harm, or a threat thereof, to public property, are duly processed and fully clarified. In the event of any omission by a competent authority, it is the responsibility of the CGU to order the opening of an inquiry, procedures and administrative proceedings or other measures, and to take over any already in progress in organs or entities of federal public administration, in order to correct a given proceeding, including seeking the imposition of appropriate administrative penalties (Law 10.683/03, Art. 18, *caput* and §1), or, as necessary, referring the matter to the President of the Republic to investigate the omission by the authorities concerned (Law 10.683/03, Art. 18, §2).

[30] In cases where administrative impropriety is found or the freezing of assets is recommended, the CGU shall refer them to the Office of the Attorney General of the Union (AGU)⁴ to take the necessary steps for the purposes of reimbursing the state treasury and other measures incumbent upon that body. By the same token, if necessary, the CGU shall invoke the intervention of the Federal Audit Court (TCU), the Federal Revenue Secretariat, the internal control organs of the federal executive branch, and, should there be evidence of criminal liability, the Federal Police Department (DPF) and the Federal Public Prosecutor's Office, even in connection with representations or claims that are deemed patently slanderous (Law 10.683/03, Art. 18, §3).

[31] The head of the CGU is the Minister of State of the Office of the Comptroller General, a position subject to free appointment and removal by the President of the Republic. The broad functions of the Minister of State of the CGU are set out in Article 18(5) of Law 10.683/03. The basic structure of the CGU is as follows: the Cabinet, the Office of the Legal Counsel, the Council for Public Transparency and Fight against Corruption, the Internal Control Coordination Committee, the Executive Secretariat, the Inspector General's Office (CRG), the Ombudsman's Office (OGU), and two secretariats: the Federal Secretariat for Internal Control (SFC) and the Secretariat for Prevention of Corruption and Strategic Information (SPCI) (Law 10.683/03, Art. 18, §1).

[32] The purpose of the Council for Public Transparency and Fight against Corruption, a collegiate consultative body linked to the CGU, is to suggest and discuss measures for refining methods and systems of control and increasing transparency in the public administration, as well as strategies for combating corruption and impunity (Decree 4.923/03, Art. 1). Its functions include the following: to contribute to the design of policies, guidelines and projects; to suggest improvements and the inclusion of internal procedures; and to carry out studies and devise strategies for consolidating proposed laws and administrative standards for combating corruption and mobilizing civil society (Decree 4.923/03, Art. 2). The Council is chaired by the Minister of State of the CGU and has 20 members, who include representatives of the federal public administration and civil society.⁵ (Decree 4.923/03, Art. 3).

[33] Instituted by Law 10.180 of February 6, 2001, the purpose of the Internal Control Coordination Committee,⁶ the collegiate coordination body of the federal executive branch's internal control system,⁷ is to promote integration and standardization among the various organs and units.

4. Art. 131 of the Federal Constitution: "*The Office of the Attorney General of the Union is the institution that, either directly or through a subordinated agency, represents the Union judicially and extrajudicially, and it is responsible, under the terms of the supplemental law that contains the provisions on its organization and operation, for legal consultation and advisory services to the executive branch. § 1 - The Office of the Attorney General of the Union is headed by the Attorney General of the Union, who is freely appointed by the President of the Republic chosen from citizens over 35 years of age of notable juridical learning and high standing. § 2 - Admission to the initial levels of the career systems of the institution covered by this article is by public competitive examination and credentials. § 3 - Representation of the Union in the execution of an outstanding tax debt shall be exercised by the Office of the Prosecutor General of the National Treasury, observing the provisions of the law.*"

5. The Council is composed in equal parts of representatives of civil society organizations and the federal government (Law 10.683/03, Art. 17, § 2). The specific composition of the Council is defined in Article 3 of Decree 4.923/03. For the current composition, see: <http://www.cgu.gov.br/ConsejoTransparencia/Composicao.asp>

6. Article 9 of Decree 3.591 of September 6, 2000, establishes the Committee's composition.

7. In addition to the CGU's Federal Secretariat for Internal Control, which, as the central body, acts as the technical supervisory body over all organs in the executive branch, also part of the federal executive branch internal control system are the sectoral organs included in the structure of the Ministry of Foreign Affairs, the Ministry of Defense, the Office of the Prosecutor General, and the Office of the Chief of Staff of the Presidency (or *Casa Civil*) (Law 10.180/01, Art. 22).

[34] The Inspection Coordination Committee,⁸ a collegiate body with consultative functions, was instituted by Decree 5.480 of June 30, 2005, with the purpose of promoting integration and standardizing concepts among the organs and units that comprise the federal public administration inspection system.⁹

[35] In order to carry out its functions, the CGU holds public competitions to recruit its staff (Constitution, Art. 37(II) and Law 8.112/90, Art. 10), which consists of public servants from the finance and control career system, finance and control analysts (AFC) with university degrees, and finance and control technicians (TFC) with high school diplomas. In addition to the public servants that comprise its staff, the CGU labor force also includes public servants from other public-sector organs and career systems needed to fill commissioned and trust positions, which are subject to free appointment and removal (Constitution, Art. 37(II) and Law 8.112/90, arts. 9 and 35). In the course of the on-site visit, it was explained that as of March 2012 there were 1640 AFCs and 700 TFCs working in the CGU.

[36] For the purposes of entry through a public competition, candidates must first meet the requirements set out in Law 8.112 of December 11, 1990, which apply to all federal public servants. Candidates undergo a background check in the course of the public competition. Furthermore, as federal public servants, members of the CGU career system enjoy a constitutional guarantee of tenure after three years of effective service and shall only lose their position in the circumstances recognized in article 41 of the Federal Constitution.

[37] With respect to the disciplinary regime, public servants are subject to the provisions of Law 8.112/90, which apply to all civil servants in the Union, including its independent agencies and public foundations, and hold all public servants liable to civil, criminal, and administrative liability for misconduct, as well as providing disciplinary penalties. Internally, public servants are also governed by the CGU's Professional Code of Conduct, which was drawn up by the Organ's Ethics Committee, as well as by Resolution 292 of February 17, 2010, which introduced rules governing the exclusive employment regime for finance and control analysts and technicians in accordance with the provisions of Law 11.890 of November 24, 2008, by which public servants are not allowed to engage in other remunerated activities except in the circumstances envisaged in the law. Senior management officials, who include government ministers, the holders of special positions, executive secretaries, secretaries, or equivalent officers who occupy positions in the Senior Management and Advisory Group (DAS) at level six, are also subject to the Code of Conduct for High Ranking Officials of the Federal Administration.

[38] With respect to internal control mechanisms governing their activities, as CGU officials they are subject to the Inspection System of the Federal Executive Branch set out in Decree 5.480 of June 30, 2005, and governed by CGU Resolution 335 of May 30, 2006.

[39] Concerning manuals, in its Response to the Questionnaire for the Fourth Round, the country under review provides detailed information about the existence of various manuals and compilations for the CGU's different areas of operations.¹⁰ For example, the internal control functions cited, include, *inter*

8. The composition and functions of this committee are established, respectively, in articles 3 and 4 of Decree 5.480 of June 30, 2005. See: <http://www.cgu.gov.br/Correicao/OQueE/sistema-correicao-comissao-coordenacao.asp>

9. The federal public administration inspection system is composed of the CGU (the system's central body) specific inspection units in charge of action in the ministries (sectoral units); specific inspection units in the organs that make up the structure of the ministries, as well as their independent agencies and public foundations (sectional units); and by the Inspection Coordination Committee (Decree 5.480/05, Art. 2). The sectoral units are part of the structure of the CGU and subordinate to it (Decree 5.480/05, Art. 2, § 1). The sectional units are subject to the regulatory guidelines of the CGU and the technical supervision of the relevant sectoral units (Decree 5.480/05, Art. 2, § 2).

10. See Response of Brazil to the Questionnaire of the Fourth Round, pp. 16-17 and 26-27, available at: http://www.oas.org/juridico/PDFs/mesicic4_bra_resp.pdf.

alia, those connected with annual accounts audits, the Special Accountability Mechanism,¹¹ and SFC Regulatory Order 1/2001. As regards inspection functions, the Response mentions the Administrative Procedures Manual of the Inspector General's Office¹² and the Manual of Disciplinary Administrative Procedure.¹³

[40] As for training, in addition to the Public Servant Training Policy in force in the CGU, established by Resolution 527 of April 11, 2008,¹⁴ the Response of the country under review to the Questionnaire in the Fourth Round describes a large number of training programs and activities both for the Organ's staff and for civil society, notably, the following: the CGU Virtual School,¹⁵ the CAPACITA Program,¹⁶ the Members' Training Program in Disciplinary Administrative Procedure,¹⁷ the Eyes Fixed on Public Funds Program,¹⁸ the Public Administration Strengthening Program,¹⁹ in addition to various activities for promoting integrity with respect to the private sector²⁰ and training and awareness-raising activities in connection with the Access to Information Law.²¹

[41] As regards implementation of modern systems or technologies for facilitating its work, the CGU has the *Ativa* computer system, which keeps a record of all requests for oversight actions in the SFC, as well as any results found, including those of regional units. The system is also used by the SPCI to keep a record of anti-corruption actions, and by the CRG for carrying out inspection activities. For its part, the Office of the Inspector General has the Disciplinary Proceedings Management System (CGU-PAD).²² Also, in July 2011 it implemented an electronic document management system.

[42] In the area of production of strategic information, the Public Spending Observatory (ODP) was established in December 2008 as the unit tasked with monitoring public spending, using scientific methodology supported by the latest information technology, in order to produce data to support and expedite strategic decision-making.²³

[43] With a view to providing members of the public with information about its objectives, functions, and activities, on its website,²⁴ the CGU offers its Services Menu,²⁵ the purpose of which is to facilitate and broaden citizen access to its services and encourage participation in public sector monitoring. There are also channels for reporting complaints on the CGU website²⁶ as well as a range of information on the Organ's activities, including primers and orientation materials.²⁷ The CGU also has official profiles on Internet social networking sites (Twitter²⁸ and Facebook²⁹).

11. Available at: <http://www.cgu.gov.br/AuditoriaeFiscalizacao/AuditoriasAnuaisPrestConta/index.asp> and <http://www.cgu.gov.br/AuditoriaeFiscalizacao/TomadasCuentasEspecial/>.

12. http://www.oas.org/juridico/PDFs/mesicic4_bra_CGU_manual.pdf

13. <http://www.cgu.gov.br/Publicacoes/GuiaPAD/>

14. See Response of Brazil to the Questionnaire of the Fourth Round, p. 37.

15. *Ibid.*, pp. 32 and 33, and www.escolavirtual.cgu.gov.br/.

16. *Ibid.*, pp. 15 and 35.

17. *Ibid.*, pp. 23 and 24.

18. *Ibid.*, p. 30.

19. *Ibid.*, p. 30.

20. *Ibid.*, pp. 31 and 32.

21. *Ibid.*, p. 31.

22. <http://www.cgu.gov.br/cgupad/>

23. See Response of Brazil to the Questionnaire of the Fourth Round, pp. 107-115 and www.cgu.gov.br/ODP/index.asp.

24. <http://www.cgu.gov.br>

25. <http://www.cgu.gov.br/carta-servicos-cidadao/Index.asp>

26. <http://www.cgu.gov.br/denuncias/>

27. <http://www.cgu.gov.br/publicacoes/>

28. <http://twitter.com/cguonline>

[44] The Ombudsman's Office (OGU), which is part of the structure of the CGU, receives, examines and channels complaints, claims, praise, suggestions, and information requests concerning procedures and activities of agents, organs and entities of the federal executive branch. The OGU also has technical coordination authority over the ombudsmen segment of the federal executive branch. Furthermore, it organizes and interprets the communications it receives and produces reports with quantitative indicators on user satisfaction with public services provided in the context of the federal executive branch.

[45] With respect to oversight of its accounting, finances, budget, operations and assets, the CGU presents annual accounts to the internal control organ, which is the Secretariat for Internal Control of the Office of the Chief of Staff of the Office of the President of the Republic, owing to the jurisdiction of that oversight body (Constitution, arts. 70 and 74; and Decree 7.688/12, Art. 21). External control of the CGU is exercised by the TCU pursuant to articles 70 and 71 of the Federal Constitution.

[46] The budget enabling the CGU to carry out its activities is guaranteed by the national budget contained in the Annual Budget Law. The budget funds for maintaining the activities of CGU are provided by Government Program 1173 (Internal Control, Prevention and Fight against Corruption), the specific purpose of which is to carry out the activities of the internal control system, prevent corruption, combat impunity, and strengthen transparency in the public administration. The Program is part of the federal government's Pluriannual Plan and includes a range of measures designed to ensure the functionality of the Office of the Comptroller General in carrying out its institutional mission. The Response of Brazil to the Questionnaire contains detailed information about the appropriation that the Annual Budget Law has been allocating to some of those measures in recent years, as well as on how the CGU allocates budget funds.³⁰

[47] As to coordination mechanisms for harmonizing its functions with those of other oversight bodies or branches of government, it was explained in the course of the on-site visit that the CGU has signed cooperation protocols and agreements with various organs, including the Federal Revenue Secretariat,³¹ the Financial Activities Control Council (COAF) of the Ministry of Finance,³² and the Federal Public Prosecutor's Office (MPF).³³ The CGU also signed a protocol of intent with a view to joining the Public Administration Oversight Network (RCGP), under the coordination of the TCU³⁴ and is part of the National Strategy to Combat Corruption and Money Laundering (ENCCLA) coordinated by the Ministry of Justice.³⁵

[48] During the on-site visit, CGU officials also explained that the body's relations with the Federal Police and the Federal Public Prosecutor's Office occur when the existence or probable existence of a criminal offense is detected. In such cases, the CGU channels requests to the AGU and the Federal Public Prosecutor's Office, so that those entities might seek to have the assets of the person under investigation frozen. The AGU is also activated in cases where a court order is needed to access the bank data of the person under investigation or other data protected by confidentiality (tax-related, telegraphic, telephone, etc.). They also mentioned their relationship with the Ministry of Planning, Budget, and Administration in the areas of risk management and preventive strengthening of internal

29. <https://www.facebook.com/cguonline>

30. See Response of Brazil to the Questionnaire of the Fourth Round, pp. 37 and 38.

31. According to information received, this agreement enables the CGU to obtain tax data or information on corporate credit card spending by public servants without a court order.

32. Under this agreement, the COAF sends the CGU information on unusual financial transactions by federal public officials.

33. See section 4.1 for more details about cooperation between the MPF and CGU.

34. <http://www.rededecontrol.gov.br/>

35. <http://portal.mj.gov.br/data/Pages/MJ7AE041E8ITEMID3239224CC51F4A299E5174AC98153FD1PTBRIE.htm>

control. This relationship was considered crucial, for example, in the approval of regulatory standards on voluntary transfers to municipalities.

[49] With respect to transparency and accountability, the CGU has significant tools,³⁶ including the federal government's Transparency Portal³⁷ and the CGU's public transparency page.³⁸

1.2. Adequacy of the legal framework and/or other measures

[50] The Office of the Comptroller General (CGU) has a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were succinctly described in section 1.1 of this report. Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures:

[51] In first place, during the on-site visit, it was explained that, despite being established by Law 10.180/01, the Internal Control Coordination Committee is not yet operational. It was explained, however, that the internal control units were coordinating with each other and with units in other organs in order to standardize concepts. By way of an example, officials cited the efforts to harmonize concepts in relation to services outsourcing agreements. However, bearing in mind the importance of this coordination body, which is responsible, *inter alia*, for the standardization of interpretations in connection with procedures in the Internal Control System of the Federal Executive Branch, the Committee will formulate a recommendation in this regard (see recommendation 1.4.1 in section 1.4 of this report).

[52] Second, the Committee takes note of the web page for the Council for Public Transparency and Fight against Corruption³⁹ and suggests that the country under review maintain it updated permanently and ensure publication of the agendas and minutes of all meetings held. The Committee will formulate a recommendation in this regard (see recommendation 1.4.2 in section 1.4 of this report).

[53] In third place, the Response of Brazil to the Questionnaire contains information on the number of officials serving in the CGU.⁴⁰ From that information, the Committee finds that the number of officials serving in the body fell from 2,625 in 2009 to 2,489 in 2010. During the on-site visit, it was explained that as of March 2012 the CGU had 2,340 officials in service and that more than half of the existing positions in the CGU were vacant.⁴¹

[54] It was also explained during the on-site visit that the last public call for resumes held by the body had been in 2008 and that since then, many employees had retired or left the CGU to work at organs in the judicial or legislative branches, in particular, the TCU, hoping for a better quality of life, given that, among other things, the TCU offered not only better pay, but also shorter working hours (seven hours a day), than the CGU, which is part of the federal executive branch career system. In addition, it was explained that authorization had been given to initiate a call for resumes for 250 vacancies in the CGU and that the competition would be concluded in the second half of 2012. Based on the foregoing and bearing in mind the importance of the work of the CGU and of the need for it to

36. For more details about those tools, see Response of Brazil to the Questionnaire of the Fourth Round, pp. 27 to 29.

37. <http://www.portaltransparencia.gov.br/>

38. <http://www3.transparencia.gov.br/TransparenciaPublica/index.jsp?CodigoOrgao=20125&TipoOrgao=2&consulta=0>

39. <http://www.cgu.gov.br/ConselhoTransparencia/Documentos.asp>

40. See Response of Brazil to the Questionnaire of the Fourth Round, p. 36.

41. The legally approved staffing complement for the CGU is 5,000 employees: 3,000 AFCs and 2,000 TFCs.

have the necessary human and financial resources⁴² to perform its functions properly, the Committee will formulate a recommendation in this regard (see recommendation 1.4.3 in section 1.4 of this report).⁴³

[55] In fourth place, during the on-site visit, information was provided about the expansion of the ombudsman units in the federal executive branch (which increased from 40 in 2002 to 175 by the beginning of 2011) and on the existence of guidelines for the implementation of ombudsman units.⁴⁴ However, the Committee noted the absence of a legal norm establishing general principles and guidelines for those organs as well as the fact that the routines and procedures manual of the Ombudsman's Office envisaged in its 2011-2012 work plan has not yet been launched.⁴⁵ Bearing in mind the foregoing and the even greater relevance acquired by the Ombudsman's Office and ombudsman units following the entry into force of the Access to Information Law, the Committee will formulate recommendations in this regard (see recommendations 1.4.4 and 1.4.5 in section 1.4 of this report).

[56] Lastly, the Committee notes the existence of a large number of cooperation agreements and processes between the CGU and various oversight bodies. However, it was found that there was no institutionalized cooperation between the CGU and the Public Ethics Commission (CEP), organ responsible, *inter alia*, for the investigation and punishment of ethical offenses. In that regard, the Committee believes that it would be beneficial for those organs to establish institutional cooperation and coordination channels for their activities. The Committee will formulate a recommendation in this regard (see recommendation 1.4.6 in section 1.4 of this report).

1.3. Results of the legal framework and/or other measures

[57] The Response to the Questionnaire by the country under review and the on-site visit yielded information on results of the CGU, notably the following:

[58] In first place, the Response of the country under review⁴⁶ described results in connection with the CGU's functions with respect to prevention of acts of corruption and the participation of civil society and the private sector in efforts to that end, such as the organization and holding of the local, municipal, regional, state, and federal stages of the First National Conference on Transparency and Societal Oversight (CONSOCIAL).⁴⁷ Mention is also made of corruption prevention measures carried out in the framework of various programs and activities, such as the CAPACITA Program,⁴⁸ the Fixed Eyes on Public Funds Program,⁴⁹ the Public Administration Strengthening Program,⁵⁰ and various joint integrity-

42. Section IV of the CGU Management Performance Report (Year 2011) states, "*As explained, the main difficulties in achieving the goals set for the year had to do with the chronic shortage of human resources caused by the loss and insufficient replenishment of staff, as well as the budget constraints and restrictions on per diem expenses and travel costs, which are decisions that are not within the powers of the CGU management.*" Available at: http://www.cgu.gov.br/Publicacoes/RelatGestao/Arquivos/relatorio_gestao_cgu_2011.pdf

43. Brazil informed that the CGU is already adopting measures designed to contribute to the retention of its staff, such as, for example, the Flexible Schedule Decree for government employees and the Technical Note which proposes compensation for public servants who work in remote regions. Those documents can be found in www.oas.org/juridico/PDFs/mesicic4_bra_CGU_minuta.pdf and www.oas.org/juridico/PDFs/mesicic4_bra_CGU_notas.pdf.

44. <http://www.cgu.gov.br/ouvidoria/Destaques/20120227-cartilha.asp>

45. http://www.cgu.gov.br/eventos/2011_reuniao-geral-ouvidorias-publicas/plano-de-trabalho-2011-2012-texto.pdf

46. See Response of Brazil to the Questionnaire of the Fourth Round, pp. 27 to 35 and 88 to 92.

47. <http://www.consocial.cgu.gov.br/>. See Response of Brazil to the Questionnaire of the Fourth Round, pp. 33 to 34 and 89 to 92.

48. *Ibid.*, pp. 15 and 35.

49. *Ibid.*, p. 30.

promotion activities with the private sector⁵¹ (including the “*Pro-Ethics Corporate Register*”⁵² and the launch of the manual “*Corporate Social Responsibility in the Fight against Corruption*”⁵³), and training and awareness-raising activities in connection with the Access to Information Law.⁵⁴

[59] The Committee finds that the above information serves to demonstrate that measures for the prevention of acts of corruption have been carried out at the CGU, in keeping with its functions in this regard.

[60] In second place, with respect to its functions as the central body of the federal executive branch internal control system, the Response of the country under review mentions five principal lines of action pursued by the body between 2007 and 2011: Evaluation of the Implementation of Government Programs, Account Audits, Random Audit Program, Investigation Activities, and Auditing of International Projects.⁵⁵

[61] In broad terms, the information presented shows that the activities of the random audit program diminished considerably, particularly between 2010 and 2011. On the other hand, evaluation of the implementation of government programs and account audits have increased substantially. These data would appear to suggest an activity shift by the body toward a more preventive control, seeking to orient federal supervisory bodies and help them to identify and adopt necessary corrective measures in a timely manner. This was confirmed by CGU representatives during the on-site visit, although they also underscored the importance of their work in subsequent internal control.

[62] With respect to the evaluation of the execution of government programs, in its Response the country under review⁵⁶ reported that in 2010 the CGU completed 4,380 control measures in this area of activity, distributed among 79 governmental actions, while 34 actions targeted the executive secretaries and ministers responsible for the public policy reviewed, following the commitment of supervisory bodies to adopt plans of actions to solve the issues identified.

[63] As regards the random audit program, the Response of the country under review⁵⁷ mentioned that 1,931 municipalities (34.7% of the total in Brazil) were inspected in 2010, which represented approximately R\$16.8 billion in federal funds spent on small and medium-sized municipalities.

[64] With regard to investigation activities, the Response of the country under review⁵⁸ offers data on the examination of a total of 3,033 complaints and the conclusion of 1,613 control actions in the course of 2010. It also contains data on the specific control actions of the Growth Acceleration Program (PAC).⁵⁹ It was also explained that the reports presented by the CGU are forwarded to the supervising ministries, the plaintiffs, the Federal Audit Court, and, subject to the seriousness of the circumstances uncovered, also to the Federal Police and the Federal Public Prosecutor Office for investigation and criminal proceedings. However, more detailed information was not made available on the total number of the latter cases. Having said that, the Response of the country under review did

50. *Ibid.*, p. 30.

51. *Ibid.*, pp. 31 and 32.

52. For more information see: <http://www.cgu.gov.br/empresaproetica/index.asp>.

53. <http://www.cgu.gov.br/PrevencaodaCorrupcao/AreasAtuacao/IntegridadeEmpresas/index.asp>.

54. *Ibid.*, p. 31.

55. *Ibid.*, p. 15 (Table 2).

56. *Ibid.*, p. 17.

57. *Ibid.*, p. 17.

58. *Ibid.*, p. 17.

59. *Ibid.*, p. 18.

include information about the participation of the CGU in various special operations carried out in coordination with the federal police and the Federal Public Prosecutor Office, among other organs.⁶⁰ It is worth noting that in the course of the on-site visit, civil society representatives and academics agreed that the work of the CGU has been essential for many of these special operations, which, because of their high profile, generate strong public support for the body and the other institutions involved.

[65] As regards account audits, the Response of the country under review includes information about the Special Accountability Mechanism (RCE).⁶¹ The Response states that from 2002 to 2011,⁶² a total of 16,039 RCEs were analyzed and that, of those, 3,702 were referred to the originating body, while 12,337 were certified to the Federal Audit Court, representing a potential return to the public treasury of R\$ 7.7 billion.

[66] The Committee finds that the above information serves to demonstrate that internal control measures have been carried out at the CGU, in keeping with its functions in that regard.

[67] In third place, the Response of the country under review⁶³ provides information about results achieved by the Inspector General's Office with regard to the body's disciplinary functions. The Response indicates that from 2003 to 2011, 3,533 federal employees were terminated from public service, of which 3,013 were dismissals of career employees; 304 dismissals from commissioned positions; and 216 losses through retirement. According to the information contained in the Response, 56.2% of the terminations had to do with acts of corruption.

[68] The following additional information was provided during the on-site visit:⁶⁴ The number of disciplinary proceedings instituted rose from 69 in 2007 to 88 in 2011; the number of preliminary investigations went from 930 in 2007 to 1,242 in 2011; the number of significant disciplinary proceedings that were followed up upon increased from 645 in 2007 to 1,788 in 2011; and the number of inspections carried out went from 39 in 2007 to 38 in 2011.

[69] The Committee finds that the above information serves to show that the CGU has conducted investigations and imposed disciplinary penalties in connection with acts of corruption, in keeping with its functions in that regard. The foregoing notwithstanding, no information was provided in relation to important aspects of the investigations into those acts, such as how many sanctions were not enforced due to the statute of limitations lapsing. Therefore, the Committee will formulate a recommendation in this regard (see recommendation 1.4.7 in Chapter II of this report).⁶⁵

[70] Finally, the Response of the country under review also mentions the results of the National Register of Ineligible and Suspended Companies (CEIS) kept by the CGU, the body responsible for

60. *Ibid.*, pp. 21 to 23.

61. The RCE is an instrument available to the public administration designed to enable redress for possible harm caused to it. The procedure entails separate formalities and is only invoked after all other administrative measures for repairing the harm have been exhausted. Proceedings are instituted in the organs where the harm occurred and are analyzed and certified by the Office of the Comptroller General before being referred to the TCU.

62. See Response of Brazil to the Questionnaire of the Fourth Round, pp. 19 to 21 (Tables 3 to 5).

63. *Ibid.*, pp. 24 to 26 (Tables 7 and 8).

64. http://www.oas.org/juridico/PDFs/mesicic4_bra_cgu_resumo.pdf

65. Brazil reports that, between 01/01/2007 and 09/10/2012, the CGU ruled on a total of 114 disciplinary procedures. The total number of concluded sanctions recorded during this period was 19: eight warnings, five suspensions, four effective resignations, one forfeiture of retirement benefits, and one dismissal from a commissioned position.

consolidating and publishing such information on a permanent web page.⁶⁶ The Response also mentions that the number of penalties disclosed in the Register went from 1,063 in 2008 to 3,757 in 2010.⁶⁷

[71] The Committee considers the creation of the above Register to be an important innovation on the part of the CGU. However, the Committee believes that two important factors could impact its effectiveness: 1) The submission of data to it and its consultation are not mandatory for the entire public administration across all three of its branches and its various levels; 2) the legal basis for the penalty is what determines the scope of its application. As a result, a company penalized by the federal government might still be able to contract with state or municipal governments.⁶⁸ In that connection, during the on-site visit, CGU representatives reported the existence of draft law 6.826/2010,⁶⁹ which envisages administrative and civil liability for legal persons for acts against the public administration at the national or foreign level, as well as other measures. The above draft law specifically provides that any legal person declared ineligible will be prohibited from engaging in competitive bidding, contracting, or keeping contracts with the public administration, in all three branches and in every sphere of government, for a period of two to ten years. The Committee will formulate a recommendation in this regard (see recommendations 1.4.8 in Chapter II of this report).

1.4. Conclusions and recommendations

[72] Based on the comprehensive review conducted with respect to the Office of the Comptroller General in the foregoing sections, the Committee offers the following conclusions and recommendations:

[73] **Brazil has considered and adopted measures intended to maintain and strengthen the Office of the Comptroller General, as described in Chapter II, Section 1 of this report.**

[74] In light of the comments made in the above-noted section, the Committee suggests that the country under review consider the following recommendations:

- 1.4.1. Install the Internal Control Coordination Committee and disseminate information about the results of its meetings and other activities via the Internet (see Chapter II, section 1.2 of this report).
- 1.4.2. Maintain the web page of the Council for Public Transparency and Fight against Corruption permanently updated and ensure publication of the agendas and minutes of all meetings held (see Chapter II, section 1.2 of this report).

66. <http://www.portaltransparencia.gov.br/ceis>. According to the sole paragraph of Article 1 of CGU Resolution 516 of March 15, 2010, the CEIS shall contain a record of the following penalties: “I – Temporary suspension from participation in competitive bidding and impediment to contracting with the Administration pursuant to the provisions of Art. 87(III) of Law 8.666/93; II – Declaration of ineligibility to participate in competitive bidding or enter into contracts with the Public Administration pursuant to the provisions of Art. 87(IV) of Law 8.666/93; III - Impediment to participate in competitive bidding or enter into contracts with the Union, the States, the Federal District, or municipalities, pursuant to the provisions of Art. 7 of Law 10.520 of 1992; V – Prohibition from participation in competitive bidding and impediment to contracting with the Government, pursuant to the provisions of Art. 81, § 3 of Law 9.504 of 1997; VI – Declaration of ineligibility by the Court of Auditors, pursuant to the provisions of Art. 46 of Law 8.443 of 1993; and, VII - Other penalties envisaged in specific or related legislation with the effects provided in the caput of Article 1.”

67. See Response of Brazil to the Questionnaire of the Fourth Round, p. 26.

68. Brazil informed that Opinion No. 87 of the Office of the Attorney General (adopted by Order No. 1.071/2011), appended which is supported by a wealth of doctrine and case law, interprets the penalties imposed on companies and individuals, pursuant to Law No. 8.666/93, as covering the whole Brazilian public administration.

69. <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=466400>

- 1.4.3. Strengthen the CGU, ensuring for it the necessary financial and human resources to enable it to perform its functions properly, including seeking to implement a staff retention plan (see Chapter II, section 1.2 of this report).
- 1.4.4. Consider the possibility of establishing a legal norm setting out general principles and guidelines for the activities of the OGU and the ombudsman units of federal executive branch organs (see Chapter II, section 1.2 of this report).
- 1.4.5. Publish and distribute the OGU routines and procedures manual (see Chapter II, section 1.2 of this report).
- 1.4.6. Establish institutional cooperation and coordination channels between the activities of the CGU and those of the CEP (see Chapter II, section 1.2 of this report).
- 1.4.7. Improve the statistics on disciplinary investigations initiated by the CRG, in order to establish how many sanctions were not enforced due to the statute of limitations lapsing (see Chapter II, section 1.3. of this report).
- 1.4.8. Consider the possibility of making the necessary statutory amendments in order to broaden the effects of the declaration of ineligibility so that any legal person declared ineligible is prohibited for a reasonable period of time from engaging in competitive bidding, contracting, or keeping contracts with the public administration, in all three branches and in every sphere of government, and of making obligatory the submission of data to the National Register of Ineligible and Suspended Companies (CEIS) as well as compliance therewith (see Chapter II, section 1.3. of this report).

2. FEDERAL AUDIT COURT (TCU)

2.1. Existence of provisions in the legal framework and/or other measures

[75] The Federal Audit Court (TCU) has a set of provisions in its legal framework and other measures concerning, among others, the following:

[76] Article 70 of the Federal Constitution provides that oversight of the accounts, finances, budgets, operations and assets of the Union and of direct and indirect administration entities is exercised by the National Congress, by means of external control, and by the internal control system of each branch of government.⁷⁰ It also provides that the external control exercised by the National Congress is done so with the assistance of the TCU. The exclusive constitutional powers of the TCU are set out in articles 71 to 74 and 161 of the Constitution.

[77] The Organic Law of the TCU (Law 8.443 of July 16, 1992) establishes, at Article 1, the powers of the TCU, including the following: *“I- To examine the accounts of administrators and other persons responsible for public monies, assets, and valuables of the offices of the different branches of government of the Union and of indirect administration entities, including foundations and societies created and maintained by the federal government, and the accounts of those from which losses, misplacements, or other irregularities that result in harm to the Treasury may arise; II - To proceed, motu proprio or at the request of the National Congress, the chambers thereof, or the relevant*

70. The Constitution also envisages the existence of courts of auditors for the states and the Federal District, as well as audit tribunals and councils for municipalities (Constitution, Art. 75).

committees, to audit the accounts, finances, budgets, operations, and assets of the offices of the different branches of government of the Union and of the other entities referred to in the foregoing subparagraph; III - To evaluate the annual accounts reports of the President of the Republic under the terms of Article 36 herein; (...) VIII - To represent the relevant branch of government in investigations of irregularities or abuse, indicating the offense charged and determining responsibilities, including those of government ministers or officials of equivalent rank” (Law 8.443/92, Art. 1). The TCU may also impose penalties and decide on complaints and consultations formulated within the sphere of its authority, as well as issue decisions and regulatory instructions on the subject matter of its powers and on the organization of proceedings to be submitted for its consideration, subject to liability (Law 8.443/92, Art. 3).⁷¹

[78] The TCU has its own exclusive jurisdiction throughout the national territory, which encompasses, *inter alia*, all physical or legal persons that use, collect, have in their keeping, or administer federal public assets and valuables; those who cause the loss, misplacement, or any other irregularity resulting in harm to the Treasury; and those responsible for the use of resources transferred by the Union under an agreement or an instrument of that nature (Law 4.483/92, arts. 4 and 5).

[79] The final decision on a proceeding concerning an annual presentation of accounts is formalized in a judgment (*acórdão*), for which the rights of a full defense, contradiction of charges, and due process are observed. The decisions of the Court may be reviewed on appeal by the TCU itself. The different types of appeal are set out in articles 32 to 35 and 48 of the Organic Law of the TCU.

[80] As regards its autonomy and independence, the Response of the country under review to the Questionnaire in the Fourth Round⁷² states that “*in spite of its constitutional mission to assist the National Congress, there is no hierarchical relationship between the TCU and the legislature. The Court is an independent and autonomous constitutionally established body.*” The Response also cites a decision of the Supreme Court in that regard.

[81] Under Article 73 of the Federal Constitution, the TCU is composed of nine justices.⁷³ Three justices are appointed by the President of the Republic while two are elected between auditors and members of the Federal Public Prosecutor’s Office before the Court, subject to Senate approval. The other six justices are chosen by the National Congress: three by the Federal Senate and three by the House of Deputies. Justices are elected for life, despite the existence of a mandatory retirement age (70 years old), and have the same guarantees, prerogatives, impediments, pay, and benefits as members of the Superior Court of Justice (STJ). The Court is also composed of four auditors selected by public competition, who serve as substitutes for the justices in the event of absence, impediment, or vacancy of the position, in addition to a specialized prosecution service under the direction of a Prosecutor General (Constitution, Art. 130).

[82] To carry out its functions, the TCU holds public competitions to recruit its staff (Constitution, Art. 37 (II) and Law 8.112/90, Art. 10), which is composed of public servants in the external control career system (auditors, technicians, and auxiliaries). In 2010 the TCU had a total of 2,648 employees.⁷⁴

71. The legal powers of the Court of Auditors, compiled by the Court itself, are found at:

http://portal2.tcu.gov.br/portal/page/portal/TCU/institucional/conheca_tcu/institucional_competencias/competencias.pdf

72. See Response of Brazil to the Questionnaire of the Fourth Round, p. 40.

73. Article 73(1) of the Federal Constitution sets out the eligibility requirements to become a justice of the TCU.

74. A complete staffing chart may be found on p. 41 of the Response of Brazil to the Questionnaire of the Fourth Round.

[83] As with CGU staff, candidates have to meet the requirements set down in Law 8.112/90 in order to enter the body's service by means of a public competition and, once approved and appointed, have a constitutional guarantee of tenure after three years of effective service (Constitution, Art. 41).

[84] As regards the disciplinary regime, TCU employees are also subject to the provisions of Law 8.112/90. In addition, they are subject to specific duties and prohibitions contained in the Code of Ethics for TCU Employees (TCU resolution 226 of May 27, 2009).⁷⁵

[85] In terms of manuals, the TCU has, *inter alia*, the Auditing Rules of the Court (TCU Resolution 280 of December 10, 2010), which sets out the technical and conduct rules to ensure that work is carried out according to safety, quality, and consistency standards. The TCU also has Auditing Standards and other rules and manuals used by its staff.⁷⁶ There are, in addition, specific directives and guidelines for the exclusive use of TCU personnel in auditing activities.

[86] Training for TCU employees is provided by the Instituto Serzedello Corrêa (ISC),⁷⁷ which was created in 1992 by the Organic Law of the TCU (Art. 88). In its Response to the Questionnaire of the Fourth Round, the country under review presented information on the evolution of training events promoted by the ISC and the participation of TCU employees in them between 2006 and 2009.⁷⁸

[87] As regards implementation of modern systems or technologies for facilitating its work, the Response of the country under review to the Questionnaire in the Fourth Round states that "*TCU audits are carried out using a computer tool developed by the Court. The Fiscalis system, as it is known, organizes all the working documents used, from the planning of the audit through to the electronic generation of the final report.*"⁷⁹ Information was also provided about the implementation of the *e-TCU* procedural management system and about the inauguration of the new data center at TCU headquarters.⁸⁰

[88] The TCU has a website to inform the public about its activities,⁸¹ in addition to other internet means of communication, including Twitter,⁸² Facebook,⁸³ and YouTube.⁸⁴ The TCU also has various portals on its website with information about the body's activities,⁸⁵ including primers and a range of other publications.⁸⁶ The TCU also carries out programs, such as Public Dialogue,⁸⁷ an initiative aimed, *inter alia*, at encouraging the active participation of civil society representatives in monitoring public resources and improving communication between oversight bodies, public administrators, and society.

75. Available at: http://portal2.tcu.gov.br/portal/page/portal/TCU/institucional/conheca_tcu/Codigo_etica_servidores.pdf

76. The TCU's auditing rules and other standards and manuals are available at:

http://portal2.tcu.gov.br/portal/page/portal/TCU/comunidades/fiscalizacao_controle/normas_auditoria

77. <http://portal2.tcu.gov.br/portal/page/portal/TCU/isc>

78. See Response of Brazil to the Questionnaire of the Fourth Round, pp. 41 and 42.

79. *Ibid.*, p. 41.

80. *Ibid.*, pp. 50 and 51.

81. <http://portal2.tcu.gov.br/TCU>

82. <http://twitter.com/#!/AgenciaTCU>

83. <http://www.facebook.com/TCUoficial>

84. <http://www.youtube.com/user/AgenciaTCU>

85. See Response of Brazil to the Questionnaire of the Fourth Round, p. 49.

86. *Ibid.*, pp. 49 and 50.

87. http://portal2.tcu.gov.br/portal/page/portal/TCU/dialogo_publico

[89] The TCU also has an ombudsman unit,⁸⁸ which receives complaints, promotes a channel of dialogue between the TCU and society, and mediates between the citizen and the public administration.

[90] With respect to oversight of accounts, finances, budget, operations and assets, during the on-site visit, TCU representatives explained that the body has an internal control secretariat and an inspector's office. It was also mentioned that external control of the TCU is exercised by the National Congress through the Joint Budget Committee and the Financial Oversight and Control Committee of the House of Deputies.

[91] As to its budget, during the on-site visit, representatives of the Court informed that the budget for carrying out the TCU's activities is the result of negotiations with the executive branch (through the Federal Budget Secretariat of the Ministry of Planning) to ensure that its requests are included in the national budget contained in the Annual Budget Law. The Response of Brazil to the Questionnaire contains information about how the TCU budget has evolved in recent years.⁸⁹

[92] As regards coordination mechanisms for harmonizing its functions with those of other oversight bodies or branches of government, the TCU maintains technical cooperation agreements with a number of organs in the various spheres of government, such as the CGU, AGU, STF, Federal Revenue Secretariat, National Council of Justice (CNJ), and others.⁹⁰

[93] In addition, the Response of the country under review says that "*the Public Administration Control Network (RCGP) was created as an interagency center of decision-making that promotes greater efficiency in the state's control of the public administration. The signing of the Memorandum of Intent on March 25, 2009, launched the implementation of the RCGP through training workshops held in Brasilia and the implementation of networks in the states. The main purpose of the RCGP is to implement actions in the areas of oversight of the public administration, analysis, and the fight against corruption; provision of incentives, strengthening of societal oversight, dissemination of information and documents, experience sharing, and training for its staff. The Memorandum of Intent was signed by the heads of 17 federal agencies.*"⁹¹ During the on-site visit, one of the results of the RCGP cited by TCU representatives was the creation of the Integrated Registry of Convictions for Administrative Violations (CADICON).⁹²

[94] Finally, it is worth drawing attention to the cooperation and coordination of the TCU's and the AGU's activities. Under Article 61 of the Organic Law of the TCU, the TCU Prosecution Service is required to institute proceedings, through the AGU or, as appropriate, the authorities of the entities under the Court's jurisdiction, seeking the necessary measures for the collection of debts or fines resulting from TCU convictions.

2.2. Adequacy of the legal framework and/or other measures

[95] The Federal Audit Court (TCU) has a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were succinctly described in section 2.1 of this report. Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures:

88. http://portal2.tcu.gov.br/portal/page/portal/TCU/ouvidoria/sobre_ouvidoria

89. See Response of Brazil to the Questionnaire of the Fourth Round, p. 47.

90. The complete list is available on p.48 of the Response of Brazil to the Questionnaire of the Fourth Round.

91. See Response of Brazil to the Questionnaire of the Fourth Round, pp. 48 and 49.

92. <https://contas.tcu.gov.br/cadicon>

[96] In first place, during the on-site visit, both the TCU and civil society representatives mentioned the lack of uniformity and difficulties with harmonizing the procedures of the TCU and the state audit courts, owing to their autonomy and different interpretations of control standards.⁹³ In that connection, they mentioned the existence of two proposed constitutional amendments (PEC)⁹⁴ that aim to unify the external control standards and create an administrative, financial, and disciplinary oversight body for audit courts, known as the National Council of Audit Courts (CNTC), along the lines of the National Council of Justice (CNJ) and the National Council of the Federal Prosecutor's Office (CNMP). It was also explained that the main challenge in securing approval for the CNTC is the difficulty in reaching consensus on its composition.⁹⁵ Bearing in mind the foregoing and the need to have an external oversight body as well as harmonized procedures for audit courts, the Committee will formulate a recommendation in this regard (see recommendation 2.4.1 in section 2.4 of this report).

[97] In second place, the Committee notes that among the sanctions available to the TCU are disqualification of an individual from holding a commissioned or trust position in the public administration for 5 to 8 years (Law 8.443/92, Art. 60) and the prohibition (or declaration of ineligibility) of a bidder from taking part in competitive bidding in the framework of the federal public administration for up to 5 years (Law 8.443/92, Art. 46). Furthermore, Article 272 of the Internal Rules of the TCU provides that the Court shall maintain a specific record of the penalties imposed. In that regard, the Committee believes it important that, as in the case of CADICON, continue to be kept permanently updated two registers in the framework of the TCU: the Register of persons disqualified from holding public office or performing public duties (Cadastro de Inabilitados),⁹⁶ and the Register of disqualified persons, with information on physical and legal persons declared ineligible by the TCU to contract with the public administration (Cadastro de Inidôneos).⁹⁷ Furthermore, the necessary statutory changes should be made to make it mandatory for the public administration to consult both registers. The Committee will formulate recommendations in this regard (see recommendations 2.4.2 and 2.4.3 in section 2.4 of this report).

[98] In third place, the Committee considers it important to broaden the punitive authority of the TCU in cases of declarations of ineligibility so that the prohibition is not restricted to public bidding in the federal public administration, but extends to all contracting throughout the public administration, including all branches and levels of government. This would prevent, for instance, companies convicted by the TCU from contracting with states and municipalities, thereby evading the effects of the penalty (see recommendation 2.4.4 in section 2.4 of this report).

2.3. Results of the legal framework and/or other measures

[99] The Response to the Questionnaire of the country under review and the on-site visit yielded information on results in the TCU, notably the following:

93. In the course of the on-site visit, representatives of civil society organizations, particularly *AMARRIBO*, were highly critical of how the state audit courts operate.

94. PEC 28/2007 (<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=346395>) and PEC 30/2007 (http://www.senado.gov.br/atividade/materia/detalhes.asp?p_cod_mate=80566).

95. Those who support PEC 28/2007 say that the CNTC should be composed mainly of members of courts of accounts, while those who support PEC 30/2007 are in favor of greater civil society participation.

96. <http://portal2.tcu.gov.br/portal/page/portal/TCU/comunidades/responsabilizacao/inabilitados>

97. <http://portal2.tcu.gov.br/portal/page/portal/TCU/comunidades/responsabilizacao/inidoneos>

[100] In first place, the Response of Brazil to the Questionnaire⁹⁸ provides information on the number of collection proceedings and the various amounts funneled to the executing organs between 2006 and 2010. In 2006, there were 2,112 proceedings worth R\$354 million; in 2007, 1,747 proceedings worth R\$600 million; in 2008, 2,987 proceedings worth R\$1,582 million; in 2009, 2,497 proceedings worth R\$1,227 million; and in 2010, 2,559 proceedings worth R\$1,427 million.

[101] In the course of the on-site visit, the AGU representative provided additional information about the amounts actually recovered by the body: R\$1,306 million in 2008; R\$1,467 million in 2009; R\$2,085 million in 2010; and R\$2,930 million in 2011.⁹⁹ Furthermore, according to the AGU representative, the number of collection proceedings increased sharply from 2008 onward owing to suppressed demand.¹⁰⁰ In that regard, the representative reported that the recovery rate for fines imposed by the TCU went from 2.10% in 2008 to 25.08% and 2011.¹⁰¹ The participants in the on-site visit underscored that a major component of the strategy for increasing the recovery rate of those resources was through out-of-court settlements with those convicted and payment plans for fines. As a result of the success of the AGU's efforts, many actors now approach the body unprompted to negotiate their debts.¹⁰²

[102] Bearing in mind the foregoing, the Committee considers that the progress made by the AGU in effectively recovering fines imposed by the TCU has been very significant. However, the Committee notes that the amount recovered still only corresponds to one quarter of the total value of fines. In that regard, the Committee will formulate a recommendation that the AGU continue its efforts and strategy for the effective recovery of funds for the Treasury (see recommendation 2.4.5 in section 2.4 of this report).

[103] In second place, the Committee takes note of the information supplied by the TCU on results obtained with respect to its oversight,¹⁰³ information-giving,¹⁰⁴ and punitive¹⁰⁵ functions, among others. Almost all of the information provided indicates an increase in the activity of the Court in the last five years. For example, the total number of processes (audits, inspections, consultations, complaints, etc.) rose from 6,135 in 2006 to 8,019 in 2010. Furthermore, in 2006, only 13 persons were disqualified from holding commissioned or trust positions and 23 companies were prohibited from taking part in competitive bidding in the federal public administration by the TCU. These numbers went up to 103 and 109, respectively, in 2010.¹⁰⁶

[104] The Committee finds that the above information serves to show that the TCU has performed its functions, producing the results indicated from that information.

2.4. Conclusions and recommendations

98 See Response of Brazil to the Questionnaire of the Fourth Round, p. 42.

99 http://www.oas.org/juridico/portuguese/bra_panel5_AGU.ppt

100. *Ibid.*

101. *Ibid.*

102. Brazil reports that the AGU signed an agreement, approved by the Judicial Branch, that enabled the receipt, R\$ 468 million in installments. That amount comes from the judgment imposed by the TCU on various persons responsible for diverting federal funds during the construction of the São Paulo Labor Courts Complex (Fórum Trabalhista). This was the largest recovery of illicit assets in Brazil's history.

103. See Response of Brazil to the Questionnaire of the Fourth Round, p. 43.

104. *Ibid.*, pp. 44 and 45.

105. *Ibid.*, p. 45.

106. *Ibid.*, p. 45.

[105] Based on the comprehensive review conducted with respect to the Federal Audit Court in the foregoing sections, the Committee offers the following conclusions and recommendations:

[106] Brazil has considered and adopted measures intended to maintain and strengthen the Federal Audit Court (TCU), as described in Chapter II, Section 1 of this report.

[107] In light of the comments made in the above-noted section, the Committee suggests that the country under review consider the following recommendations:

- 2.4.1. Consider the possibility of creating the National Council of Audit Courts as an administrative, financial, and disciplinary oversight body for those courts, ensuring it has the necessary human and financial resources to perform its functions properly (see Chapter II, section 2.2 of this report).
- 2.4.2. Continue to publish and keep permanently updated the register of persons disqualified by the TCU from holding positions of trust and consider the possibility of making the necessary statutory amendments to make it mandatory for the public administration to consult that register (see Chapter II, section 2.2 of this report).
- 2.4.3. Continue to publish and keep permanently updated the register of persons declared ineligible by the TCU and of persons who are prohibited from participating in public bidding in the federal public administration, and consider the possibility of making the necessary statutory amendments to make it mandatory for the public administration to consult that register (see Chapter II, section 2.2 of this report).
- 2.4.4. Consider the possibility of broadening the punitive authority of the TCU in cases of declarations of ineligibility so that the penalty established in Article 46 of the Organic Law of the TCU is not restricted to public bidding in the federal public administration, but extends to all contracting throughout the public administration, including all branches and levels of government (see Chapter II, section 2.2 of this report).
- 2.4.5. Follow-up and intensify the efforts of the AGU as regards increasing the level of effective recovery for the Treasury of fines imposed and collections ordered by the TCU (see Chapter II, section 2.3 of this report).

3. FEDERAL POLICE DEPARTMENT (DPF)

3.1. Existence of provisions in the legal framework and/or other measures

[108] The Federal Police Department (DPF) has a set of provisions in its legal framework and other measures concerning, among others, the following:

[109] Article 144 of the Federal Constitution of Brazil of 1988 provides that the DPF is a permanent body that is organized and maintained by the Union.¹⁰⁷ It has a structured career system and its functions

107. The DPF, which is present in every Brazilian state, has 27 superintendencies installed in the various capitals of the units of the Federation, each of them administration offices that execute their own budgets; 97 stations in various municipalities of strategic importance; 15 special maritime, river, and lake police delegations; 18 outposts, and 2 intensive training centers. The Federal Police are also present overseas, with 13 police attaché's offices in Argentina, Bolivia,

include, *inter alia*, “I – To investigate criminal offenses¹⁰⁸ against the political and social order to the detriment of property, services, and interests of the Union and its self-sufficient entities and state-owned companies, as well as other offenses that have inter-state and international repercussions and demand uniform suppression, in accordance with the law; (...); IV – to exercise exclusively the functions of judicial police of the Union.” (Constitution, Art. 144, § 1 and Decree 6.061/07, Annex I, Art. 29).¹⁰⁹

[110] Under Article 2 of Decree 6061 of March 15, 2007, the DPF is part of the institutional structure of the Ministry of Justice and is composed of an Executive Directorate, a Department of Investigation and Fight against Organized Crime, an Inspector General’s Office, a Police Intelligence Department, a Technical-Scientific Department, a Personnel Management Department, and a Department of Administration and Police Logistics.¹¹⁰

[111] Furthermore, Article 1 of the Internal Regulations of the DPF, established by MJ Resolution 2877 of December 30, 2011, provides that the DPF enjoys “*budgetary, administrative, and financial autonomy [and is] directly subordinate to the Minister of Justice.*”

[112] The Department of Investigation and Fight against Organized Crime of the DPF comprises, *inter alia*, the following units responsible for investigation of acts of corruption: The Division for Suppression of Crimes against Property and Arms Trafficking, the Division for Suppression of Financial Crimes, and the Office of the Coordinator General of the Treasury Police (Internal Regulations of the DPF, Art. 2). Furthermore, the Service for the Suppression of the Diversion of Public Resources (SRDP) was created in 2012 under the Office of the Coordinator General of the Treasury Police of the Department of Investigation and Fight against Organized Crime. The SRDP has specialized delegations to fight embezzlement of public resources in 17 states and the Federal District.

[113] The head of the Federal Police Department is the Director General, who is designated by commission and may be appointed and dismissed by the President of the Republic (Decree 73.332/73, Art. 1). The principal decision-making authority in the framework of the DPF is the Superior Police Council, a collegiate entity intended to guide overall police and administrative activities and issue opinions on matters of relevance to the institution. The composition of the Council is determined by Article 10 of the Internal Regulations of the DPF.

[114] As regards its staff, entry to the career systems that comprise the DPF is through public competitions (Constitution, Art. 37(II) and Law 8.112/90, Art. 10), with the exception of its top authorities who are designated by commission and maybe freely appointed and dismissed (Constitution, Art. 37(II) and Law 8.112/90, arts. 9 and 35). The DPF has 13,952 staff, of which 11,334 are police operatives and 2,618 are administrative employees. As federal public servants, members of the DPF career system enjoy a constitutional guarantee of tenure after three years of effective service (Constitution, Art. 41, *caput*).

Colombia, Paraguay, Uruguay, Suriname, South Africa, France, Portugal, Italy, the United States, the United Kingdom, and Peru.

108. According to Article 5 of the Code of Criminal Procedure, in criminal offences, such as corruption-related offenses, police investigations shall be opened “I – *Ex officio*; II – *On instructions from the judicial authority and the Federal Public Prosecutor’s Office, at the request of the injured party or anyone legitimately empowered to represent them,*” or in the event of the offender being discovered *in flagrante delicto*. The decision adopted on the request to open an investigation may be appealed to the Chief of Police (Code of Criminal Procedure, Art. 5, § 2).

109. The DPF has additional powers established in its internal regulations (Art. 1, paragraphs V and VI). The DPF also has other powers established by various laws.

110. Chapter II of the Internal Regulations of the DPF includes an exhaustive list of the units that make up the body’s institutional structure and their respective competencies.

[115] As federal public servants senior career officials in the DPF are subject to the rules on conflict of interests and liability for their acts established, *inter alia*, in the Constitution and Law 8.112/90, as well as other ethical standards. They are also subject to separate rules established by Law 4878 of December 3, 1965.

[116] As regards mechanisms for internal control of DPF employees, the Internal Regulations of the DPF establish at Articles 14 and 29, respectively, the competencies of the Office of the Inspector General of the Federal Police and of the Inspector General of the DPF.

[117] External control of police activity is exercised by the Federal Public Prosecutor's Office (Constitution, Art. 129(VII)). Resolution 20 adopted by the National Council of the Federal Public Prosecutor's Office on May 28, 2007, governs the exercise of that control.

[118] With respect to oversight of accounts, finances, budget, operations and assets of the DPF, during the on-site visit, it was explained that the DPF has an internal control adviser and that it is also subject to the office of the internal control advisor of the Ministry of Justice as well as oversight by the GCU and the TCU.

[119] Insofar as training is concerned, the DPF has the National Police Academy, which is responsible, *inter alia*, for training, updating, improvement, and specialization of DPF personnel, as well as disseminating the police doctrine and establishing exchange mechanisms with other agencies in the country and abroad.¹¹¹

[120] According to information supplied in the Response of the country under review to the Questionnaire of the Fourth Round,¹¹² *"in 2010, the Academy trained 593 new federal police operatives and 97 employees of the Federal Prisons Department. In addition 11,273 employees received professional qualifications, 4,337 in in-person ongoing training activities and 6,936 in EAD routines (...)"*

[121] Furthermore, during the on-site visit DPF representatives presented a specific training plan on investigation of diversion of public resources, which envisages four activities in the course of 2012.¹¹³

[122] It was also explained during the on-site visit that the DPF is involved in the National Training Program for the Fight against Corruption and Money Laundering (PNLD), which is under the coordination of the Department of Asset Recovery and International Legal Cooperation (DRCI) of the Ministry of Justice. The PNLD, created in 2004 on the recommendation of the ENCCLA, is an integrated plan that provides training to government agents and guidance to the public, as well as improving the use of public resources and spreading a culture of preventing and fighting corruption and money laundering in Brazil.¹¹⁴

[123] As regards manuals, in its Response to the Questionnaire of the Fourth Round,¹¹⁵ the country under review mentions that *"2010 saw publication of the first edition of the Investigation Manual on Diversion of Public Resources, prepared by a team under the coordination of the Treasury Police Division of the DPF, the purpose of which includes investigation of corruption and related crimes."*

111. Normative Instruction DG/DPF 13 of 2005 sets out the competencies of the National Police Academy at Article 119.

112. See Response of Brazil to the Questionnaire of the Fourth Round, p. 55.

113. http://www.oas.org/juridico/PDFs/mesicic4_bra_dpf_plano.pdf

114. For more information about the PNLD, see:

<http://portal.mj.gov.br/data/Pages/MJFFC0396EITEMIDB1AD49ADA3F64808A018683CB1132E96PTBRIE.htm>

115. See Response of Brazil to the Questionnaire of the Fourth Round, pp. 55 and 56.

[124] To inform the public about its objectives, functions, and activities, on its website¹¹⁶ the DPF publishes its Services Menu,¹¹⁷ the purpose of which is to facilitate and broaden citizen access to its services and encourage participation in public sector monitoring and promote an improvement in service quality. The DPF website also has channels for reporting complaints,¹¹⁸ separated according to type of offense, in addition to information and guidance on various other services, as well as a user satisfaction survey¹¹⁹ to evaluate citizens' views on the quality of services. The DPF also has official profiles on three social networking sites (Twitter,¹²⁰ Facebook¹²¹ and Youtube¹²²).

[125] Concerning the way in which the necessary resources for its operations is ensured, it was explained during the on-site visit that every year, based on the approved Budgetary Guidelines Law, the Federal Budget Secretariat of the Ministry of Planning, Budget, and Management (MPOG) prepares the draft budget for the next year jointly with each ministry, including the Ministry of Justice, to which the DPF belongs. Likewise, the DPF draws up a proposed budget jointly with the Ministry of Justice. The proposal submitted by the Ministry is then included in the draft Annual Budget Law, which is introduced by the executive branch to Congress for consideration. The table below shows how the budget of the DPF has evolved since 2007:

	2007	2008	2009	2010	2011
Budget appropriation (R\$ billions)	3.07	3.69	3.9	4.11	4.27

Source: Federal Police Department (on-site visit)

[126] In addition to resources from the national budget, the DPF has other revenue sources connected with immigration, private security, SINARM, and chemical products. For the purposes of managing its separate revenues, Supplemental Law 89/97 created the Establishment and Operational Activities Fund of the Federal Police (FUNDAPOL). The following table, shows FUNDAPOL revenue over the last three years (in millions of reals):

2008		2009		2010	
Estimated	Actual	Estimated	Actual	Estimated	Actual
233	299	388	306	291	385

Source: Federal Police Department 2010 Management Report

[127] As regards coordination mechanisms for harmonizing its functions with those of other oversight organs or branches of government, the DPF has signed a protocol of intent to join the Public Administration Oversight Network (RCGP), which is under the coordination of the TCU¹²³ and also part of the ENCCLA, coordinated by the Ministry of Justice.¹²⁴ DPF representatives also mentioned in the course of the on-site visit that the body cooperates extensively (though not on an institutionalized basis)

116. <http://www.dpf.gov.br/>

117. <http://www.dpf.gov.br/institucional/carta-de-servicos/>

118. <http://www.dpf.gov.br/servicos/fale-conosco/denuncias>. Article 5(3) of the Code of Criminal Procedure provides, “any person who is aware of a criminal offense may, either verbally or in writing, bring it to the attention of the police authority, which, having verified the provenance of the information, has the obligation to open an inquiry.”

119. <http://www.dpf.gov.br/institucional/investigacion-de-satisfacao/>

120. <http://twitter.com/agenciapf>

121. <http://www.facebook.com/departamentodepoliciafederal>

122. <http://www.youtube.com/PFnATela>

123. <http://www.rededecontrole.gov.br/>

124. <http://portal.mj.gov.br/data/Pages/MJ7AE041E8ITEMID3239224CC51F4A299E5174AC98153FD1PTBRIE.htm>

with the CGU and that both have signed a technical cooperation agreement with the Office of the Prosecutor General to use the Banking Movements Investigation System (SIMBA)¹²⁵ developed by the MPF. The DPF is also working to set up both a database on diversion of public resources, similar to the Judicial Police Activity Management System (*Sistema e-Pol*), which should be integrated in 2013 with the Federal Public Prosecutor's Office Consolidated System and, subsequently, with the *Sistema PJe* of the National Council of Justice (CNJ).

[128] With regard to transparency and accountability, according to the Response of the country under review to the Questionnaire of the Fourth Round¹²⁶ *“The Ministry of Justice’s Transparency Program was created by Decree 3746 of December 17, 2004. The purpose of the Program, which covers the Federal Police Department, is to facilitate monitoring by the public of the Ministry’s activities and spending, as well as to improve internal prevention and control mechanisms to ensure the propriety of all the Ministry’s administrative activities.(...) Resolutions 1417 and 1418, both of July 27, 2005, introduce detailed regulations governing the activities of the Transparency Program with respect to disclosure of information and analysis and improvement of preventive control mechanisms on the Ministry’s administrative activities. The program, which is implemented within the framework of the minister’s cabinet, is coordinated by the working group instituted by the resolution that created the Program.”*

3.2. Adequacy of the legal framework and/or other measures

[129] The Federal Police Department (DPF) has a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were succinctly described in section 3.1. Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures:

[130] In first place, the Committee notes the absence of an organic law of the federal police setting out the structure of the DPF career system and establishing the qualifications and specific requirements for recruitment to staff and management (“commissioned”) positions in the body, including the post of Director General. The Committee takes note of the existence of a bill in that connection introduced to the Legislature by the executive branch in 2009, which is under discussion in the House of Deputies.¹²⁷ The Committee will formulate a recommendation in this regard (see recommendation 3.4.1 in section 3.4 of this report).

[131] In second place, the Committee notes that the Service for the Suppression of the Diversion of Public Resources recently created in the DPF, is found in 17 of Brazil’s 26 states, as well as the Federal District. The Committee believes it essential for this DPF service to be present in each of the country’s 9 other states and that these important units (both existing and future ones) specializing in the investigation of acts of corruption be guaranteed the necessary human and financial resources to carry out their functions properly. The Committee will formulate a recommendation in this regard (see recommendation 3.4.2 in section 3.4 of this report).

125. The SIMBA system is a set of processes, modules, and rules for standardizing (encrypted) banking information among financial institutions and government organs. For further information, visit: <http://www.dpf.gov.br/servicos/sigilo-bancario/o-que-e-o-simba/>.

126. See Response of Brazil to the Questionnaire of the Fourth Round, pp. 57 and 58.

127. Proposed law 6.493/2009. Available at: <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=461541>

[132] In third place, the Committee suggests that the DPF enhance its technical and institutional capacity to investigate cases of bribery of national and foreign government officials by individuals or corporations (see recommendation 3.4.3 in section 3.4 of this report).

[133] In fourth place, given the importance of the DPF having an internal control body to promote the quality of the body and to encourage citizen participation therein, the Committee urges the country under review to establish the DPF Ombudsman's Office and ensure that it has the necessary human and financial resources to perform its functions properly. The Committee will formulate a recommendation in this regard (see recommendation 3.4.4 in section 3.4 of this report).

[134] In fifth place, the Committee notes that the supplemental law mentioned in Article 129 (VII) of the Constitution has not yet been promulgated. The absence of clear action parameters could undermine the external oversight work of the DPF carried out by the MPF. The Committee will formulate a recommendation in this regard (see recommendation 3.4.5 in section 3.4 of this report).

3.3. Results of the legal framework and/or other measures

[135] The Response to the Questionnaire of the country under review and the on-site visit yielded information on results in the DPF, notably the following:

[136] The Response of Brazil to the Questionnaire¹²⁸ provides information on a large number of special operations carried out by the DPF to combat the diversion of public resources, as well as intelligence operations, which led to the imprisonment of 2,357 persons in 2010, 124 of whom were public servants, including the Governor of the Federal District and the Governor of the State of Amapá. The Response of Brazil to the Questionnaire also¹²⁹ presents the following tables with information on the results of operations carried out and the number of police investigations (*inquéritos*), broken down by offense:

[137] *DPF Operations*

	2005	2006	2007	2008	2009	2010	2011*
Operations carried out	67	167	188	235	288	270	256
Public servants imprisoned	219	385	310	396	183	124	260
Police officers imprisoned	09	11	15	07	04	05	04
Total persons imprisoned	1,407	2,673	2,876	2,475	2,663	2,734	2,085

* Consolidated data as of November 1, 2011

Source: <http://www.dpf.gov.br/agencia/estatisticas>

[138] *Changes in numbers of police investigations*

	2005	2006	2007	2008	2009	2010	2011
Embezzlement	1,247	1,291	1,294	1,749	1,373	1,114	1,462
Extortion	119	107	160	123	135	116	116
Acceptance of bribes	348	495	656	596	851	409	544
Influence peddling	67	79	71	178	94	57	48
Offering of bribes	293	275	474	509	929	286	374

Source: Federal Police Department

128. See Response of Brazil to the Questionnaire of the Fourth Round, pp. 64 and 65.

129. *Ibid.*, pp. 64 and 65.

[139] “By the end of 2011, there were 25,811 police investigations underway in the Federal Police Department concerning the offenses presented in the table above, distributed as follows: Embezzlement - 16,404, Extortion – 1,950, Acceptance of bribes – 3,557, Influence peddling – 556, and Offering of bribes – 3,344”.

[140] Furthermore, during the on-site visit, additional information was provided on the number of police investigations (*inquéritos*) concluded in connection with the above offenses in the last five years. Of 5,161 embezzlement investigations opened, 5,109 were concluded; of 496 extortion investigations initiated, 490 were concluded; of 1,284 investigations into acceptance of rights, 1151 were completed; of 221 investigations of influence peddling, 206 were concluded; and of 904 investigations into offering of bribes, 867 were concluded.¹³⁰

[141] The Committee notes that the information supplied in the table indicates a considerable rise in investigations of acts of corruption between 2005 and 2009 but that the trend was interrupted in 2010 before rising again in 2011, although to below the 2008 levels. Furthermore, the table entitled “DPF Operations” displays a rising trend in the number of persons imprisoned in DPF of operations, which could explain the dip in the number of investigations in 2010 and 2011, given their complexity.

[142] Finally, the Committee acknowledges the significant efforts made by the DPF in opening and concluding investigations of acts of corruption in Brazil. The efforts of the DPF in this field were also recognized by academics and civil society representatives during the on-site visit to Brazil. They mentioned the favorable image enjoyed by the body in the eyes of Brazilian public opinion based on the results of the various operations conducted by the DPF over the years, some of which have resulted in the imprisonment of high-profile figures in the public and private sectors.

3.4. Conclusions and recommendations

[143] Based on the comprehensive review conducted with respect to the Federal Police in the foregoing sections, the Committee offers the following conclusions and recommendations:

[144] **Brazil has considered and adopted measures intended to maintain and strengthen the Federal Police, as described in Chapter II, Section 3 of this report.**

[145] In light of the comments made in the above-noted section, the Committee suggests that the country under review consider the following recommendations:

- 3.4.1. Consider the possibility of adopting the organic law of the Federal Police (see Chapter II, Section 3.2 of this report).
- 3.4.2. Establish a unit of the DPF’s Service for the Suppression of the Diversion of Public Resources in each of the Brazilian states without one and ensure that these important units (both existing and future ones) specializing in the investigation of acts of corruption have the necessary human and financial resources to carry out their functions properly (see Chapter II, section 3.2 of this report).
- 3.4.3. Enhance the technical and institutional capacity of the DPF to investigate cases of bribery of national and foreign government officials by individuals or corporations (see Chapter II, section 3.2 of this report).

130. http://www.oas.org/juridico/PDFs/mesicic4_bra_dpf_estadis.pdf

- 3.4.4. Establish the DPF Ombudsman, ensuring for it the necessary human and financial resources to enable it to perform its functions properly (see Chapter II, section 3.2 of this report).
- 3.4.5. Consider the possibility to regulate, through supplemental law, the constitutional provision so that the Federal Public Prosecutor's Office can have clear parameters of action in its external oversight of the DPF (see Chapter II, section 3.2 of this report).

4. FEDERAL PUBLIC PROSECUTOR'S OFFICE (MPF)

4.1. Existence of provisions in the legal framework and/or other measures

[146] The Federal Public Prosecutor's Office (MPF) has a set of provisions in its legal framework and other measures concerning, among others, the following:

[147] The Federal Constitution of Brazil of 1988 provides, at Article 127, that the Federal Public Prosecutor's Office is a permanent institution, essential to the jurisdictional function of the State, and it is its duty to defend the legal order, the democratic regime, and inalienable social and individual interests, and that its functional and administrative autonomy are ensured.¹³¹ (Constitution, Art. 127, § 2).

[148] Under Article 128 of the Federal Constitution, the MPF is part of the Public Prosecution Service of the Union (MPU), which also comprises of the Labor Public Prosecution Service, the Military Public Prosecution Service, and the Public Prosecution Service of the Federal District and the Territories (MPDFT). The MPU and the state public prosecution services are also part of the Brazilian Public Prosecution Service.

[149] Under Article 129 of the Federal Constitution, the constitutional functions of the Federal Public Prosecutor's Office include: "To initiate, exclusively, public criminal proceedings, under the terms of the law" (Constitution, Art. 129 (I)); "to institute civil investigation and public civil proceedings to protect public and social property, the environment and other diffuse and collective interests (Constitution, Art. 129 (III)); "to request investigative procedures and the institution of police investigations, stating the legal grounds for its procedural arguments" (Constitution, Art. 129 (VIII)); "to exercise other functions which may be conferred upon it, provided that they are compatible with its purpose, being prohibited legal representation and advice for public entities"(Constitution, Art. 129 (IX))."

[150] The specific institutional functions and powers of the MPU are contained in Chapters I, II, III, and IV of Title I of its organic law (Supplemental Law 75 of 1993). In particular, the functions of the MPF include: "*to institute civil inquiries and other related administrative procedures*" (Supplemental Law 75/93, Art. 38(I)); "*to request investigative procedures and the institution of a police investigation, it being able to monitor the latter and submit evidence*" (Supplemental Law 75/93, Art. 38(II)); *to request the competent authority to institute initiative proceedings, other than those of a disciplinary nature, it being able to monitor them and submit evidence*" (Supplemental Law 75/93, Art. 38(III)), and; "*monitor the execution of sentences in proceedings under the jurisdiction of the Federal Justice and Electoral Justice systems*" (Supplemental Law 75/93, Art. 38(VII)).

131. For the purposes of exercising its constitutional and legal powers, the MPF has functional, administrative, and financial autonomy under the terms of Article 22 of Supplemental Law 75 of 1993: "*The Public Prosecution Service of the Union is ensured functional, administrative, and financial autonomy, it having the authority: I – To propose to the legislature the creation and extinction of its auxiliary positions and services, as well as setting time limits for the positions of their members and staff to expire; II – to staff its career positions and auxiliary services; III – to organize auxiliary services ; IV – to carry out acts of management.*"

[151] Under the terms of Article 37(I) of Supplemental Law 75/93, it is the responsibility of the MPF to act, specifically, in cases under the jurisdiction of the Supreme Federal Tribunal, the Superior Court of Justice, regional federal courts and federal judges, and electoral courts and judges.

[152] The Federal Public Prosecutor's Office is authorized to institute public criminal proceedings in publicly actionable crimes (Code of Criminal Procedure, Art. 24). The main guidelines regarding the criminal jurisdiction of the MPF are found in Article 109 of the Constitution, which contains provisions on the cases that are eligible for trial under the federal justice system. That rule applies to an enormous range of crimes, which are, in turn, defined in the Criminal Code¹³² and in other ordinary laws.¹³³ Subparagraphs IV and V establish the main powers with regard to corruption against federal organs, as follows: "*Art. 109. It is the responsibility of federal judges to try and judge: [...] IV – all political crimes and criminal wrongdoings committed against the property, services, or interests of the Union or its self-sufficient entities or state-owned companies, except for contraventions and matters under the jurisdiction of the military and electoral justice systems; V – Offenses envisaged in international treaties or conventions where, execution having commenced in the country, the result has occurred or should have occurred abroad, or vice versa.*"¹³⁴

[153] Article 8 of Supplemental Law 75/93 contains further provisions on the broad powers that the members of the MPU possess in the exercise of their functions.

[154] During the on-site visit, representatives of the Federal Public Prosecutor's Office explained that the MPF has six Coordination and Review Chambers, which are sectoral organs concerned with coordination, integration, and review of the exercise of functions in the institution (Supplemental Law 75/93, Art. 58), whose responsibilities include "*I - to promote integration and coordination of the institutional bodies in activities connected with their assigned sector, observing the principle of functional independence; (...); IV - offer opinions on the archive of police investigations, parliamentary inquiries, or items of information, except in cases under the original jurisdiction of the Prosecutor General; (...); VII - to decide on conflicts of functions among the organs of the Federal Public Prosecutor's Office*" (Supplemental Law 75/93, Art. F2).

[155] In matters concerning the fight against corruption, attention was drawn to the Second Chamber (Criminal Matters and External Oversight of Police Activity) and the Fifth Chamber (Public Property and Lack of Administrative Probity). During the on-site visit it was also mentioned that in 2010, the Second Chamber established the Working Group on the Fight against Corruption, Appropriation, and Diversion of Federal Funds in Municipalities as an advisory and coordination body on matters concerning the fight against corruption involving federal funds transferred to municipalities. One of the objectives of the Working Group is to establish a partnership with public organs, such as the CGU and

132. Relevant among the crimes against the public administration defined in the Criminal Code (Decree-Law 2.848/40) are the following: Embezzlement (Art. 312); Misuse of public funds or revenues (Art. 315); Extortion (Art. 316); Acceptance of bribes (Art. 317); Malfeasance (Art. 319); Representation of private matters before the Administration (Art. 321); Influence peddling (Art. 332); Offering of bribes (Art. 333); Offering of bribes in international business transactions (Art. 337-B), and Influence peddling in international business transactions (Art. 337-C).

133. Notable, *inter alia*, are Law 9.613 of 1998, which recognizes the crime of money laundering, and Law 8.429 of 1992, which establishes offenses liable to punishment for lack of administrative probity.

134. Brazil informed that Law 9.613/98 was substantially modified by Law 12.683/2012 - http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2012/Ley/L12683.htm, adapting even further the anti-money laundering system to the requirements of international conventions and treaties by eliminating the role of predicate offenses, including an express reference to offenses committed abroad (Art. 2, II), referring in detail to advance disposal of assets (Art. 4) and including Mercantile Registries (*juntas comerciais*) as obligated persons (Art. 9, XIII).

the Office of the Inspector General of the Federal Police, among others, for the purpose of compiling data and documents.¹³⁵

[156] In September 2010, the MPF and the CGU signed a protocol of technical cooperation with the aim of extending and strengthening linkage and integration of their activities to confront corruption involving federal resources throughout the country, as well as to permit cross-referencing between the two institutions' databases, or with other databases to which they have access, in order to identify irregular situations and ensure the effectiveness of activities to combat them. The agreement also provides that the MPF will bring to the attention of the CGU any criminal proceedings instituted on the basis of its audits and inspections; that the MPF will supply information requested by the CGU for the institution of proceedings and activities; and that the CGU will furnish the Federal Public Prosecutor's Office with relevant information and documents for the criminal prosecution of persons involved in acts of corruption. There is also an agreement between the MPF and the CGU that was signed in 2004 and establishes a partnership between the two bodies in the area of civil matters, encompassing, in particular, cases with respect to lack of integrity and protection of public property. That agreement concerns, above all, the Fifth Chamber of the MPF and the Federal Secretariat for Internal Control of the CGU.

[157] The head of the MPF is the Prosecutor General of the Republic (Supplemental Law 75/93, Art. 45), who is appointed by the President of the Republic from members of the career service,¹³⁶ who are over the age of 35, following their approval by an absolute majority of the Federal Senate, in order to serve a term of two years, for which reappointment is permitted (Constitution, Art. 128, § 1). The Prosecutor General may only be dismissed on the initiative of the President of the Republic, following authorization by an absolute majority of the Federal Senate (Constitution, Art. 128, § 2).

[158] The Federal Senate has exclusive authority to prosecute and try the Prosecutor General of the Republic for liability offenses¹³⁷ (Constitution, Art. 52(II)). In the case of common crimes, the Prosecutor General of the Republic may only be prosecuted and tried by the STF (Supplemental Law 75/93, Art. 18(II)(a)).

[159] The Superior Council is the highest collegiate decision-making body in the MPF. Presided over by the Prosecutor General of the Republic, it is composed of 10 assistant prosecutors general as well as the Prosecutor General and the Vice Prosecutor General of the Republic, who are ex officio members (Supplemental Law 75/93, Art. 54). It is the responsibility of the Council, among other functions established in Article 57 of Supplemental Law 75/93, to prepare and approve the standards and

135. Brazil informs that in 2000, after the MPF forwarded information to the Office of the Attorney General of the Union (AGU), the latter, in concert with the Brazilian Ministry of Justice (DRCI/MJ) instituted an asset recovery proceeding in the Swiss courts to recoup US\$6.8 million in public funds diverted from Brazil's state coffers by the former Judge Nicolau dos Santos Neto. The return of those assets to the Brazilian state was completed by the Swiss judicial system. Also in conjunction with the MPF and the DRCI /MJ, the AGU succeeded in freezing almost US\$30 million in funds held in Swiss bank accounts in connection with the Propinoduto case. The funds were the proceeds of acts of corruption committed by prosecutors at the Rio De Janeiro State Revenue Department.

136. Since 2001, the National Association of Government Prosecutors (ANPR) has held consultations for preparing a shortlist of three candidates. First an internal round of voting is held in the institution, then the ANPR sends the president of the Republic a list with the names of the three candidates who received the most votes. Under this constitutional provision, the President is not under the obligation to choose the Prosecutor General of the Republic from this shortlist of three names.

137. Under Law 1079 of 1950, the following are offenses in connection with official duties of the Prosecutor General: "1) Issuing an opinion on a case when they are a suspect in it under the law; 2) refusal to carry out an act for which they are responsible; 3) manifest negligence in the performance of their functions; 4) acting in a manner incompatible with the dignity and decorum of the position." (Law 1.079/50, Art. 40(I)). Ordering or committing, as head of the Public Prosecution Service of the Union, the acts envisaged in Article 10 of this Law (Law 1.079/50, Art. 40-A(I)) also constitute offenses in connection with official duties of the Prosecutor General or whomever substitutes them.

regulations that will govern the institution (for example, defining criteria for the distribution of investigations and procedures and approving the draft budget of the MPF); and to introduce rules and decide on matters concerning the career system (for example, standards on the competition for entry to the career system, criteria for promotions based on merit and for establishing the order of seniority, and holding of inspections and investigations, etc.).

[160] The MPF career system consists of the positions of assistant prosecutor general of the Republic, regional government prosecutor of the Republic, and government prosecutor of the Republic (Supplemental Law 75/93, Art. 44). The administrative structure of the MPF also includes other staff who belong to the procedural analyst and procedural technicians career systems, which are governed by PGR/MPU resolution 286 of 2007. In November 2011, the MPF had a workforce of 897 members and 7,933 staff.

[161] Entry to the Federal Public Prosecutor's Office career system is by public competition of examinations and credentials, with the Bar Association of Brazil effectively involved in holding them. The basic requirements are a law degree and at least three years of practice of the law. The order of grades shall be respected in the appointment (Constitution, Art. 129(3) and Supplemental Law 75/93, arts. 186 and 187). A competition shall be held as a matter of obligation when the number of vacancies exceeds 10% of the staff and on a discretionary basis when the Superior Council of the MPF deems it appropriate (Supplemental Law 75/93, Art. 186, sole paragraph).

[162] After completing a probationary period of two years, members of the MPF may only be dismissed from their posts by a court judgment that is not subject to appeal ("*trânsito em julgado*") (Constitution, Art. 128(5)(I.a) and Supplemental Law 75/93, Art. 17(I)). Furthermore, they may only be transferred at their request, with their consent, or for reasons of public interest, by decision of the Superior Council adopted by a vote in favor of two thirds of its members, for which they are guaranteed every possibility of defense (Constitution, Art. 18(5)(I.b) and Supplemental Law 75/93, Art. 17(II)).

[163] The Constitution also accords the Federal Public Prosecutor's Office, legal treatment and guarantees analogous to those of judges, so that they might exercise their functions without being subject to undue influence. Notable among these guarantees is that of functional independence.¹³⁸ (Constitution, Art. 127, § 1).

[164] With regard to prohibitions and conflicts of interests, Article 128 (5) of the Federal Constitution establishes a series of prohibitions for members of the Federal Public Prosecutor's Office. Brazilian procedural laws also envisage cases of impediment and suspension. The administrative procedure for determination of liability and the penalties to which members of the Federal Public Prosecutor's Office are subject are described in Chapter III of Title III of Supplemental Law 75/93 (articles 236 to 265).

[165] As regards the procedure for action, the Response of the country under review to the Questionnaire of the Fourth Round states,¹³⁹ "*Members of the MP may act in two ways: motu proprio or at the behest of third parties. They act motu proprio when they decide to open an investigation on their*

138. Regarding the functional independence of members of the Federal Public Prosecutor's Office, the Response of the country under review to the Questionnaire of the Fourth Round states, "*The principle of functional independence signifies that each government prosecutor has full autonomy in the exercise of their functions and need only abide by the laws of the country and the evidence in each case. Should that occur and several members of the Federal Public Prosecutor's Office act in the same proceeding, each is at liberty to present their personal convictions on the case, so long as they do so in a reasoned manner, based on the evidence and the laws of the country. Under this principle, seniority in the Federal Public Prosecutor's Office is only taken into account in connection with administrative and management acts.*"

139. See Response of Brazil to the Questionnaire of the Fourth Round, pp. 67-68.

own initiative because some irregularity or situation that requires the intervention of the body has come to their attention. Based on the evidence collected in that activity, the members of the MP have the autonomy to decide either to close the investigation, refer it to another public body competent to take up the case, or institute the appropriate judicial proceedings.” The other way in which they act comes about at the request of a third party, who may or may not have a direct interest in the facts. It is common for citizens who become aware of a particular act or potentially irregular situation to appear before the Federal Public Prosecutor’s Office and request them to order measures to be taken (...)”

[166] In cases where a member of the Federal Public Prosecutor’s Office decides, to request that the police investigation or any other item of information be set aside, rather than presenting charges, Article 28 of the Code of Criminal Procedure provides that “*should the judge consider the reasons invoked to be without merit, they shall refer the investigation or the items of information to the Prosecutor General, who shall present the charges, designate another body of the Federal Public Prosecutor’s Office to present them, or reiterate the motion to close the file, which only then will the judge be required to comply with.*”¹⁴⁰ However, in accordance with the provisions of Article 62(IV) of Supplemental Law 75/93 (Organic Law of the MPU), the Second Chamber for Coordination and Review, a collegiate organ, reviews requests to set aside cases.

[167] Members of the MPF have various manuals of procedure, notable among which is the manual on violation of confidentiality of tax or bank information¹⁴¹ and the task force operational guidelines in the framework of the MPF,¹⁴² both of which were drawn up by the Staff College of the Public Prosecution Service of the Union (ESMPU).

[168] The main purposes of the ESMPU, which was created by Law 9.628 of 1998 are to promote the improvement and continuous updating of MPU members and staff, induct new members of the MPU in the performance of their duties in the institution, prepare legal research projects and programs, and ensure that the MPU is recognized as an essential institution to the jurisdictional function of the Brazilian state (Law 9.628/98, Art. 3). In furtherance of its objectives, the school promotes academic activities throughout the country, including improvement courses, workshops, seminars, symposiums, congresses, and postgraduate programs. It also organizes training courses for the entry and lifetime recruitment of staff and for promotion of MPU members (Constitution, Art. 129, § 4).¹⁴³

[169] In the course of the on-site visit, representatives of the Federal Public Prosecutor’s Office provided information about the MPF’s integrated information system, known as the Consolidated Information System (or *Único*), which is used to manage MPF processes. Created to expedite and consolidate processing of judicial and administrative documents, the system allows the nationwide integration of the MPF and enhances the transparency, promptness, and security of procedural processes. The *Único* system offers a series of innovative technological tools for the MPF’s institutional activities, such as digital certification, electronic signatures, text indexing, computerized guidelines, statistics, importation of data on proceedings in the courts, and remote access. It was also explained that the system’s judicial and administrative modules are installed in every state prosecutor’s office (first instance) and that the administrative module has also been set up in every regional prosecutor’s office in

140. The same would appear to occur in cases where the criminal investigation is undertaken by the Federal Public Prosecutor’s Office itself, pursuant to Article 15 of resolution 13 of the National Council of the Federal Public Prosecutor’s Office (CNMP) of October 2, 2006.

141. Available at: <http://www3.esmpu.gov.br/linha-editorial/manuais-de-atuacao/Quebra%20de%20Sigilo%20-%204a%20Revisao.pdf>

142. Available at: <http://www3.esmpu.gov.br/linha-editorial/manuais-de-atuacao/Manual%20de%20Atuacao%20-%20Forcas-tarefas.pdf>

143. For more details on the activities of the ESMPU, see <http://www3.esmpu.gov.br/>

the Republic (second instance). The next stage of the project is to establish the judicial module in the second instance, as well as both modules in the Office of the Prosecutor General of the Republic (third instance).

[170] The MPF has a website to inform the public about its activities,¹⁴⁴ in addition to other channels of communication, including radio,¹⁴⁵ television,¹⁴⁶ on-line videos published on YouTube,¹⁴⁷ and Twitter.¹⁴⁸ An array of information on the functions and procedures of the MPF can also be found in the primer “Inside the MPF.”¹⁴⁹ The MPF also implements programs, such as the so-called *Citizen School*,¹⁵⁰ An initiative designed to educate the student community in the Federal District by means of workshops, primers, panels, booklets, videos, multimedia and documents, about the history and activities of the Federal Public Prosecutor’s Office as the protector of society.

[171] In addition, the Response of the country under review to the Questionnaire of the Fourth Round states,¹⁵¹ “*The Federal Public Prosecutor’s Office established a Transparent Portal with the aim of increasing the capacity of citizens to participate in the oversight and evaluation of its activities.*¹⁵² *Through it, they can research institutional data, such as the annual budget and monthly financial transfers, spending by active members and staff, tenders and contracts under execution, the names of permanent staff, staff that perform trust or commissioned functions, staff in positions of trust or on commission, outsourced workers, and employees assigned to other organs in the public administration, among other information.*”

[172] External oversight of the Federal Public Prosecutor’s Office, at both the Union and the state level, is exercised by the National Council of the Federal Public Prosecutor’s Office (CNMP).^{153,154} Article 13-A, § 2 of the Federal Constitution attributed to the CNMP the exercise of administrative and financial control of the Federal Public Prosecutor’s Office and of the performance by its members of their official duties, charging it, *inter alia*, with the following duties: “*I - to safeguard the functional and administrative autonomy of the Federal Public Prosecutor’s Office, it having the authority to issue regulatory decisions within its sphere of competence, or to recommend measures; II - to safeguard observance of Article 37 and examine, ex officio or at third-party behest, the legality of administrative decisions issued by members or organs of the Public Prosecution Service of the Union or of the States, it having the authority to quash them, review them, or set a deadline for the adoption of measures necessary to ensure faithful compliance with the law, without prejudice to the jurisdiction of the courts of accounts; III - to receive and examine complaints against members or organs of the Federal Public*

144. <http://www.pgr.mpf.gov.br/>

145. <http://noticias.pgr.mpf.gov.br/radio>

146. <http://noticias.pgr.mpf.gov.br/televisao>

147. <http://www.youtube.com/tvmpf>

148. http://www.twitter.com/@MPF_PGR

149. <http://noticias.pgr.mpf.gov.br/comunicacao-mpf/publicacoes/por-dentro-mpf.pdf>

150. <http://www.pgr.mpf.gov.br/conheca-o-mpf/visitacao-a-pgr/memorial-do-mpf/escola-cidada>

151. See Response of Brazil to the Questionnaire of the Fourth Round, p. 70.

152. <http://www.transparencia.mpf.gov.br/>

153. <http://www.cnmp.gov.br>

154. “*The National Council of the Federal Public Prosecutor’s Office shall be composed of 14 members appointed by the President of the Republic, after the names have been approved by an absolute majority of the Federal Senate, for a term of two years, with one reappointment permitted, as follows: I - the Prosecutor General of the Republic, who shall chair the Council; II - four members of the Public Prosecution Service of the Union, ensuring the representation of each of its career systems; III - three members of the Federal Public Prosecutor’s Office of the States; IV - two judges, one appointed by the Supreme Federal Tribunal and one appointed by the Superior Court of Justice; V - two lawyers, appointed by the Federal Council of the Brazilian Bar Association; VI - two citizens, of notable juridical learning and high standing, one appointed by the Chamber of Deputies and other by the Federal Senate.*” (Federal Constitution, Art. 130-A).

Prosecutor's Office, including those against their auxiliary services, without prejudice to the correctional and disciplinary powers of the institution, it having the authority to take up ongoing disciplinary proceedings; order removal, vacation of position, or retirement with remuneration commensurate with the length of service; and apply other administrative penalties while fully ensuring the rights of defense; IV - to review, ex officio or at third-party behest, disciplinary proceedings involving members of the Public Prosecution Service of the Union or of the States on which sentence has been passed less than one year earlier."

[173] As to oversight of the accounts, finances, budgets, operations and assets of the MPU, Supplemental Law 75/93 provides that it *"shall be exercised by the National Congress, by means of external control, with the assistance of the Federal Audit Courts of the Union, in accordance with Title IV, Chapter I, Section IX of the Federal Constitution, and by the internal control system."* (Supplemental Law 75/93, Art. 23, § 2). The above law also provides that the MPU shall present its accounts annually within 60 days after the opening of the session of the National Congress (Supplemental Law 75/93, Art. 23, § 3).

[174] With regard to internal control mechanisms for the activities of members of the MPF, Supplemental Law 75/93 provides that the Office of the Inspector General of the MPF is the oversight body for the operational activities and conduct of its members (Supplemental Law 75/93, Art. 63). The functions of the Inspector General of the MPF established in Article 65 of Supplemental Law 75/93 include *"II - to conduct inspections and investigations, either ex officio or on instructions from the Prosecutor General or the Superior Council, and to present the relevant reports; III - to open investigations against members of the career system and propose the institution of the resulting administrative proceeding to the Superior Council."*

[175] Furthermore, the federal Constitution provides that *"laws of the Union and of the States shall create ombudsman's offices of the Federal Public Prosecutor's Office with authority to receive complaints and charges from any interested parties against members or organs of the Federal Public Prosecutor's Office, directly representing the National Council of the Federal Public Prosecutor's Office."* (Constitution, Art. 130-A, § 5).

[176] In the course of the on-site visit, information was provided about CNMP Resolution 64 of December 1, 2010, which directed the establishment of ombudsman's offices in the Federal Public Prosecutor's Office of the States and the Union, as well as in the framework of the CNMP. It was also explained that PGR/MPF resolution 658 of December 2, 2011, established a commission charged with preparing, within 60 days, a draft supplemental law and an administrative proposal for the creation of the Office of the Ombudsman of the MPF. Following a nationwide public survey via the Internet, from March 12 to 25, 2012, the Commission presented the draft supplemental law to the Prosecutor General of the Republic on March 29, 2012.

[177] With respect to the manner in which the necessary budgetary funds for its operations are guaranteed, the Federal Constitution provides that *"the Federal Public Prosecutor's Office shall prepare its draft budget within the limits set forth in the budgetary guidelines law"* (Constitution, Art. 127, § 3 and Supplemental Law 75/93, Art. 23). In exercise of its financial autonomy, the MPF prepares the draft budget in conjunction with the other areas of the Public Prosecution Service of the Union (MPU). The draft budget submitted by the MPU is then included in the Draft Annual Budget Law introduced by the executive branch to Congress for consideration. The table below shows how the budget of the Federal Public Prosecutor's Office has evolved since 2006:

	2006	2007	2008	2009	2010
Budget appropriation (R\$ billions)	1.43	1.75	1.89	2.15	2.28

Source: <http://www.planejamento.gov.br>

[178] As regards coordination mechanisms for harmonizing its functions with those of other oversight bodies or branches of government, in addition to the above-mentioned protocol signed with the CGU, the MPF has signed a protocol of intent to join the Public Administration Oversight Network (RCGP), which is under the coordination of the TCU.¹⁵⁵ The MPF is also part of the National Strategy to Combat Corruption and Money Laundering (ENCCLA) coordinated by the Ministry of Justice.¹⁵⁶

[179] Information was also provided during the on-site visit about an administrative management modernization project in the MPF, which was launched in 2010.¹⁵⁷ According to the strategic map presented,¹⁵⁸ the institution's vision is, by 2020, to be recognized nationally and internationally for its excellence in advancing justice, citizenship, and the fight against crime and corruption. The strategic objective of the MPF in its fight against crime and corruption consists of ensuring effective investigation and prompt and efficacious prosecution of criminal wrongdoing and administrative lack of probity, reducing impunity and the incidence of criminal and dishonest behavior.¹⁵⁹

4.2. Adequacy of the legal framework and/or other measures

[180] The Federal Public Prosecutor's Office (MPF) has a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were succinctly described in section 4.1. Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures:

[181] In first place, during the on-site visit, representatives of the MPF said that there lacks a clear definition regarding the investigative powers of the Federal Public Prosecutor's Office,¹⁶⁰ owing to the fact that the Supreme Federal Tribunal (STF) has yet to adopt a definitive position on the issue.¹⁶¹ At the federal level there would appear to be, therefore, a difference of opinion: For some, the MPF has "implicit constitutional powers" to investigate. For others, under Article 144 of the Federal Constitution, such activity is the exclusive province of the Federal Police.

155. <http://www.rededecontrole.gov.br/>

156. <http://portal.mj.gov.br/data/Pages/MJ7AE041E8ITEMID3239224CC51F4A299E5174AC98153FD1PTBRIE.htm>

157. http://www.oas.org/juridico/portuguese/bra_panel8_MPF.pdf

158. http://www.transparencia.mpf.gov.br/licitacoes-contratos-e-aquisicoes/licitacoes/pgr/2011/docs-concorrencia/mapa_estrategico_final_ok%20Concorrencia%2002.pdf

159. http://www.transparencia.mpf.gov.br/licitacoes-contratos-e-aquisicoes/licitacoes/pgr/2011/docs-concorrencia/descricao_objetivos%20concorrencia%2002.pdf

160. Although not recent, the manner that the Federal Public Prosecutor's Office has acted in criminal investigations has been brought into question with the presentation, *inter alia*, of a direct action for unconstitutionality (No. 4220) to the STF by the Brazilian Bar Association (OAB) supported by the Office of the Attorney General (AGU); as well as by Proposed Constitutional Amendment (PEC) 37/2011, which is being examined by the Special Committee of the House of Deputies.

161. In examining habeas corpus (HC) action 91661, the Second Chamber of the Supreme Federal Tribunal unanimously recognized the power of the Federal Public Prosecutor's Office to investigate in special circumstances, such as in cases concerning police activity. The reporting judge on the habeas corpus action, retired justice Ellen Gracie, cited articles 129 and 144 of the Constitution and held that it was "perfectly possible for the Federal Public Prosecutor's Office to seek certain evidence that shows the existence of the authorship and materiality of a given criminal offense. This conclusion does not signify depriving the judicial police of their constitutionally recognized powers, but is simply to harmonize the constitutional provisions (articles 129 and 144) in order to make them mutually compatible and so permit not only the correct and normal evaluation of allegedly criminal acts, but also the formation of an opinion about the crime."

[182] As this is a constitutional matter, the Committee will not venture a recommendation to the country under review on the issue, but takes notes of the concerns put forward by representatives of the Federal Public Prosecutor's Office and awaits with interest the decision of the Supreme Court in this regard.

[183] In second place, the Committee notes the existence of important working groups for combating corruption established in the framework of the MPF, such as the Working Group on the Fight against Corruption, Appropriation, and Diversion of Federal Funds in Municipalities; however, no specialized unit was found to exist within the institution in charge of these crimes. Given the increasing sophistication of acts of corruption and the resulting complexity of their investigation and prosecution, the Committee believes that it would be beneficial for the country under review to consider establishing a specialized unit in the MPF to tackle offenses of this type, with the aim of ensuring that they are investigated more efficiently. The Committee will formulate a recommendation in this regard (see recommendation 4.4.1 in section 4.4 of this report).

[184] In third place, given the importance of the MPF having an internal control body to promote the quality of the institution and to encourage citizen participation therein, the Committee urges the country under review to comply with paragraph 5 of Article 130-A of the Federal Constitution and with CNMP Resolution 64/10 and, in keeping with the proposed supplemental law submitted to the Prosecutor General of the Republic for consideration, that it establish the Office of the Ombudsman of the MPF and ensure that it has the necessary human and financial resources to perform its functions properly. The Committee will formulate a recommendation in this regard (see recommendation 4.4.2 in section 4.4 of this report).

4.3. Results of the legal framework and/or other measures

[185] The Response to the Questionnaire of the country under review and the on-site visit yielded information on results in the MPF, notably the following:

[186] The Response of Brazil to the Questionnaire¹⁶² provides the following information:

Summary of opened and ongoing MPF investigations

Information received in the Questionnaire	Criteria Used	2007	2008	2009	2010	2011	Total
- Number of investigations initiated on Corruption and Administrative Impropriety	Administrative procedure, administrative piece, PIC and ICP filed with respect to Corruption and Administrative Impropriety	2903	2921	3196	5734	9400	24154
- Number of ongoing investigations	Spread out over each year with respect to Corruption and Impropriety	6172	7331	8278	9050	10209	41040

162. See Response of Brazil to the Questionnaire of the Fourth Round, pp. 64 and 65.

- Number of investigations initiated, indicating how many went before a competent authority for the adoption of a decision	Complaints or those filed with respect to administrative impropriety in the framework of an extrajudicial act	390	415	735	765	1094	3399
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[187] Based on this information, the Committee notes a marked upswing in MPF activities in terms of the number of investigations into corruption and administrative impropriety that have been opened or are ongoing. However, this information is not broken down sufficiently to allow a comprehensive analysis that would provide, for instance, information on specific crimes or investigations opened in the past five years in connection with acts of corruption that are suspended, time-barred, or set aside without a decision on merits adopted.

[188] In that connection, during the on-site visit, MPF representatives said that it was not possible to submit the additional information requested because the Consolidated System (*Unico*) was still in the process of implementation. However, they mentioned that the First Instance of the Federal Public Prosecutor’s Office has both modules of the System (judicial and administrative) installed and that, so far, the Second Instance of the Federal Public Prosecutor’s Office has the administrative module of the system in place. It was also explained that progress continues with the implementation of the System in the Federal Public Prosecutor’s Office at Second Instance and in the Office of the Prosecutor General of the Republic (Third Instance). The System’s implementation schedule was provided. It envisages the System being implemented at all Instances by the end of 2012 and that it will gather information on all the proceedings of the MPF and of the public prosecution services at state level. The Committee will formulate a recommendation in this regard (see recommendation 4.4.3 in section 4.4 of this report).

[189] Notwithstanding the above, the MPF needs to integrate the Unico System with all the other systems in the Judiciary, which has at least 210 different computer systems. Furthermore, with respect to the interoperability of the National Council of Justice’s Computer System--or PJe System--and the Unico System, it was explained, also during the on-site visit, that the communication infrastructure between the two systems has been completed in the prosecutor’s offices in the Fourth Region and that work is underway to implement that infrastructure in the prosecutor’s offices of the other regions (First, Second, Third, and Fifth). In addition, the CNMP and CNJ have been working to harmonize their processes/proceedings classification tables in order to ensure consistency between the two institutions’ records.

[190] During the on-site visit, MPF representatives explained the reason for the fewer investigations opened before the competent decision-making body in comparison to the number of ongoing investigations. Among other reasons, they mentioned the following: 1) the need to have “robust” evidence, whether pre-existing or prepared, given the sophistication of corruption-related crimes and the attendant difficulty of proving them; 2) the difficulty in gaining access to confidential tax and banking information of accused persons, which delays investigations (despite case law to the contrary, the Federal Public Prosecutor’s Office usually requires judicial authorization to access such information.); and, 3) the broad judicial interpretation of the constitutional guarantee of “preventive” habeas corpus, which leads to the closure of investigations--even if they do not entail a threat to the liberty of the accused--without

adversarial action; that is, without the concrete possibility provided to each party to be heard and to know and challenge petitions.

[191] Bearing in mind the foregoing, the Committee hopes that once the Consolidated (“Unico”) System has been implemented in full and integrated with the various other systems in the Judiciary, the country under review will be able to furnish complete information on the results of the MPF in this area. The above would help the Committee to have access to broken down information that would enable it to perform a comprehensive assessment of objective results in the application of the legal framework as well as of other measures in the MPF concerning its responsibilities in the implementation of Article III, paragraph 9 of the Convention. The Committee will formulate a recommendation in this regard (see recommendation 4.4.4 in section 4.4 of this report).

[192] During the on-site visit, the opportunity arose for the participation of a researcher in this area, who presented a study,¹⁶³ which examined the expulsion of 441 public servants for reasons related to corruption between 1993 and 2005. In his study, the investigator noted that only one third of the 441 servants dismissed in the wake of administrative inquiries were prosecuted.¹⁶⁴

[193] For their part, during the on-site visit, MPF representatives explained that the low number of criminal proceedings in those cases had to do with a number of difficulties, among which they mentioned the hindrance and sometimes prohibition of access to the disciplinary investigations conducted by the bodies concerned. Representatives of the Federal Public Prosecutor’s Office said that many bodies sue the MPF to prevent them from having access to such information and that the case law requires that administrative proceedings be exhausted before they can be given that information. In the opinion of representatives of the Federal Public Prosecutor’s Office interviewed, this problem has to do with the ever-increasing opposition to the institution’s investigating power, in light of its independence and autonomy. The Committee will formulate a recommendation in this regard (see recommendation 4.4.5 in section 4.4 of this report).

4.4. Conclusions and recommendations

[194] Based on the comprehensive review conducted with respect to the Federal Public Prosecutor’s Office in the foregoing sections, the Committee offers the following conclusions and recommendations:

[195] Brazil has considered and adopted measures intended to maintain and strengthen the Federal Public Prosecutor’s Office, as described in Chapter II, Section 4 of this report.

[196] In light of the comments made in the above-noted section, the Committee suggests that the country under review consider the following recommendations:

- 4.4.1. Establish within the organizational structure of the MPF a specialized unit to investigate and prosecute acts of corruption (see Chapter II, Section 4.2 of this report).

163. “Corruption and the Judiciary: The (In)Effectiveness of the Judicial System in Combating Corruption,” Available at: http://www.consocial.cgu.gov.br/uploads/biblioteca_arquivos/153/arquivo_ffc425de74.pdf

164. *Ibid.*, p. 88.

- 4.4.2. Establish the MPF Ombudsman, ensuring for it the necessary human and financial resources to enable it to perform its functions properly (see Chapter II, section 4.2 of this report).¹⁶⁵
- 4.4.3. Conclude implementation of the administrative and judicial modules of the MPF's Consolidated (*Unico*) System in all its Instances and move forward with integration of the system with the Judiciary's other systems (see Chapter II, Section 4.3 of this report).
- 4.4.4. Continue with its efforts to produce complete information on the results of the MPF in this area, such as the number of investigations opened into acts of corruption, broken down by offense, in order to identify how many cases are ongoing; how many have been suspended and the reasons for their suspension (including "preventive" habeas corpus); how many are time-barred for failure to conclude them within the established time limit; how many have been set aside without a decision adopted on merits; how many are in a position where a decision on the merits of the case under investigation could be adopted; and how many have been referred to the competent court to adopt such a decision (see Chapter II, section 4.3. of this report).
- 4.4.5. Strengthen cooperation between the bodies responsible for disciplinary investigations of public servants ("*inspectores*") and the MPF, in order to enhance the effectiveness of the work of the MPF in the criminal prosecution of public servants under investigation for acts of corruption at the administrative level (see Chapter II, section 4.3. of this report).

5. SUPREME FEDERAL TRIBUNAL (STF)

5.1. Existence of provisions in the legal framework and/or other measures

[197] The Supreme Federal Tribunal (STF) has a set of provisions in its legal framework, as well as other measures that refer, *inter alia*, to the following:

[198] The Federal Constitution of Brazil of 1988 sets out, at Article 102, the areas of jurisdiction of the STF, which are divided into: i) original (subparagraph I), in which the STF acts as sole and final instance, and, ii) appeals, which may be ordinary (subparagraph II) or extraordinary (subparagraph III).

[199] Under Brazil's constitutional system, the STF, as the highest ranked organ in the Judiciary, acts both as the court of last resort on constitutional matters and as constitutional court in the abstract control of laws.

[200] As regards criminal matters, it has original jurisdiction to try the President of the Republic, the Vice President, members of the National Congress, its own justices, and the Prosecutor General of the Republic, among others, for ordinary criminal offenses.

[201] In exercising its jurisdiction on ordinary appeals, the STF hears cases concerning political offenses, habeas corpus, *amparo* ("*mandado de segurança*"), habeas data, and writs of injunction decided at sole instance by superior courts that have denied them. In exercising its jurisdiction on

165. Brazil reports that on August 30, 2012, through resolution PGR/MPF No. 519, the Office of the Ombudsman of the MPF was created.

extraordinary appeals, the STF examines the decisions of lower courts that might entail a violation of the Constitution, it being the body of last resort with regard to the so-called “diffuse control” of constitutionality.

[202] With regard to its functional structure, Article 101 of the Federal Constitution provides that the STF is composed of 11 justices chosen from citizens between 35 and 65 years of age of notable juridical learning and high standing. Justices of the STF are appointed by the President of the Republic, after the names have been approved by an absolute majority of the Federal Senate (Constitution, Art. 101, sole paragraph). The mandatory retirement age for justices is 70 years old. The Federal Senate has exclusive jurisdiction to try justices of the STF for violation of their official duties¹⁶⁶ (Constitution, Art. 52(II)).

[203] The organs of the Court are the Plenary, the Chambers, and the President (Internal Regulations of the STF, Art. 3). The President and Vice President are elected by the Plenary of the Court from among its members and serve for a term of two years (Internal Regulations of the STF, Art. 2). Both Chambers consist of five justices and each is presided over by the most senior of their members for a period of one year, with no renewal allowed, until all of the members have held the presidency in decreasing order of seniority (Internal Regulations of the STF, Art. 4, *caput* and § 1).

[204] Decisions in the framework of the STF may be adopted on an individual basis (President or Justice) or collectively (Plenary or Chambers). The division of powers as regards responsibility for decision-making, based on a variety of factors (type of action, original or appeal jurisdiction of the Court, existence of a “forum by prerogative of office” for the parties, origin of the challenged decision, as appropriate, etc.), is comprehensively defined in the Internal Regulations of the STF.

[205] Article 103-A of the Federal Constitution, introduced by Constitutional Amendment 45 of 2004, allows the STF, following reiterated decisions on constitutional matters, to approve rulings with a binding effect on the rest of the judiciary and on the direct and indirect public administration in the federal, state, and municipal spheres.

[206] Constitutional Amendment 45/2004 also included the requirement that the constitutional question raised in an extraordinary appeal must have a general effect¹⁶⁷ in order to be examined by the STF.

[207] In addition to the aforementioned justices, the STF also has other employees within its administrative structure, who are selected by means of a public competition for entry to the judicial analyst and judicial technician career systems. In October 2011 the STF had a workforce of 567 analysts and 529 technicians, making a total effective staff of 1,096. The STF also has 578 commissioned positions and functions, 537 of which are filled by public administration employees. At present, the STF is assisted by 16 investigating magistrates, specifically responsible for conducting investigations in criminal inquiries and original criminal suits, pursuant to Law No. 12.019/2009.

[208] In terms of training of STF staff, the Response of the country under review to the Questionnaire of the Fourth Round describes a large number of training programs and activities carried out between 2008 and 2010.¹⁶⁸

166. Law 1.079 of 1950.

167. The purpose of the institution of “General Effect” is to limit the jurisdiction of the STF to judgments on extraordinary appeals and constitutional questions of social, political, economic, or legal significance that transcend the subjective interests of the case, in addition to standardizing constitutional interpretations to preclude the need for the STF to adopt decisions on multiple identical cases concerned with the same constitutional issue.

168. See Response of Brazil to the Questionnaire of the Fourth Round, pp. 76 and 77 (Table 33).

[209] The STF has a website to inform the public about its activities,¹⁶⁹ a “push” notification system for STF news,¹⁷⁰ in addition to other channels of communication, such as *Radio Justica*,¹⁷¹ and *TV Justica*¹⁷² as well as on-line videos published on YouTube¹⁷³ and Twitter.¹⁷⁴ The STF also produces a wide range of publications,¹⁷⁵ including “The Constitution and the Supreme Court”;¹⁷⁶ “Criminal Matters - A Compilation of the STF’s Criminal Case Law”¹⁷⁷; “Extradition,”¹⁷⁸ As well as weekly newsletters¹⁷⁹ and topical bulletins.¹⁸⁰ The STF also has an Assistance Portal¹⁸¹ with a variety of information and services for lawyers and the general public.

[210] In addition, the Response of the country under review to the Questionnaire of the Fourth Round¹⁸² states, “As regards transparency in its activities, the Supreme Federal Tribunal established its Transparency Portal.¹⁸³ The portal provides access to institutional data, such as the annual budget and monthly financial transfers; tenders and contracts under execution; positions of employment and their respective pay, and other information.”

[211] External oversight of the judicial branch is exercised by the National Council of Justice (CNJ),¹⁸⁴ which was created by Constitutional Amendment 45/04. Article 13-B, § 4 of the Federal Constitution attributed to the CNJ the exercise of administrative and financial control of the judicial branch and of the performance by judges. It also has other powers entrusted to it by the Statute of the Magistracy: “I - to ensure the functional and administrative autonomy of the judiciary and compliance with the Statute of the Magistracy, it having the authority to issue regulatory decisions within its sphere of competence, or to recommend measures; II - to safeguard observance of Article 37 and examine, ex officio or upon request, the legality of administrative decisions issued by members or organs of the judiciary, it having the authority to vacate them, modify them, or set a deadline for the adoption of measures necessary to ensure strict compliance with the law, without prejudice to the jurisdiction of the courts of accounts; III - to receive and examine complaints against members or organs of the judiciary, including those against their auxiliary services, dependencies and organs that provide notarial and registration services that are officially sanctioned and act under the delegated authority of the government, without prejudice to the correctional and disciplinary powers of the courts, it having the authority to take up ongoing disciplinary proceedings and order removal, vacation of position, or retirement with remuneration commensurate with the length of service; and apply other administrative penalties while fully ensuring the rights of defense; IV - to represent the Federal Public Prosecutor’s Office in cases of offenses against the public administration or abuse of authority; V - to review, ex officio or upon request, disciplinary proceedings involving judges and members of tribunals on whom sentence has been passed less than one year earlier; VI - to prepare a half-yearly statistical report on proceedings and judgments for each unit of the Federation, in the different organs of the judiciary; VII – to prepare an annual report, proposing

169. <http://www.stf.jus.br/>

170. <http://stf.jus.br/portal/push/autenticarUsuario.asp>

171. <http://www.radiojustica.jus.br/>

172. <http://www.tvjustica.jus.br/>

173. <http://www.youtube.com/stf>

174. http://twitter.com/@STF_oficial

175. <http://stf.jus.br/portal/diarioJustica/verDiarioAtual.asp>

176. <http://stf.jus.br/portal/constituicao/constituicao.asp>

177. http://www.stf.jus.br/arquivo/cms/publicacaoPublicacaoTematica/anexo/Temas_penais.pdf

178. <http://www.stf.jus.br/arquivo/cms/publicacaoPublicacaoTematica/anexo/EXT.pdf>

179. <http://stf.jus.br/portal/informativo/pesquisarInformativo.asp>

180. <http://stf.jus.br/portal/cms/verTexto.asp?servico=publicacaoInformativoTema>

181. <http://www.stf.jus.br/portal/atendimentoStf/apresentacao.asp>

182. See Response of Brazil to the Questionnaire of the Fourth Round, p. 70.

183. <http://stf.jus.br/portal/contaPublicaCompra/>

184. <http://www.cnj.jus.br>

such measures as it deems necessary, on the situation of the judiciary in the country and the activities of the Council, which should be included in the message of the President of the Supreme Federal Tribunal to be submitted to the National Congress at the opening of each session of the legislature.”

[212] The CNJ is composed of 15 members who are elected for a two-year term and may be re-elected once. The CNJ is composed of the President of the STF who chairs the Council, eight judges and magistrates from different levels within the judicial system, two prosecutors (one federal and one state), two lawyers named by the Brazilian Bar Association, and two citizens of “notable juridical learning and high standing” chosen by the Federal Senate and the House of Deputies (Constitution, Art. 103-B).

[213] The Response of the country under review makes reference to a number of decisions adopted by the CNJ in exercise of its regulatory powers,¹⁸⁵ including the prohibition of nepotism and the adoption of the Code of Ethics of the Magistracy.¹⁸⁶ It also contains information about various steps taken by the Council to improve efficiency in the Judiciary, in particular the establishment of internal control units in institutions¹⁸⁷ and the implementation of the National Performance Strategy,¹⁸⁸ to reduce the growing backlog of cases, as well as the development and expansion of the use of information technologies in the Judiciary.

[214] Also notable was the publication “Justice in Numbers,”¹⁸⁹ which was the outcome of efforts to integrate the Judiciary’s information systems,¹⁹⁰ and the creation of the National Register of Civil Convictions for Acts of Administrative Corruption.¹⁹¹

[215] The CNJ has an ombudsman¹⁹² to receive complaints on the workings of the judicial system as a whole, including the Council. The Council also has the Office of the National Inspector of Justice,¹⁹³ who is responsible for administrative disciplinary procedures in the judicial branch and whose efforts in the fight against corruption in the judiciary were recognized by the representative of the Brazilian Bar Association and other civil society organizations during the on-site visit.¹⁹⁴

[216] The Response of the country under review also stated, “*More recently, National Council of Justice Resolution 102/2009 introduced a higher degree of transparency in the use of public funds and decision-making by the organs of the judiciary through the regular publication of budgets, contracts, personnel costs, salaries, etc.*”¹⁹⁵

[217] As regards the manner in which the necessary budgetary funds for its operations are guaranteed, the Federal Constitution grants the judiciary administrative and financial autonomy and provides, “*Courts shall prepare their draft budgets within the stipulated limits in conjunction with the other branches of government set forth in the budgetary guidelines law*” (Constitution, Art. 99, § 1). In exercise of its financial autonomy, the STF prepares its draft budget in conjunction with the other

185. See Response of Brazil to the Questionnaire of the Fourth Round, pp. 78 and 79.

186. <http://www.cnj.jus.br/codigo-de-etica-da-magistratura>

187. National Council of Justice Resolution 86/2009.

188. National Council of Justice Resolution 70/2009

189. <http://www.cnj.jus.br/programas-de-a-a-z/eficiencia-modernizacao-e-transparencia/pj-justica-em-numeros>

190. National Council of Justice Resolution 46/2007.

191. http://www.cnj.jus.br/improbidade_adm/consultar_requerido.php and National Council of Justice Resolution 46/2007.

192. <http://www.cnj.jus.br/ouvidoria-page>

193. <http://www.cnj.jus.br/sobre-o-cnj/corregedoriainst>

194. During the on-site visit attention was drawn to an important decision by the STF in February 2012, which recognized that the Office of the Inspector of the CNJ may open an investigation against magistrates—or take over an administrative proceeding under way in the local courts—without the need to justify that decision.

195. See Response of Brazil to the Questionnaire of the Fourth Round, p. 79.

superior courts. The draft budget submitted by the STF, which must observe the limits set forth in the Budgetary Guidelines Law, is then included in the Draft Annual Budget Law introduced by the executive branch to Congress for consideration. The table below shows how the budget of the Supreme Federal Tribunal has evolved since 2006:

	2006	2007	2008	2009	2010
Budget appropriation (R\$ millions)	316	441	479	580	510

Source: <http://www.planejamento.gov.br>

5.2. Adequacy of the legal framework and/or other measures

[218] The Supreme Federal Tribunal (STF) has a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were succinctly described in section 5.1. Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures:

[219] In first place, in the course of the on-site visit, a broad explanation was provided about the judicial appeals system in Brazil. A single judge (First Instance) is responsible for collecting the evidence and analyzing the facts and the law. The judgment at First Instance may be reviewed, under ordinary appeal, by a collegiate body (Second Instance), which will proceed to review the facts and the law. The decision of the collegiate body may be appealed before the Superior Court of Justice (STJ) (Third Instance) under a special appeal to examine legal questions under federal law. The decision of the STJ is also subject to appeal before the STF (Fourth Instance) under a so-called extraordinary appeal, which is solely for the examination of constitutional issues.

[220] It was mentioned during the on-site visit that owing to the breadth of issues covered by the Federal Constitution, a large number of conflicts can become “constitutionalized”; in other words, almost any matter can reach the STF, which overburdens the Court’s judges (“justices”) and staff (in 2010, for example, the STF received 72,000 new cases).¹⁹⁶ Further to the foregoing, it was noted that almost 50% of court cases in Brazil do not conclude at Second Instance, as reflected in the high number of appeals to the higher instances (STJ and STF).

[221] It was also mentioned during that visit that if all the available remedies are used, the criminal proceeding has to exhaust four judicial instances in order to be considered concluded and not subject to appeal (*trânsito em julgado*). Article 5 (LVII) of the federal Constitution provides that “*no one shall be considered guilty until the criminal conviction is final.*” In that connection, under the case law of the STJ and the STF, execution of the criminal judgment only begin once all appeals have been exhausted.

[222] It was explained during the on-site visit that the attempt is being made to reform the appeals system in Brazil and that draft legislation has been put forward for reducing the problem of “*trânsito em julgado*” (requirement of final decision in cases), in order to prevent the prescription of criminal offenses. One of these is Draft Constitutional Amendment 15/2011, which aims to do away with special and extraordinary appeals and introduce original rescission actions in the STJ and STF, which would mean that, in practice, proceedings would conclude at second instance.

196. http://www.oas.org/juridico/portuguese/bra_panel11.ppt

[223] While the Committee recognizes that this is a constitutional issue, in view of its crucial importance for combating impunity for persons accused of acts of corruption, the Committee will formulate a recommendation in this regard (see recommendation 5.4.1 in section 5.4 of this report).

[224] It should be noted that, with the exception of the representative of the Brazilian Bar Association (OAB),¹⁹⁷ all the representatives of civil society organizations during the on-site visit, including academics,¹⁹⁸ were highly critical of the consequences of the existence of four judicial instances in Brazil, which they believe contributes, in practice, to a final (not subject to appeal) judgment being virtually unattainable, often leading to the statute of limitations to run on cases and, consequently, impunity for those accused of acts of corruption. The civil society representatives and members of the Federal Public Prosecutor's Office who took part in the on-site visit agreed that a reform, such as Draft Constitutional Amendment 15/2011, was necessary to make the STF more effective.

[225] In second place, also during the on-site visit, the existence was noted of a problem to do with the original jurisdiction of the STF to try cases involving common crimes allegedly committed by members of Congress and other high ranking authorities mentioned in the federal Constitution.¹⁹⁹ The so-called "forum by prerogative of office" means that a charge against a parliamentarian, for example, is only received after deliberation by the plenary of the STF, which is considered a rigid and lengthy process. The "forum by prerogative of office" also entails the transfer to the STF of criminal actions and investigations when a member of parliament is elected (or when the other officials take up their respective duties) and are returned to the first instance when the member of parliament or official leaves the post, which creates considerable delays in proceedings, according to representatives of the STF and CNJ in the on-site visit.

[226] Those representatives explained that in a recent decision, the STF rejected the request of an accused member of parliament who resigned their position to have their case returned to the first instance. The justices considered this an "abuse of law" and ordered that the proceeding continue in the STF.

[227] The Committee also takes note of a study conducted by the Brazilian Judges' Association (AMB),²⁰⁰ which found that from 1988 to 2007, 130 cases under the original jurisdiction of the STF were processed by the Court (44 of them concerning crimes against the public administration) and

197. In the opinion of the representative of the OAB, Draft Constitutional Amendment 15/2011 will not solve the problem of the STF, which concerns the structure in place for dealing with cases over which it has original jurisdiction. The representative also said that the percentage of judgments at first and second instance that were reviewed by the superior courts was high due, among other factors, to the poor quality of decisions. However, he considered that this proportion would trend downward as a result of the efficiency control measures implemented by the CNJ, which no longer permits a magistrate, for example, to allow more than 10 years to pass without handing down a judgment on a case. He also said that the OAB would present a proposal for the creation of an administrative body on court performance because, in its opinion, the delays very often had to do with the fact that judges waste too much time on administrative matters in their respective courts when they should be judging cases.

198. During the on-site visit, the opportunity arose for the participation of a researcher in this area, who presented a study, which examined the expulsion of 441 public servants for reasons related to corruption between 1993 and 2005. In his study, the researcher found that the effectiveness of the courts in criminal and civil proceedings ("Administrative Dishonesty Law") in the cases studied was 3.17% and 1.59%, respectively. See: "Corruption and the Judiciary: The (In)Effectiveness of the Judicial System in Combating Corruption," Available at: http://www.consocial.cgu.gov.br/uploads/biblioteca_arquivos/153/arquivo_ffc425de74.pdf

199. Constitution, Art. 102(I)(b).

200. Available at: http://www.amb.com.br/portal/docs/noticias/estudo_corrupcao.pdf

that none had led to the conviction of a parliamentarian or a high-level political appointee.²⁰¹ Based on that information, the Committee considers it important for the country under review to look for appropriate ways to ensure that the “forum by prerogative of office” is not used to enable members of parliament or high-level political appointees suspected of acts of corruption to evade justice. The Committee will formulate a recommendation in this regard (see recommendation 5.4.2 in section 5.4 of this report).

[228] In that connection, it should be noted that during the on-site visit the representative of the OAB and the representatives of civil society organizations were also deeply critical of the institution of the “forum by prerogative of office” in Brazil, which, in their opinion has contributed to a sense of impunity for politicians accused of corruption.

[229] In third place, during the on-site visit the Committee had the opportunity to listen to representatives of the CNJ²⁰² and it suggests that work continue with improving the internal control units in the Judiciary by ensuring that they meet the requirements set forth in CNJ Resolution 86/2009. The Committee will offer a recommendation in this regard (see recommendation 5.4.3 in section 5.4 of this report).

5.3. Results of the legal framework and/or other measures

[230] The Response to the Questionnaire of the country under review and the on-site visit yielded information on results in the STF, notably the following:

[231] The Response of Brazil to the Questionnaire²⁰³ provides information on the number of proceedings concerning acts of corruption and administrative impropriety in the STF.

[232] According to that information, in 2010, the STF heard 83 appeals in proceedings concerning acts of corruption and administrative impropriety. In that period, the Court did not try any criminal actions in connection with such matters. In turn, in the first eight months of 2011, the STF passed judgment in 102 proceedings (5 criminal and 95 appeals) relating to such matters.

[233] In 2010, 169 proceedings of this type were instituted before the STF (7 criminal and 162 appeals), while in the first eight months of 2011 there were 117 new proceedings (11 criminal and 106 appeals).

201. Brazil reports that this AMB study ignores the fact that until the year 2001 (Constitutional Amendment No. 35/01) no original criminal action against a member of the Federal Congress could be processed by the Supreme Court without prior congressional authorization. The legislature never granted any such authorization. In addition, neither does the study mention certain cases heard by the Supreme Court, such as Criminal Action 307, in which a former President and other officials were prosecuted for a range of crimes, including the acceptance of bribes.

202. The CNJ representatives presented the results of an important comprehensive study carried out based on a Questionnaire on the existence and adequacy of internal control units in state courts. It was decided to enforce resolution 86/2009 by requiring any courts that did not yet have an internal control unit to create one. According to the CNJ representatives, all courts now have such a unit. However, internal control units are required to comply with the guidelines and requirements set forth in the above resolution, and that remains a challenge. One of those requirements concerns the institutional location of the unit in accordance with TCU judgment 1.074/2009. Based on the CNJ study, it was found that some internal control units only had a staff of three, while others had one of 38. Oddly enough, the courts with the largest budgets generally had a less well-developed internal control structure than state courts with fewer resources. See: http://www.oas.org/juridico/portuguese/bra_panel13_CNJ.ppt

203. See Response of Brazil to the Questionnaire of the Fourth Round, pp. 75 and 76 (Table 32).

[234] In the first eight months of 2011, final judgments (“*trânsito em julgado*”) were handed down in 89 proceedings, compared with 67 in 2010. Furthermore, as of August 31, 2011, there were 36 proceedings concerning acts of corruption ongoing in the STF (30 criminal and 6 appeals) along with 213 proceedings relating to administrative impropriety (1 criminal and 212 appeals).

[235] In the course of the on-site visit, the STF representative also explained that in June 2011, 136 deputies and senators were under investigation or trial in the STF (although not necessarily for acts of corruption; also for violation of electoral standards and tax offenses). It was also reported that one superior court judge was answering criminal charges for corruption.²⁰⁴

[236] Based on this information and bearing in mind the reference in the preceding section to the bewilderingly high number of proceedings that the STF receives each year, the Committee notes a positive increase in the number of proceedings relating to corruption and administrative impropriety disposed of by the STF between 2010 and 2011. However, this information is not complete or broken down enough to allow a comprehensive analysis by which to determine, for example, whether or not the assertion made in the 2007 AMB study mentioned in the preceding section that no politician has been convicted by the Supreme Court since 1988 is still valid. In order to do so, the Committee would need information on proceedings relating to acts of corruption in cases under both original jurisdiction and that of appeal of the STF broken down by type of offense, and if the respective decisions resulted in an indictment/penalty or acquittal; the number of cases that have prescribed or in which liability has been extinguished for failure to adopt a decision within the statutory time limit; and the amount of fines imposed and whether or not compensation was made to the treasury. The Committee will formulate a recommendation in this regard (see recommendation 5.4.4 in section 5.4 of this report).

[237] Furthermore, during the on-site visit, the opportunity arose to listen to representatives of the CNJ, who described the difficulties in collecting statistics from courts due to the fact that the Judiciary as a whole (federal and state courts) has at least 210 different computer systems and they all need to use the same table for systematizing information. However, information was also provided on the progress made by the CNJ in implementing its *PJe* computer system. In response to a request from the members of the review subgroup and the MESICIC Technical Secretariat, the CNJ subsequently provided additional information on results in this area,²⁰⁵ however, the document itself notes that the information could be incomplete as a result of the above described difficulties.²⁰⁶

[238] The information provided indicates that in the framework of the federal justice system, the STJ received 4 complaints of acts of corruption and money laundering in 2011. The total number of complaints received by regional federal courts in the same period was 229. Furthermore, the STJ did not decide on any proceedings concerning such matters in 2011, while regional courts handed down decisions in 53 proceedings, 30 of them final. 14 defendants received final convictions and the statute of limitations ran on 3 proceedings. The information also indicates that 1,137 proceedings on such matters are ongoing in the regional courts.

[239] With regard to proceedings concerning administrative impropriety, it was explained that in 2011, the STJ did not receive any complaints, while the total number of complaints received by regional federal courts was 571. In that period, regional federal courts pass judgment in 79 proceedings, 4 of them final, while the STJ handed down a final judgment in one proceeding.

204. http://www.oas.org/juridico/portuguese/bra_panel11.ppt

205. http://www.oas.org/juridico/PDFs/mesicic4_bra_cnj.pdf

206. *Ibid.*

[240] The average time for trying cases concerning administrative impropriety was approximately 5 years in the regional federal regional courts and the total number of convictions was 181. Information on the average times of the STJ in cases concerning administrative impropriety was not provided.

[241] From 2010 to 2011, in cases under its original jurisdiction, the STJ issued 6 decisions declaring prescription of criminal action. In that same period it was found that federal regional courts declared 28 criminal actions to be time-barred, although this information is not complete because two of the five federal regional courts did not submit their figures.

[242] The information supplied by the CNJ contains the same data as those mentioned above in relation to the state courts as well as general information on funds to be reimbursed to the Treasury based on the courts' judgments. However, no information was provided on how much of those funds were actually recovered by the State.

[243] Based on that information, the Committee notes a high average time overall for trying cases concerning administrative impropriety in the federal regional courts. The situation is more serious still in the state courts, which has led to a high number of decisions declaring prescription of criminal action. The Committee considers that the country under review should look for ways to expedite the trial of crimes involving acts of corruption and administrative impropriety so as to prevent the impunity of the perpetrators. In that connection, the Committee suggests that the country under review consider the creation of specialized bodies in this area within the Judiciary and it will formulate a recommendation in this regard (see recommendation 5.4.5 in section 5.4 of this report).

[244] Finally, bearing in mind the difficulties described by the CNJ in presenting complete information on results in this area, the Committee supports the efforts of the body to move forward both with the implementation of the PJe System and with the compilation of statistics on the STJ and federal and state courts. In addition, the committee hopes that once the PJe System has been implemented in full and integrated with the Judiciary's various other systems, the country under review will be able to submit complete information on results in this area. The above would help the Committee to have access to broken down information that would enable it to perform a comprehensive assessment of objective results in the application of the legal framework as well as of other measures in the Judiciary concerning its responsibilities in the implementation of Article III, paragraph 9 of the Convention. The Committee will formulate a recommendation in this regard (see recommendation 5.4.4 in section 5.4 of this report).

5.4. Conclusions and recommendations

[245] Based on the comprehensive review conducted with respect to the Supreme Federal Tribunal in the foregoing sections, the Committee offers the following conclusions and recommendations:

[246] Brazil has considered and adopted measures intended to maintain and strengthen the Supreme Federal Tribunal, as described in Chapter II, Section 5 of this report.

[247] In light of the comments made in the above-noted section, the Committee suggests that the country under review consider the following recommendations:

- 5.4.1. Consider the possibility of implementing reforms to the judicial appeals system or look for other mechanisms by which to expedite the conclusion of proceedings in the Judiciary and the initiation of execution of the judgment, so as to avoid impunity for those responsible for acts of corruption (see Chapter II, section 5.2 of this report).²⁰⁷
- 5.4.2. Continue to look for appropriate ways to ensure that the “forum by prerogative of office” is not used to enable members of parliament or high-level political appointees suspected of acts of corruption to evade justice (see Chapter II, section 5.2 of this report).²⁰⁸
- 5.4.3. Continue to improve the internal control units in the Judiciary by ensuring that they meet the requirements set forth in CNJ Resolution 86/2009 (see Chapter II, section 5.2 of this report).²⁰⁹
- 5.4.4. Continue its efforts aimed at producing complete information on results in the Judiciary, including cases under the original and appeal jurisdiction of the STF, on the punishment of corrupt practices that give rise to criminal or civil liability, broken down by type of offense, so as to permit the determination of the number of cases concerning corruption and/or administrative impropriety that have resulted in: i) an accusation or a penalty; ii) no accusation or an acquittal; iii) prescription of action or extinction of liability for lack of a decision within statutory time limits; iv) the amount of fines imposed and the amount actually reimbursed to the Treasury (see Chapter II, section 5.3 of this report).²¹⁰
- 5.4.5. Consider, as one way to expedite the trial of acts of corruption and of administrative impropriety, the possibility of creating specialized bodies in this area within the Judiciary, so as to avoid impunity for perpetrators as a result of prescription of the action (see Chapter II, section 5.3 of this report).²¹¹

III. BEST PRACTICES

[248] In accordance with Section IV of the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round* and the *Format* adopted by the Committee for the Reports of said Round, references is made to the best

207. Brazil informed that the Supreme Federal Tribunal orders the immediate execution of criminal convictions, whenever it is found that the right of defense of the accused has been abused (Precedents: AI 831.636-AgR-ED-ED, report of Justice Ayres Britto; RE 628.582-AgR-ED, report of Justice Dias Toffoli; AI 711.309-AgR-ED-ED, report of Justice Celso de Mello).

208. Brazil informed that the Supreme Federal Tribunal, alert to possible maneuvering by defendants entitled to a forum by prerogative of office, has already decided that resignation from parliamentary office cannot be “used as a subterfuge to invalidate constitutionally recognized powers.” (Criminal Action 396, report of Justice Cármen Lúcia).

209. In this regard, Brazil informed that the administrative structure implemented by the current president of the STF (Justice Ayres Britto), provided for an internal control unit that reports exclusively to the President of the Court.

210. Brazil offered the following clarifications on this recommendation: “We should clarify that the Supreme Federal Tribunal lacks original jurisdiction to try civil suits alleging administrative impropriety by defendants entitled to the forum by prerogative of office. Precedents: AI 556.727-AgR, report of Justice Dias Toffoli; AI 678.927-AgR, report of Justice Ricardo Lewandowski; AI 506.323-AgR, report of Justice Celso de Mello. We also note for the record that the current president of the STF and the CNJ established the goal of giving priority to the trial of cases of administrative dishonesty and redress to the Treasury through programs for follow-up and monitoring of these cases.”

211. Brazil informed that the Supreme Federal Tribunal validated the state law that created a special jurisdiction for trying crimes committed by criminal organizations (ADI 4414, report of Justice Luiz Fux). To be certain, that decision prompted the promulgation of Federal Law 12.694/2012, which contains provisions on the collegiate prosecution at first instance of crimes committed by criminal organizations.

practices identified by the country under review, which it has expressed its wish to share with the other member States of the MESICIC, as it could be beneficial to them:

- Regarding the Office of the Comptroller General of the Union (CGU):

[249] “*Pro-Ethics Corporate Register*”:²¹²A project whose objective consists of adopting desired and necessary policies and measures for creating an environment of integrity in the private sector that reduces the risks of fraud and corruption and builds confidence in relations between the public administration and corporations.

[250] “*Public Spending Observatory (ODP)*”:²¹³This initiative, built on the pillars of training, the application of a scientific approach, and information technology, is capable of producing information and knowledge to help managers to adopt strategic decisions more quickly by monitoring public spending through the innovative cross-referencing of large volumes of data from the most varied sources, in order to contribute to the aim of helping to improve public administration by boosting the efficiency of government programs, procedures, and spending, as well as identifying situations of risk or that jeopardize the integrity of processes and services.

[251] More information in this connection is available in the Response of the country under review, Annex II, pp. 95-107.

IV. FOLLOW-UP ON PROGRESS AND NEW AND RELEVANT INFORMATION AND DEVELOPMENTS WITH REGARD TO THE IMPLEMENTATION OF RECOMMENDATIONS SUGGESTED IN THE COUNTRY REPORT IN THE FIRST ROUND OF REVIEW

[252] The Committee will refer below to the progress, information, and new developments made by Brazil in relation to the recommendations and measures suggested by the Committee for implementation in the Report of the First Round, and with respect to which the Committee deemed that additional attention was required in the Reports from the Second and Third Rounds,²¹⁴ and shall, as appropriate, take note of those that have been satisfactorily considered and those that require additional attention from the country under review. In addition, where appropriate, it will address the continued validity of those recommendations and measures and, as applicable, restate or reformulate them, in accordance with provisions contained in section VI of the Methodology adopted by the Committee for the Fourth Round of Review.²¹⁵

[253] The Committee will also take note in this section of the Report of the difficulties in implementing the aforementioned recommendations and the measures to which the country under review has drawn attention, as well as of its technical cooperation needs to that end.

212. <http://www.cgu.gov.br/empresaproetica/cadastro-pro-etica/index.asp>

213. <http://www.cgu.gov.br/odp/index.asp>

214. Available at: <http://www.oas.org/juridico/english/bra.htm>

215. The list of recommendations that still require additional attention or which have been reformulated following this analysis, have been included as Annex 1 to this Report.

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE THEM (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)

1.1. Standards of conduct to prevent conflicts of interests and mechanisms to enforce them

Recommendation:

Strengthen the implementation of laws and regulatory systems on conflicts of interests, ensuring that they apply to all public officers, so as to permit practical and effective application of such systems.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Bearing in mind the existing legislative initiative, consider incorporating, into a single body of rules, a regime on the system of conflicts of interests that applies to all public officers, so that all public servants, the governed and users know precisely what their duties and rights are and thereby, eliminate the existing gaps in coverage of the present rules. However, such a measure would not preclude the existence of rules targeted at specific sectors that may require special treatment or more restrictive rules. (the basis for this measure is found in section 1.1.2 of Chapter II of the First Round Report)*

[254] In its Response,²¹⁶ the country under review presents the following information on the foregoing measure:

[255] *“With regard to the preceding recommendations it is important to note that a bill of this nature (PL 7528/200) is currently before the Brazilian Congress. The bill addresses conflicts of interests in the exercise of duties or positions in the federal executive branch and subsequent impediments for exercising a particular duty or position. The progress of the bill may be followed directly at the website of the House of Deputies: <http://www.camara.gov.br/proposicoesWeb/fichadetratamacao?idProposicao=334907>.*

[256] *As has been noted in previous assessment reports, the fact that Brazil does not yet have specific laws on conflicts of interests does not mean that the issue has not been addressed in the country's legal system. Quite to the contrary, Brazil has various laws with provisions on prevention or suppression of conflicts of interests, including the following: Code of Conduct for High-Ranking Federal Government Officials; Government (Administrative) Impropriety Act – Law 8429/92, Art. 9 (II), (VIII) and (IX), and Art. 11 (XII); Law on Government Tendering and Contracting – Law 8666/93, Art. 9 (III) and Art. 91; Federal Public Servants Statute - Law 8112/90, Art. 117 (X-XII); and the Criminal Code, Arts. 321, 332, and 337-C.”*

[257] With respect to the information presented in the Response of the country under review, the Committee takes note that the above-mentioned laws were duly reviewed and described in section 1.1.1 of the Report from the First Round, pp. 5 to 15.

[258] Furthermore, during the on-site visit, it was explained that it was hoped that bill PL 7528/2006 might be included in a special session of the House of Deputies in 2012. A week after the on-site visit, it was reported that bill PL 7528/2006 had been passed by the House of Deputies with amendments and

216. See Response of Brazil to the Questionnaire in the fourth round, pp. 78 and 79.

was subsequently sent to the Federal Senate for debate in that legislative chamber. It was also mentioned that three bills (in particular, PL 1202/2007) and seven proposed amendments to the Internal Regulations of the House of Deputies were before the National Congress with the aim of introducing rules on lobbying.

[259] The Committee notes the important progress made in the passage of bill 7528/2006, which remained untouched for almost four years (from February 2008 to April 2012) in the House of Deputies. The Committee hopes that consideration of that bill by the Federal Senate can be expedited and that Brazil can have much-needed regulations on conflicts of interests in the framework of the federal executive branch. In addition, bearing in mind that the measure also intended that the other branches of government (Legislature and Judiciary) should have regulations on conflicts of interests, the Committee also attaches great importance to progress in the proposed laws that seek to introduce rules on lobbying and hopes that Brazil will soon have regulations in that respect.

[260] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure a) of the recommendation contained in section 1.1 of Chapter IV of this report and of the need for the latter to continue to give attention thereto, bearing in mind that neither of the aforementioned proposed laws has completed the process to become law and the fact that there has been no progress by the judiciary on this issue, particularly as regards rules on the participation of judges in activities financed by private firms.

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Develop or strengthen, as appropriate, mechanisms to monitor and resolve cases of conflicts of interest for all public officers, in keeping with the previous recommendation.* (the basis for this measure is found in section 1.1.2 of Chapter II of the First Round Report)

[261] In its Response,²¹⁷ the Country under review presents the following information on the foregoing measure:

[262] *“Brazil continues to strengthen its mechanisms to monitor and resolve cases of conflict of interests, particularly through penalization of public servants who commit any transgressions relating to conflicts of interests as set out in law 8112/90 (...)”*

[263] The country also transcribes paragraphs X to XII of Article 117 of Law 8112/90 and provides data on the number of public servants ejected from the federal executive branch owing to the prohibitions established in those provisions of Law 18 112/90.

[264] Concerning the information presented in the Response of the country under review, the Committee notes that the above-mentioned laws were duly analyzed and described in section 1.1.1 of the Report from the First Round, pp. 5 to 15.

[265] In that regard, the Committee takes note of the steps taken by the country under review to advance in its implementation of measure b) of the recommendation contained in section 1.1 of Chapter IV of this report and of the need for the latter to continue to give attention thereto, bearing in mind that while the Committee acknowledges the significant progress of the CGU in terms of investigation and expulsion of public servants from the federal executive branch for violation of the rules on conflict of interests

217. See Response of Brazil to the Questionnaire in the fourth round, p. 83.

contained in paragraphs X to XII of Article 117 of Law 8112/90, the Committee considers that the measure suggested is broader in scope and refers to overall management of cases of conflict of interests; that is, the establishment or strengthening of mechanisms for monitoring them, as well as for providing guidance and resolving on specific cases of conflicts of interest. Accordingly, it would be important to have access to information on the strengthening of the work of the Public Ethics Commission and the Ethics Committee of Public Agents of the Office of the President and Vice President of the Republic, among others. Information is also needed on the establishment of such mechanisms for dealing with conflict of interests in the Legislative and Judicial branches.

Measure c) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Establish, as appropriate, proper restrictions upon those who leave public service, such as prohibiting them from having any role in matters in which they were involved by reason of their office or position, or with any entity with which they were recently associated, for a reasonable period of time.* (the basis for this measure is found in section 1.1.2 of Chapter II of the First Round Report)

[266] See the Committee's review of measure a) above with respect to the recommendation in Chapter IV, section 1.1 of this report, which also applies to this measure.

1.2. Standards of conduct to prevent conflicts of interests and mechanisms to enforce them

Recommendation:

Continue strengthening the implementation of rules of conduct to ensure the proper conservation and use of resources entrusted to public officials.

Measure suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Strengthen control mechanisms in general, in order to ensure even further, enforcement of the sanctions imposed.* (the basis for this measure is found in section 1.2.2 of Chapter II of the First Round Report)

[267] In its Response,²¹⁸ the country under review presents information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that lead it to conclude that it has been satisfactorily considered:

[268] *"Brazil continues to strengthen its control mechanisms, as can be seen from the statistics on the activities (penalties imposed, potential funds) of the oversight bodies selected for review in the Fourth Round, in particular, the Audit Court and the Office of the Comptroller General.*

[269] *In addition to the oversight bodies selected, it is important also to highlight the effectiveness of the steps taken by the Office of the Attorney General of the Union aimed at recovering monies diverted from the public coffers and at ensuring the integrity of public property and assets (...)"*

218. See Response of Brazil to the Questionnaire in the fourth round, p. 84.

[270] The Committee takes note of the satisfactory consideration by the country under review of the sole measure under the recommendation in section 1.2 of Chapter IV of this report, bearing in mind, in particular, the progress of the AGU in terms of the effective recovery of fines imposed by the TCU, which went from 2.10% in 2008 to 25.08% in 2011 and which are described in section 2.3 of Chapter II of this report.

1.3. Measures and systems requiring public officials to report acts of corruption in the performance of public functions of which they are aware to the appropriate authorities

Recommendation:

Strengthen the standards and mechanisms requiring public officials to report to the appropriate authorities acts of corruption in the performance of public functions of which they are aware.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Continue to take measures tending to strengthen measures of protection for public officials who report acts of corruption in good faith, to protect them from possible threats or reprisals against them as a result of compliance with this obligation. (the basis for this measure is found in section 1.3.2 of Chapter II of the First Round Report)*

[271] In its Response,²¹⁹ the country under review presents information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[272] – The promulgation on November 18, 2011, of the Access to Information Law (Law 12.527/2011) that added Article 126-A to the Federal Civil Service Statute (Law 8.112/90), which provides, “*No official may be held to liability under civil, criminal, or administrative proceedings for informing a superior authority or, in the event of suspicions that the latter is involved, another competent investigative authority, of the commission of crimes or dishonesty that come to their attention, as well as of providing information that emerges during the exercise of their official public duties or functions.*”

[273] – Action 14 of the ENCCLA, which is to be implemented in 2012.²²⁰ “Track and analyze the treatment given to witnesses, whistleblowers, and collaborators in the Brazilian legal system in the civil, criminal, and administrative spheres, compared with other systems; and in proposed laws currently under debate, in order to identify gaps in the law with a view to preparing draft legislation, as appropriate.”

[274] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure a) of the recommendation contained in section 1.3 of Chapter IV of this report and of the need for the latter to continue to give attention thereto, bearing in mind the information received during the on-site visit that the necessary studies had not yet begun for the preparation and presentation of the draft proposed whistleblower protection, as well as the need to complete its processing for it to become law.

219. *Ibid.*, pp. 85 and 86.

220. <http://portal.mj.gov.br/data/Pages/MJ7AE041E8ITEMID70EFA6233CEA4B8DAA9C160F6EB41BA9PTBRIE.htm>

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Increase the awareness of public officials of the purposes of the duty to report to the appropriate authorities, acts of corruption in the performance of public functions of which they are aware.* (the basis for this measure is found in section 1.3.2 of Chapter II of the First Round Report)

[275] In its Response, the country under review did not refer to measure b) of the recommendation in Chapter IV, section 1.3 of this report. The Committee takes note of the need for the country under review to give additional attention to its implementation.

2. SYSTEMS FOR REGISTERING INCOME, ASSETS, AND LIABILITIES (ARTICLE III, PARAGRAPH 4, OF THE CONVENTION)

Recommendation:

Strengthen the systems for registration of income, assets and liabilities.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Regulate conditions, procedures, and other aspects related to publication, where appropriate, of records of income, assets, and liabilities, in keeping with the fundamental principles of the legal system of the Federative Republic of Brazil.* (the basis for this measure is found in section 2.2 of Chapter II of the First Round Report)

[276] In its Response, the country under review did not refer to measure a) of the recommendation in Chapter IV, section 1.3 of this report. The Committee, therefore, notes the need for the Brazil to give further attention to its implementation.

[277] However, the Committee notes that the Implementing Regulations for the Access to Information Law (Decree 7.724 of May 16, 2012) in the framework of the Federal Executive branch represents an important regulatory forward stride in terms of public transparency by requiring the publication of “*remunerations and subsidies by the occupants of public offices, posts, positions and employment, including allowances, cost subsidies, commissions, or any other financial benefit as well as retirement proceeds and pensions of anyone in activity, detailed individually (...)*” (Decree 7.724/2012, Art. 7, § 3(VI)).

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Criminalize the act of unlawful enrichment.* (the basis for this measure is found in section 2.2 of Chapter II of the First Round Report)

[278] In its Response,²²¹ the country under review presents information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

221. See Response of Brazil to the Questionnaire in the fourth round, pp. 85 and 86.

[279] “ Brazil has efficaciously suppressed illicit enrichment, as described in the progress reports and the Response in the Third Round of Review of the MESICIC. However, it should be highlighted that bill 5586/2005, which criminalizes illicit enrichment, is still before Congress. The progress of the bill may be followed directly at the House of Deputies website: <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=292771>”.

[280] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure b) of the recommendation contained in section 2 of Chapter IV of this report and of the need for the latter to continue to give attention thereto, bearing in mind that the above bill has not yet become law.

Measure c) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Optimize systems for analyzing the content of declarations of income, assets and liabilities, with a view to making them a useful tool for detecting and preventing conflict of interests or violations of law, where appropriate.* (the basis for this measure is found in section 2.2 of Chapter II of the First Round Report)

[281] In its Response,²²² the country under review presents information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[282] “Since 2009, the Office of the Comptroller General, through the Secretariat for Prevention of Corruption and Strategic Information (SPCI), has been implementing its Systematic Examination of Assets and Income with the precise aim of monitoring changes in net worth of public servants. This is a continuous activity whereby a sample of federal employees is selected and their declarations then collected and analyzed by the CGU.

[283] *Each declaration is analyzed according to criteria that assess both the possibility of illicit enrichment and the existence of any ties that might represent conflicts of interest or indicia of criminal activity. In this way, the analysis of the contents of the declaration may lead to an asset investigation designed to investigate evidence of changes in net worth that are incompatible with revenue, as well as an investigative inquiry or a disciplinary administrative proceeding, which are the appropriate procedures for verifying conflicts of interests or crime. After the SPCI conducts a preliminary investigation such cases are referred to the Office of the Inspector General (CRG) which is responsible for instituting the above proceedings.*

[284] *The SPCI also monitors potential conflicts of interests in other ways, such as periodic comparison of data in the civil servant registry with its database of companies and their employees. This monitoring makes it possible, for example, to identify situations in which an employee of a government organ is the partner in a company that provides services to that same organ. In such instances, following a specific preliminary investigation, cases such as those are also referred to the CRG”.*

[285] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure c) of the recommendation contained in section 2 of Chapter IV of this report and of the need for the latter to continue to give attention thereto, bearing in mind that it did not provide information on how the Public Ethics Commission shares--with the CGU, for instance--information on

222. *Ibid.*, pp. 86 and 87.

conflicts of interests contained in confidential disclosures presented to it. Unfortunately, no representative of this Commission was on hand during the on-site visit to clarify this important issue.

Measure d) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Strengthen the provisions related to review or audit of the content of declarations, so that the Court of Accounts of the Union and the Office of the Comptroller General of the Union have procedures that allow them to enhance the effectiveness of these processes, in keeping with the fundamental principles of the legal system of the Federative Republic of Brazil. (the basis for this measure is found in section 2.2 of Chapter II of the First Round Report)*

[286] In its Response,²²³ the country under review presents information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[287] *“The Systematic Examination of Assets and Income, as described in the answer to item 2.c), is the main instrument used to effectively verify disclosures filed by federal government servants.*

[288] *It amounts to an ongoing monitoring effort of the disclosures filed performed ex officio on a permanent basis by the SBCI/CGU, regardless of the receipt of complaints or specific investigation procedures.*

[289] *Thus, it is possible to effectively keep track of changes in net worth of civil servants and institute disciplinary proceedings based solely on inconsistency between net worth and revenue, without the need to identify specific wrongdoing on the part of the official, as provided in Law 8.429 of 1992.*

[290] *Analyzing declarations is a complex task in which the analyst has to assess a series of hypotheses and subjective criteria in order to spot evidence of illicit enrichment. It is not possible to monitor the entire mass of federal employees who number more than 600,000. Monitoring is, therefore, carried out by sampling limited numbers of officials owing to the operational capacity of the CGU.*

[291] *Having said that, it is worth pointing out that however small the number of officials who are directly impacted, the effects of the effort are felt by the entire universe of employees. As the aim of an act of corruption is almost invariably to obtain undue financial gain, the possibility that an official’s net worth might be carefully examined tends to act as a deterrent. The efforts described, then, influence the perception that unlawful behavior carries a risk, thus helping to prevent corruption.”*

[292] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure d) of the recommendation contained in section 2 of Chapter IV of this report and of the specific need to strengthen the operating capacity of the CGU in order to increase the number of staff that verify the contents of declarations of assets and income.

[293] Consequently, with regard to systems for registering income, assets, and liabilities, measure d) suggested by the Committee to the country under review with respect to the recommendation in section 1.1 of Chapter IV of this report is hereby reformulated as follows (See Annex I, recommendation 2, measure d):

223. See Response of Brazil to the Questionnaire in the fourth round, pp. 87 and 88.

[294] -Strengthen the human resources of the CGU so that the body can further bolster its capacities with respect to the review or audit of declarations.

3. OVERSIGHT BODIES FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4 AND 11, OF THE CONVENTION)

[295] The recommendation on this section was satisfactorily considered and, therefore, does not require additional attention.

4. MECHANISMS TO ENCOURAGE PARTICIPATION BY CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11, OF THE CONVENTION)

4.1. General participation mechanisms

[296] The Committee did not offer any recommendations in this section.

4.2. Mechanisms for access to information

Recommendation:

Continue strengthening the mechanisms for access to government information.

Measure suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- Consider the advisability of integrating and systematizing in a single regulatory text the provisions that ensure access to government information. (the basis for this measure is found in section 4.2.2 of Chapter II of the First Round Report)

[297] In its Response,²²⁴ the country under review presents information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[298] *“Law 12.527 published on November 18, 2011, addresses the measure proposed by the Committee by consolidating access to government information in a single regulatory text.*

[299] *The Access to Information Law, as it is known, is broad in scope, including, as it does, all public organs that are part of the direct administration of the executive branch, the legislature--including the courts of auditors--, the judiciary, and the Public Prosecution Service, as well as self-sufficient entities, government foundations, state-owned companies, partially owned government companies, and all other entities directly or indirectly controlled by the Union, states, the Federal District, and municipalities. Private not-for-profit entities are also subject to this law when they receive public funds to carry out acts of public interest.*

[300] *The law guarantees the citizen access to complete, authentic, and up-to-date information. Access is free, without prejudice to the possibility that recompense might be requested to cover the cost of the services and materials used for the reproduction of documents. Law 12.527 also guarantees the provision of guidance on how to request and where to find what is needed; knowledge of channels of*

224. See Response of Brazil to the Questionnaire in the fourth round, pp. 88 and 89.

communication to the body that has the information; facilitated access for people with disabilities; and the creation of an information service for members of the public in each government organ, which is responsible for complying with requests and providing attention to the public, even where processing of documents is concerned. The law also classifies unlawful conduct and envisages the respective penalties for officials that act to the detriment of freedom of public access to information.

[301] *The law also sets out active transparency obligations to ensure that citizens can have prompt access to the information in greatest demand without having to go through the application process. That includes the publication of information in greatest demand among users, which expedites the proactive provision of data, instructions, documents, and other information requested. This information must be available on the Internet together with a search tool, and, in order to facilitate analysis of information, it should be possible for those interested to save reports in different electronic formats, including open-source and unpatented ones, as well as offering open-source, structured, and machine-readable formats to enable automated access by external systems.*

[302] *The law clearly sets out the procedures and deadlines to be observed by the institutions envisaged in it in dealing with information requests. If information is denied, the applicant is entitled to a complete copy of the decision denying them access. Applicants also have the right to challenge denials at three (3) instances.*

[303] *The circumstances in which information used to be denied included confidentiality scenarios, which were revised by Law 12.527. As a result of that revision, the hypothetical circumstances in which information could be classified as confidential were reduced, as was the amount of time that that status could be maintained. The law also eliminated the possibility of indefinite secrecy of information and established that information or documents connected with any conduct that entailed a human rights violation committed by agents of the state or on the authority of government officials cannot be subject to restricted access (...)*”.

[304] Furthermore, during the on-site visit, representatives of the Office of the Chief Of Staff of the President of the Republic and the CGU reported on progress made by the country under review on the implementing regulations of the Access to Information Law in the context of the Federal Executive Branch (published in Decree 7.724 on May 16, 2012), as well as providing extensive information about activities to promote a culture of freedom of information and training for public servants before the Law’s entry into force on May 16, 2012, notable among which were the following:

[305] – The holding in July 2012 of the “International Seminar on Access to Information: Implementation Challenges,” organized by the CGU in partnership with UNESCO.

[306] – The creation by the CGU of a specific Access to Information website,²²⁵ with extensive content, including frequently asked questions for officials and citizens.

[307] The production and distribution by the CGU of the primer “Access to Public Information,” which clarifies various points of the Access to Information Law and highlights aspects and advantages of a culture of access versus a culture of secrecy.

[308] – The promotion by the CGU of on-site training courses for public servants at Citizen Information Services (SIC) and distance courses for all other federal civil servants.

225. <http://www.cgu.gov.br/acessoainformacoes/index.asp>

[309] – Research/review of values, knowledge, and a culture of access to information in the Brazilian federal executive branch,²²⁶ the purpose of which is to carry out ongoing awareness and training activities for public servants.

[310] – Review of the role of ombudsmen in the organs and entities of the federal executive branch²²⁷ in order to prepare them also for the implementation of the Brazilian access to government information policy.

[311] – The development of an electronic system for receipt and processing of information requests (*Sistema e-SIC*).²²⁸

[312] It was also explained that, although funding has not been specifically allocated for implementing the Access to Information Law in the 2012 budget by decision of the President of the Republic, the ministries decided to make the matter a priority. CGU representatives also reported that a sizable number of the new intake of servants who would be recruited in 2012 (between 30 and 40 new employees) would be allocated to the Access to Information Law.

[313] Furthermore, during the on-site visit, representatives of civil society organizations (ABRAJI, *Artigo 19*, and AMARRIBO) unanimously stressed the importance for Brazil of the new Access to Information Law, which they regarded as a framework for the country that would galvanize the fight against corruption. However, they mentioned that there still existed what they called a “culture of secrecy” on the part of public servants, especially at the state and municipal level, and the absence of an archives policy, particularly among the latter. In that connection, they cited cases of mayors who destroyed information about their administration upon completing their terms in office.

[314] Civil society representatives also underscored the efforts of the CGU to improve access to information in the Federal Executive branch and the need for governments to instill the value of transparency and access to information and to encourage society to demand that right, by means of specific awareness campaigns on the right of access to government information. The ABRAJI and *Artigo 19* representatives specifically mentioned the absence of a budget appropriation for implementing the Access Law in 2012 and the fact that a specific item had not been created for that purpose in the national budget. The *Artigo 19* representative also mentioned the absence of a specialized independent organ to enforce the Access to Information Law and the need for the appeal body to be independent.

[315] The Committee takes note of the satisfactory consideration by the country under review of the sole measure under the recommendation in section 4.2 of Chapter IV of this report, bearing in mind the promulgation and entry into force of the Access to Information Law, the Law’s implementing regulations in the sphere of the Federal Executive branch, and the important advances led by the CGU to promote and implement it.

[316] That said, the Committee believes that the country could progress even further in this area and recommends that it continue working with states and municipalities, as well as with the Judiciary and the Legislature, in order to provide them with their own regulations on the implementation of the Access to Information Law and, in particular, to ensure that those regulations contain clear rules on the respective

226. Available at: http://www.cgu.gov.br/Publicacoes/SumarioPesquisaAcessoInformacao/SUMARIO_FINAL.pdf

227. Available at: http://www.cgu.gov.br/eventos/2012_OGU_IIReuniaoGeral/arquivos/Sumario_Executivo_Relatorio_Diagnostico_das_Ouidorias.pdf

228. <http://www.acessoainformacao.gov.br/sistema/>

mechanisms of appeal against denials of access and rejection of requests for declassification of information. The Committee also recommends that the country under review strengthen its archives policy, especially at the state and municipal level, as a means to ensure that information requests are not denied simply because of the absence of information that the state ought to produce and maintain.

[317] Consequently, with regard to mechanisms for access to information, the measure suggested by the Committee to the country under review with respect to recommendation in section 4.2 of Chapter IV of this report is hereby reformulated as follows (See Annex I, recommendation 4.2, measures a) and b)):

[318] a) Continue working with states and municipalities, as well as with the Judiciary and the Legislature, in order to provide them with their own regulations on the implementation of the Access to Information Law and, in particular, to ensure that those regulations contain clear rules on the respective mechanisms of appeal against denials of access and rejection of requests for declassification of information.

[319] b) Strengthen the archives policy, especially at the state and municipal level, as a means to ensure that information requests are not denied simply because of the absence of information that the State should produce and maintain.

4.3. Mechanisms for consultation

Recommendation:

Continue strengthening the mechanisms for consultation.

Measure suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- *Continue promoting the use of existing mechanisms, in order to allow the consultation by interested sectors, on the design of public policies and the drafting of bills, decrees or resolutions in the various agencies of government. (the basis for this measure is found in section 4.3.2 of Chapter II of the First Round Report)*

[320] In its Response,²²⁹ the country under review presents information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that lead it to believe that it has been satisfactorily considered:

[321] – The creation since 2003 of 19 new decision-making and advisory councils, which allow for the participation of civil society organizations and are involved in shaping and oversight of public policies, such as the National Cultural Policy Council.

[322] – The creation since 2004 of more than 28,000 municipal councils involved in the supervision and implementation of federal programs in municipalities.

[323] – The holding of various national conferences to evaluate and introduce guidelines for the ongoing improvement of public policies in different areas, particularly notable being the holding of the local, municipal, regional, state, and federal stages of the First National Conference on Transparency and

229. See Response of Brazil to the Questionnaire in the fourth round, pp. 87 and 88.

Societal Oversight (CONSOCIAL),²³⁰ which were attended by 150,000 people and involved close to 1 million people in their various preparatory stages.²³¹

[324] The Committee takes note of the satisfactory consideration by the country under review of the sole measure under the recommendation in section 4.3 of Chapter IV of this report, particularly taking into account the advances described in the use of its existing mechanisms (national conferences and councils) in order to allow consultation by interested sectors on the design of public policies, especially in the area of transparency and societal oversight through the holding of I CONSOCIAL.²³²

4.4. Mechanisms to encourage participation in public administration

[325] The recommendation on this section was satisfactorily considered and, therefore, does not require additional attention.

4.5 Participation mechanisms for follow-up of public administration

[326] The recommendation on this section was satisfactorily considered and, therefore, does not require additional attention.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)

Recommendations suggested by the Committee that require additional attention within the Framework of the Second and Third Rounds:

Recommendation 5.1:

Establish legislation on mutual assistance and continue negotiating bilateral agreements on the subject, in addition to becoming a party to other pertinent international instruments that facilitate such assistance. (the basis for this recommendation is found in section 5.1.2 of Chapter II of the First Round Report)

[327] In its Response,²³³ the country under review presents information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[328] – The promulgation in January 2008 of the Inter-American Convention on Mutual Assistance in Criminal Matters.

[329] – The existence of agreements on legal cooperation in criminal matters with Canada, Colombia, USA, Mexico, Panama, Peru, and Suriname.

[330] – The submission of draft treaties on legal cooperation in criminal matters to Bolivia and Paraguay, as well as the analysis of a draft treaty submitted by Costa Rica.

230. <http://www.consociat.cgu.gov.br/>. See Response of Brazil to the Questionnaire in the fourth round, pp. 33 to 34 and 89 to 92.

231. <http://www.consociat.cgu.gov.br/noticias/comeca-a-etapa-nacional-da-1-consociat/>

232. A document containing the 80 proposals produced at the national stage of the CONSOCIAL is published at: http://www.consociat.cgu.gov.br/uploads/biblioteca_arquivos/224/arquivo_c82af7c4ac.pdf

233. See Response of Brazil to the Questionnaire in the fourth round, pp. 93.

[331] – The introduction to Congress in 2011 of the agreement on legal cooperation in criminal matters negotiated with El Salvador.

[332] Furthermore, during the on-site visit, the existence of three initiatives to introduce internal regulations on mutual assistance in legal matters in Brazil was reported (Senate Bill No. 326 of 2007, the draft Code of Civil Procedure, and the draft Criminal Code). Information was also provided regarding Interministerial Resolution 501, published on March 21, 2012, on the processing of letters rogatory and requests, both received and made, for direct assistance in criminal and civil matters, in the absence of an international, bilateral, or multilateral legal cooperation agreement.

[333] The Committee takes note of the steps taken by the country under review to advance in its implementation of recommendation 5.1 in Chapter IV of this report, bearing in mind that the aforementioned existing legislative initiatives have yet to be enacted into law.

Recommendation 5.2:

Continue efforts to exchange technical cooperation with other states parties concerning the most effective ways and means to prevent, detect, investigate, and punish acts of corruption. (the basis for this recommendation is found in section 5.2.2 of Chapter II of the First Round Report)

[334] In its Response,²³⁴ the country under review presents information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[335] *“Brazil continues to make efforts to establish bilateral technical cooperation agreements, whose scope includes the exchange of ways and means to prevent, investigate, detect, and punish acts of corruption.”*

[336] *Between January 2010 and January 2012, 8 technical cooperation agreements with states parties to the Inter-American Convention against Corruption were promulgated. Those states parties included the Dominican Republic, Barbados, Grenada, Guatemala, Trinidad and Tobago, Canada, Chile, and Ecuador.”*

[337] The Committee takes note of the steps taken by the country under review to advance in its implementation of recommendation 5.2 in Chapter IV of this report, bearing in mind that the agreements mentioned are, generally speaking, framework agreements on technical cooperation and that it would be important to have information on Brazil’s initiatives to share its experiences and best practices in combating corruption with other states parties.

Recommendation 5.3:

Determine and prioritize specific areas in which Brazil considers that it needs the technical cooperation of other States Parties or multilateral cooperation institutions to strengthen its capacity to prevent, detect, investigate, and punish acts of corruption. (the basis for this recommendation is found in section 5.2.3 of Chapter II of the First Round Report)

234. See Response of Brazil to the Questionnaire in the fourth round, pp. 93.

[338] The Country under review did not refer to recommendation 5.3 in its Response. The Committee takes note of the need for the country under review to give additional attention to its implementation.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

[339] The Committee did not offer any recommendations in this section.

7. GENERAL RECOMMENDATIONS

Recommendations suggested by the Committee that require additional attention within the Framework of the Second and Third Rounds:

Recommendation 7.2:

Select, develop, and report to the Technical Secretariat of the Committee, procedures and indicators, when appropriate, that make it possible to monitor the recommendations established in this report. For this purpose, Brazil could consider taking into account the list of more general indicators applicable within the Inter-American system that were available for the selection indicated by the State under review and posted on the OAS website by the Technical Secretariat of the Committee, together with information derived from the review of the mechanisms developed in accordance with recommendation 7.3 below.

Recommendation 7.3:

Develop, as appropriate and where they do not yet exist, procedures designed to analyze the mechanisms mentioned in this report, as well as the recommendations contained in this report.

[340] In its Response the country under review did not refer to recommendations 7.2 and 7.3. The Committee takes note of the need for the country under review to give additional attention to their implementation.

ANNEX I

OUTSTANDING AND REFORMULATED RECOMMENDATIONS REGARDING THE TOPICS REVIEWED IN THE FIRST ROUND

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE THEM (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)

1.1. Standards of conduct to prevent conflicts of interests and mechanisms to enforce them

Recommendation:

Strengthen the implementation of laws and regulatory systems on conflicts of interests, ensuring that they apply to all public officers, so as to permit practical and effective application of such systems.

Suggested measures:

- a) Bearing in mind the existing legislative initiative, consider incorporating, into a single body of rules, a regime on the system of conflicts of interests that applies to all public officers, so that all public servants, the governed and users know precisely what their duties and rights are and thereby, eliminate the existing gaps in coverage of the present rules. However, such a measure would not preclude the existence of rules targeted at specific sectors that may require special treatment or more restrictive rules.
- b) Develop or strengthen, as appropriate, mechanisms to monitor and resolve cases of conflicts of interest for all public officers, in keeping with the previous recommendation.
- c) Establish, as appropriate, proper restrictions upon those who leave public service, such as prohibiting them from having any role in matters in which they were involved by reason of their office or position, or with any entity with which they were recently associated, for a reasonable period of time. (the basis for this measure is found in section 1.1.2 of Chapter II of the report from the First Round.)

1.2. Standards of conduct to prevent conflicts of interests and mechanisms to enforce them

The recommendation on this section was satisfactorily considered and, therefore, does not require additional attention.

1.3. Measures and systems requiring public officials to report acts of corruption in the performance of public functions of which they are aware to the appropriate authorities

Recommendation:

Strengthen the standards and mechanisms requiring public officials to report to the appropriate authorities acts of corruption in the performance of public functions of which they are aware.

Suggested measures:

- a) Continue to take measures tending to strengthen measures of protection for public officials who report acts of corruption in good faith, to protect them from possible threats or reprisals against them as a result of compliance with this obligation.
- b) Increase the awareness of public officials of the purposes of the duty to report to the appropriate authorities, acts of corruption in the performance of public functions of which they are aware.

2. SYSTEMS FOR REGISTERING INCOME, ASSETS, AND LIABILITIES (ARTICLE III, PARAGRAPH 4, OF THE CONVENTION)

Recommendation:

Strengthen the systems for registration of income, assets, and liabilities.

Suggested measures:

- a) Regulate conditions, procedures, and other aspects related to publication, where appropriate, of records of income, assets, and liabilities, in keeping with the fundamental principles of the legal system of the Federative Republic of Brazil.
- b) Criminalize the act of unlawful enrichment.
- c) Optimize systems for analyzing the content of declarations of income, assets and liabilities, with a view to making them a useful tool for detecting and preventing conflict of interests or violations of law, where appropriate.
- d) Strengthen the human resources of the CGU so that the organ can further bolster its capacities with respect to the review or audit of declarations.

3. OVERSIGHT BODIES FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4 AND 11, OF THE CONVENTION)

The recommendation on this section was satisfactorily considered and, therefore, does not require additional attention.

4. MECHANISMS TO ENCOURAGE PARTICIPATION BY CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11, OF THE CONVENTION)

4.1. General participation mechanisms

The Committee did not offer any recommendations in this section.

4.2. Mechanisms for access to information

Recommendation:

Continue strengthening the mechanisms for access to government information.

Suggested measures:

- a) Continue working with states and municipalities, as well as with the Judiciary and the Legislature, in order to provide them with their own regulations on the implementation of the Access to Information Law and, in particular, to ensure that those regulations contain clear rules on the respective mechanisms of appeal against denials of access and rejection of requests for declassification of information.
- b) Strengthen the archives policy, especially at the state and municipal level, as a means to ensure that information requests are not denied simply because of the absence of information that the State should produce and maintain.

4.3. Mechanisms for consultation

The recommendation on this section was satisfactorily considered and, therefore, does not require additional attention.

4.4. Mechanisms to encourage participation in public administration

The recommendation on this section was satisfactorily considered and, therefore, does not require additional attention.

4.5 Participation mechanisms for follow-up of public administration

The recommendation on this section was satisfactorily considered and, therefore, does not require additional attention.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)

Recommendation 5.1:

Establish legislation on mutual assistance and continue negotiating bilateral agreements on the subject, in addition to becoming a party to other pertinent international instruments that facilitate such assistance.

Recommendation 5.2:

Continue the efforts to exchange technical cooperation with other state parties as to the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption.

Recommendation 5.3:

Determine and prioritize specific areas in which Brazil considers that it needs the technical cooperation of other States Parties or multilateral cooperation institutions to strengthen its capacity to prevent, detect, investigate, and punish acts of corruption.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

The Committee did not offer any recommendations in this section.

7. GENERAL RECOMMENDATIONS

Recommendation 7.1:

The recommendation on this section was satisfactorily considered and, therefore, does not require additional attention.

Recommendation 7.2:

Select, develop, and report to the Technical Secretariat of the Committee, procedures and indicators, when appropriate, that make it possible to monitor the recommendations established in this report. For this purpose, Brazil could consider taking into account the list of more general indicators applicable within the Inter-American system that were available for the selection indicated by the State under review and posted on the OAS website by the Technical Secretariat of the Committee, together with information derived from the review of the mechanisms developed in accordance with recommendation 7.3 below.

Recommendation 7.3:

Develop, as appropriate and where they do not yet exist, procedures designed to analyze the mechanisms mentioned in this report, as well as the recommendations contained in this report.

ANNEX II

**AGENDA OF THE ON-SITE VISIT TO THE
FEDERATIVE REPUBLIC OF BRAZIL**

<u>Tuesday, March 20, 2012</u>	
8:00 – 9:00 a.m.	Coordination meeting between the representatives of the members states of the subgroup and the Technical Secretariat (<i>Hotel Comfort Inn Brasilia</i>).
9:30 – 11:00 a.m.	Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional associations, academics, or researchers
	Topic: <ul style="list-style-type: none">• Civil society perspective on the implementation of the new Access to Information Law (Law 12.527 of November 18, 2011).
	<u>Participants:</u> <i>Asociación Brasileña de Periodismo Investigativo (ABRAJI)</i> Fernando Rodrigues, Director <i>Artigo 19</i> Arthur Serra Massuda, Projects Coordinator <i>Amigos Associados de Ribeirão Bonito (AMARRIBO) – Brazilian Chapter of Transparency International.</i> Lizete Verillo, Anticorruption Director Jorge Sanchez, Chair of the Management Board
11:00 a.m. – 12:45 p.m.	Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional associations, academics, or researchers (<i>Continued</i>)

	<p>Topics:</p> <ul style="list-style-type: none"> • Challenges for the investigation, prosecution and punishment of acts of corruption in Brazil. • Oversight bodies and the fight against corruption in Brazil. • Judicial effectiveness in preventing and combating corruption in Brazil • Civil society perspective on the role of the oversight bodies in the management of ethics and the fight against corruption in Brazil. • Private sector cooperation and oversight bodies. <hr/> <p><u>Participants:</u></p> <p><i>Brazilian Bar Association (OAB)</i> Paulo Henrique Falcão Brêda, Chair of the Special Committee for the Fight against Corruption.</p> <p><i>Fundación Getúlio Vargas (FGV)</i> Fernando Abrucio, Professor and Researcher <i>Researcher</i> Carlos Higino Ribeiro de Alencar, Secretary of Transparency for the Federal District and author of the study on judicial effectiveness in Brazil in the prevention of and fight against corruption.</p> <p><i>Amigos Associados de Ribeirão Bonito (AMARRIBO) – Brazilian Chapter of Transparency International.</i> Jorge Sanchez, Chair of the Management Board</p> <p><i>Instituto Ethos</i> Caio Magri, Executive Manager on Public Policies Lisandra Arantes, Coordinator for Public Policies</p>
12:45 – 2:15 p.m.	Lunch
2:15 – 3:45 p.m.	Panel 1: Office of the Comptroller General Of the Union (CGU)
	<p>Topic:</p> <ul style="list-style-type: none"> • Results in the performance of its duties • Accountability mechanisms

	<p><u>Participants:</u></p> <p><i>Representative of the Executive Secretariat of the CGU</i></p> <p>Jaine Mailda Pena Cirqueira, Chief of the Special Advisory Unit on Project Management</p> <p><i>Representative of the Secretariat for Prevention of Corruption and Strategic Information of the CGU</i></p> <p>Mário Vinicius Claussen Spinelli, Secretary of the SPCI</p> <p><i>Representative of the Federal Secretariat for Internal Control of the CGU</i></p> <p>Ronald da Silva Balbe, Director of Planning and Coordination of Control Activities</p> <p><i>Representatives of the Office of the Inspector General of the Union</i></p> <p>Waldir João Ferreira da Silva Júnior, Assistant Inspector, Social Area</p> <p>Antonio Nóbrega, Chief of Staff</p> <p><i>Representative of the Office of the Ombudsman General of the CGU</i></p> <p>José Eduardo Elias Romão, Ombudsman General</p>
3:45 – 5:00 p.m.	Panel 2: Office of the Comptroller General Of the Union (CGU)
	<p>Topics:</p> <ul style="list-style-type: none"> • Harmonization and coordination of functions with other oversight bodies (Federal Audit Court, Public Ethics Commission, the Federal Public Prosecutor’s Office, among others). • Exceptions to the area of responsibility of the CGU. <p><u>Participants:</u></p> <p><i>Representative of the Office of the Inspector General of the Union</i></p> <p>Waldir João Ferreira da Silva Júnior, Assistant Inspector, Social Area</p> <p><i>Representative of the Federal Secretariat for Internal Control of the CGU</i></p> <p>Ronald da Silva Balbe, Director of Planning and Coordination of Control Activities</p> <p><i>Representative of the internal control unit of an entity of the direct federal public administration</i></p> <p>Jerri Eddie Xavier Coelho, Secretary of Control of the General Secretariat of the Office of the President of the Republic</p> <p><i>Representative of the internal control unit of an entity of the indirect federal public administration.</i></p> <p>Silas Roberto de Souza, Chief Auditor of <i>Empresa Brasileira de Correos y Telégrafos</i> (ECT)</p>

5:00 – 5:45 p.m.	Panel 3: Office of the Comptroller General Of the Union (CGU)
	<p>Topics:</p> <ul style="list-style-type: none"> • Human resources and institution-building measures • Domestic standards on the performance of its duties (Procedure manual of the Office of the Ombudsman General of the CGU) • Budget regime <p><u>Participants:</u></p> <p><i>Representative of the Executive Secretariat of the CGU</i> Jaine Mailda Pena Cirqueira, Chief of the Special Advisory Unit on Project Management</p> <p><i>Representative of the Office of the Ombudsman General of the CGU</i> José Eduardo Elias Romão, Ombudsman General</p> <p><i>Representatives of the Internal Performance Department of the CGU</i> Cláudio Torquato, Director of Internal Performance</p> <p>Lorena Pompeu, Coordinator General of Planning and Budget</p> <p>Simei Spada, Coordinator General of Human Resources</p>
5:45 – 6:30 p.m.	Panel 4: Office of the Comptroller General Of the Union (CGU)
	<p>Topic:</p> <ul style="list-style-type: none"> • Best practices (Public Spending Observatory and Pro-Ethics Corporate Register). <p><u>Participants:</u></p> <p><i>Representative of the Department of Corruption Prevention of the CGU</i> Izabela Moreira Correa, Coordinator General</p> <p><i>Representative of the Department of Strategic Information of the CGU</i> Gilson Libório, Director of Strategic Information</p> <p>Leonardo Sales, Assistant Coordinator</p>
6:30 – 7:30 p.m.	Informal Meeting ^{235/} of representatives of the members states of the subgroup and the Technical Secretariat.
<u>Wednesday, March 21, 2012</u>	

235. The second paragraph of provision 20 of the *Methodology for Conducting On-Site Visits* states, “At the conclusion of the meetings on each day of the on-site visit, the Technical Secretariat shall organize an informal meeting with the members of the Subgroup, to exchange preliminary points of view on the topics addressed at those meetings.”

9:00 – 10:30 a.m.	Panel 5: Federal Audit Court (TCU)
	<p>Topics:</p> <ul style="list-style-type: none">• Results in the performance of its duties• Follow-up on recommendation 1.2 from the first round <p><u>Participants:</u></p> <p><i>Representatives of the Office of the Secretary General for External Oversight of the TCU</i></p> <p>Marcelo Luiz Souza da Eira, Assistant Secretary of Planning and Procedure Carlos Roberto Takao Yoshioca, Director of Strategic Information Management</p> <p><i>Representatives of the Office of the Secretary General for Administration of the TCU</i></p> <p>Carlos Roberto Caixeta, Assistant Secretary for Administration José Eliomá Oliveira Albuquerque, Secretary for Budget, Finance, and Accounts</p> <p><i>Representative of the Public Prosecution Service to the TCU</i></p> <p>Márcio André Santos de Albuquerque, Chief of Staff of the Prosecutor General of the Public Prosecution Service to the TCU</p> <p><i>Representative of the Office of the Attorney General of the Union (AGU)</i></p> <p>André Luiz de Almeida Mendonça, Director of the Department of Property and Probity</p>
10:30 – 11:30 a.m.	Panel 6: Federal Audit Court (TCU)
	<p>Topics:</p> <ul style="list-style-type: none">• Institutional coordination mechanisms and regime of competencies (Office of the Comptroller General, Office of the Attorney General, National Council of Justice, National Council of the Public Prosecution Service , among others).• Exceptions to the area of responsibility of the Federal Audit Court.

	<p><u>Participants:</u></p> <p><i>Representatives of the Office of the Secretary General for External Oversight of the TCU</i></p> <p>Marcelo Luiz Souza da Eira, Assistant Secretary of Planning and Procedure Carlos Roberto Takao Yoshioca, Director of Strategic Information Management</p> <p><i>Representative of the Office of the Secretary General for Administration of the TCU</i></p> <p>José Eliomá Oliveira Albuquerque, Secretary for Budget, Finance, and Accounts</p> <p><i>Representative of the Public Prosecution Service to the TCU</i></p> <p>Márcio André Santos de Albuquerque, Chief of Staff of the Prosecutor General of the Public Prosecution Service to the TCU</p>
<p>11:30 a.m. – 12:30 p.m.</p>	<p>Panel 7: Federal Audit Court (TCU)</p>
	<p>Topics:</p> <ul style="list-style-type: none"> • Internal control mechanisms • Institution-building measures • Budget regime <p><u>Participants:</u></p> <p><i>Representatives of the Office of the Secretary General for External Oversight of the TCU</i></p> <p>Marcelo Luiz Souza da Eira, Assistant Secretary of Planning and Procedure Carlos Roberto Takao Yoshioca, Director of Strategic Information Management</p> <p><i>Representative of the Office of the Secretary General for Administration of the TCU</i></p> <p>José Eliomá Oliveira Albuquerque, Secretary for Budget, Finance, and Accounts</p> <p><i>Representative of the Public Prosecution Service to the TCU</i></p> <p>Márcio André Santos de Albuquerque, Chief of Staff of the Prosecutor General of the Public Prosecution Service to the TCU</p>
<p>12:30 – 2:00 p.m.</p>	<p>Lunch</p>
<p>2:00 – 3:45 p.m.</p>	<p>Panel 8: Federal Public Prosecutor’s Office (MPF)</p>

	<p>Topics:</p> <ul style="list-style-type: none"> • Results in the performance of its duties • Institutional coordination mechanisms and regime of competencies (Federal Police and Office of the Comptroller General, among others).
	<p><u>Participants:</u></p> <p><i>Representatives of the Federal Public Prosecutor's Office</i></p> <p>Ela Wiecko Castilho, Assistant Prosecutor General of the Republic</p> <p>Mônica Nicida Garcia, Regional Prosecutor of the Republic</p> <p>Lauro Pinto Cardoso Neto, Prosecutor of the Republic and Secretary General of the MPF</p> <p>Roberto Antônio Dassié Diana, Prosecutor of the Republic</p> <p>Gustavo Ferreira Souza, Assistant Procedural Secretary of the MPF</p> <p><i>Person responsible for action 6 of the National Strategy to Combat Corruption and Money Laundering (ENCCLA) 2011²³⁶</i></p> <p>Hamilton Fernando Cota Cruz, Special Advisor to the Executive Secretariat of the CGU</p>
3:45 – 4:30 p.m.	Panel 9: Federal Public Prosecutor's Office (MPF)
	<p>Topics:</p> <ul style="list-style-type: none"> • Institution-building measures • Internal control mechanisms • Accountability mechanisms
	<p><u>Participants:</u></p> <p><i>Representatives of the Federal Public Prosecutor's Office</i></p> <p>Ela Wiecko Castilho, Assistant Prosecutor General of the Republic</p> <p>Mônica Nicida Garcia, Regional Prosecutor of the Republic</p> <p>Lauro Pinto Cardoso Neto, Prosecutor of the Republic and Secretary General of the MPF</p> <p>Roberto Antônio Dassié Diana, Prosecutor of the Republic</p> <p>Gustavo Ferreira Souza, Assistant Procedural Secretary of the MPF</p>
4:30 – 6:30 p.m.	Panel 10: Federal Police Department (DPF)

236. "Action 6 - Prepare joint action guidelines for government bodies in money-laundering and corruption investigations."

	<p>Topics:</p> <ul style="list-style-type: none"> • Results in the performance of its duties • Institutional coordination mechanisms and regime of competencies (Federal Public Prosecutor’s Office and Office of the Comptroller General). • Institution-building measures • Internal control mechanisms • Budget regime • Accountability mechanisms <p><u>Participants:</u></p> <p><i>Representative of the Service for the Suppression of the Diversion of Public Resources (SRDP) of the DPF</i></p> <p>Josélio Azevedo de Sousa, Federal Police Commissioner and Head of the SRDP</p> <p><i>Representative of the Office of the Inspector General of the DPF</i></p> <p>Nilson Vieira dos Santos, Federal Police Commissioner and Deputy Chief of the Judicial Inspections Division of the Office of the Coordinator General of Inspections</p> <p><i>Representative of the Department of Administration and Police Logistics of the DPF</i></p> <p>Nivaldo Poncio, Chief of the Projects Service of the Planning and Projects Division of the Office of the General Coordinator of Planning and Modernization</p> <p><i>Representative of the Office of the Advisor on Internal Control of the DPF</i></p> <p>João Henrique Wilkon Marques, Internal Control Advisor</p> <p><i>Officer Responsible for the Transparency Program of the Ministry of Justice</i></p> <p>Mariana Delgado de Carvalho Silva, Coordinator of the Transparency Program of the Ministry of Justice</p>
6:30 – 7:30 p.m.	<p>Informal meeting with representatives of the members states of the subgroup and the Technical Secretariat</p>
<u>Thursday, March 22, 2012</u>	
9:00 – 10:00 a.m.	<p>Panel 11: Supreme Federal Tribunal (STF)</p>
	<p>Topic:</p> <ul style="list-style-type: none"> • Responsibilities, decision-making process, and resources (draft constitutional amendment 15/11).

	<p><u>Participants:</u> <i>Representative of the Supreme Federal Tribunal</i> Luiz Guilherme Mendes de Paiva, Advisor to the Office of the President <i>Representative of the National Council of Justice (CNJ)</i> Gilberto Valente Martins, Member of the National Council of Justice</p>
10:00 – 11:45 a.m.	Panel 12: Supreme Federal Tribunal (STF)
	<p>Topic:</p> <ul style="list-style-type: none"> • Results in the performance of its duties
	<p><u>Participants:</u> <i>Representatives of the National Council of Justice (CNJ)</i> Gilberto Valente Martins, Member of the National Council of Justice Judge Nicolau Lupianhes Neto, Auxiliary Judge on the National Council of Justice and Coordinator of the National Adoption Register (CNA)</p>
11:45 a.m. – 12:30 p.m.	Panel 13: Supreme Federal Tribunal (STF)
	<p>Topic:</p> <ul style="list-style-type: none"> • Internal control mechanisms
	<p><u>Participants:</u> <i>Representative of the Secretariat for Internal Control of the STF</i> Edna Isabel Brito Goncalves Prandini, Secretary for Internal Control <i>Representative of the Secretariat for Internal Control of the CNJ</i> Silvia Caldas Ferreira, Secretary for Internal Control Humberto Nunes, Coordinator of the Performance Monitoring Section <i>Representative of the National Council of Justice</i> Judge Nicolau Lupianhes Neto, Auxiliary Judge on the National Council of Justice and Coordinator of the National Adoption Register (CNA)</p>
12:30 – 2:00 p.m.	Lunch
2:00 – 3:15 p.m.	Panel 14: Follow-up on recommendations from the first round

	<p>Topic:</p> <ul style="list-style-type: none"> • Conflict of interests: <ul style="list-style-type: none"> - Follow-up proposed law (PL) No. 7.528/2006, on conflict of interests; - Measures to strengthen implementation of laws and regulatory systems on conflict of interests and mechanisms for monitoring and resolving such conflicts. <p><u>Participants:</u></p> <p><i>Representative of the Office of the Chief Of Staff of the Office of the President of the Republic</i></p> <p>Luiz Alberto dos Santos, Deputy Chief of Analysis and Follow-up on Governmental Public Policies</p> <p><i>Representative of the Secretariat for Institutional Relations</i></p> <p>Rafael Dubeux, Deputy Chief of Parliamentary Affairs</p> <p><i>Representatives of the Central Bank Ethics Committee</i></p> <p>Nilvanete Ferreira da Costa, Chief of the Department of Human Resources</p> <p>José Augusto Varanda, Executive Manager of Administrative and Technological Support</p> <p><i>Representative of the Ethics Committee of the “Receita Federal” (federal tax authority)</i></p> <p>Marcos Noronha, President of the Ethics Committee of the RFB</p>
3:15 – 4:45 p.m.	Panel 15: Follow-up on recommendations from the first round
	<p>Topic:</p> <ul style="list-style-type: none"> • Systems for registering assets, income and liabilities: <ul style="list-style-type: none"> - Follow up on proposed law (PL) No. 5.586/2005 on criminalization of illicit enrichment - Progress on regulation of conditions, procedures, and other aspects connected with the publication of disclosures. - Improvement of disclosure analysis systems as a useful tool for detection and prevention of conflicts of interests (coordination of activities between the Public Ethics Commission and the CGU). - Systematic examination of declarations of assets and net worth.

	<p><u>Participants:</u></p> <p><i>Representatives of the Office of the Comptroller General Of the Union (CGU)</i></p> <p>Roberto Vieira, Assistant Inspector of the Economics Area Alexandre Andrade, Division Chief of the Department of Strategic Information Jônia Bumlai, Finance and Control Analyst</p> <p><i>Representative of the Secretariat for Institutional Relations</i></p> <p>Rafael Dubeux, Deputy Chief of Parliamentary Affairs</p> <p><i>Representative of the Office of the Inspector of the “Receita Federal” (federal tax authority)</i></p> <p>Leonardo Abras, Discipline Coordinator</p>
4:45 – 6:30 p.m.	Panel 16: Follow-up on recommendations from the first round
	<p>Topics:</p> <ul style="list-style-type: none"> • Assistance and cooperation: <ul style="list-style-type: none"> - Follow-up on the draft code of civil procedure, which includes a section on international cooperation. - Technical cooperation offered to other states parties of the IACC on prevention, detection, investigation, and punishment of acts of corruption. • Whistleblower protection: <ul style="list-style-type: none"> - Follow-up on studies carried out for preparing a draft law on the subject.
	<p><u>Participant:</u></p> <p><i>Representative of the Department of Asset Recovery and International Cooperation of the Ministry of Justice (DRCI/MJ)</i></p> <p>Arnaldo Silveira, Advisor on International Treaties and Forms</p>
6:30 – 7:30 p.m.	Informal meeting with representatives of the member states of the subgroup and the Technical Secretariat.
<u>Friday, March 23, 2012</u>	
9:00 – 11:30 a.m.	Panel 17: Follow-up on recommendations from the first round

	<p>Topic:</p> <ul style="list-style-type: none"> • Access to information: <ul style="list-style-type: none"> - Implementation of the New Access to Information Law - Progress under the National Open Governance Plan (Unnumbered Decree of September 15, 2011). <p><u>Participants:</u></p> <p><i>Representative of the Office of the Comptroller General Of the Union (CGU)</i></p> <p>Izabela Corrêa, Coordinator General of Promotion of Ethics, Transparency, and Integrity</p> <p>Roberta Solis Ribeiro, Advisor on International Affairs</p> <p><i>Representative of the Office of the Chief Of Staff of the Office of the President of the Republic</i></p> <p>Ricardo Horta, Advisor to the Executive Secretariat</p> <p><i>Representative of the Ministry of Planning, Budget, and Management</i></p> <p>Corinto Meffe, Department of Information System Integration</p>
<p>11:30 a.m. – 12:00 noon.</p>	<p>Informal meeting with representatives of the member states of the subgroup and the Technical Secretariat.</p>
<p>12:00 noon – 1:00 p.m.</p>	<p>Final Meeting^{237/} between representatives of the country under review, the member states of the subgroup and the Technical Secretariat.</p>
<p>1:00 p.m.</p>	<p>Lunch</p>

237. The third paragraph of provision 20 of the *Methodology for Conducting On-Site Visits* states, “At the end of the on-site visit, a meeting shall be held, to be attended by the Subgroup experts, the Technical Secretariat, and the Lead Expert of the country under review and/or the official appointed in his place in accordance with provision 10, second paragraph, of this Methodology. That meeting shall identify, if necessary, the information that, exceptionally, the country under review is still to submit through the Technical Secretariat and the deadline within which it is to do so, and it shall also coordinate any other pending matters arising from the on-site visit.”

**CONTACT AUTHORITY OF THE COUNTRY UNDER REVIEW FOR THE
COORDINATION OF THE ON-SITE VISIT AND REPRESENTATIVES OF THE MEMBER
STATES OF THE PRELIMINARY REVIEW SUBGROUP AND THE TECHNICAL
SECRETARIAT OF THE MESICIC**

COUNTRY UNDER REVIEW:

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