

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
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UNITED STATES

FINAL REPORT

(Adopted in the plenary session held on September 30, 2005)

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

**REPORT ON IMPLEMENTATION IN THE UNITED STATES
OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW
IN THE FRAMEWORK OF THE FIRST ROUND¹**

INTRODUCTION

1. Legal-institutional framework²

The government of the United States is based on a federal system consisting of a national (federal) government and various state and local governments. The legal system of the United States developed from the common law tradition of England. The law of the land derives from the U.S. Constitution, legislative enactments, and judicial decisions that interpret custom, statute and precedent.

The U.S. Constitution creates the federal government and assigns limited powers to each of three branches: executive, judicial, and legislative. The U.S. Constitution anticipates checks and balances among the various branches of government through shared responsibilities and oversight, so that power is not concentrated in one person or branch. All remaining powers are reserved to the state governments and the people.

The President, who is elected through a public process, leads the federal executive branch. The U.S. Constitution assigns the President powers over the military and to execute the laws of the land and conduct foreign policy. The executive is also responsible for prosecuting crimes, including those involving the legislature or judiciary. The President delegates official responsibility for exercising these powers to subordinate departments, agencies, and officers within the executive branch.

The federal legislative branch consists of representatives elected by popular vote to the House of Representatives and Senate, known collectively as the U.S. Congress. Congress enacts laws within its jurisdiction that are the supreme law of the land. Congress can investigate the activities and conduct of personnel and officials in the other branches, and, for certain causes, may impeach the President, Vice President and members of the judiciary. Although the President is responsible for seeing that the laws are faithfully executed, Congress oversees their implementation and the President's stewardship.

The federal judicial branch is composed of judges appointed by the President and confirmed by the Senate, and various employees hired to support judicial functions. Judges receive a lifetime appointment without diminution of pay and can only be removed by the Congress after impeachment. Federal judges, located at various U.S. district and appeals courts throughout the United States, can

¹ This report was adopted by the Committee in accordance with the provisions of Article 3(g) and 26 of its Rules of Procedure and Other Provisions, at the plenary session held on September 30, 2005, at its eighth meeting, held at OAS Headquarters in Washington D.C., United States, September 26 to 30, 2005.

² Response of the United States to the questionnaire, at p. 1. At the request of the United States, and pursuant to the Rules of Procedure and Other Provisions, the Response of the United States to the Questionnaire and the attachments thereto, and the documents submitted by civil society organizations, have been published at the following Internet website: <http://www.oas.org/juridico/spanish/corresp.htm>

check the legislature's and executive's actions to ensure that they do not violate constitutional prerogatives and limits.

The fifty states each have their own constitutions and governments, including subordinate local and municipal governments. All states have created their own branches of government, complete with their own judicial systems and legislatures. The state governments hold powers not granted to the various federal branches via the U.S. Constitution, which allows them broad control over areas such as land use, corporate entities, and local crimes. However, laws enacted legitimately by the federal legislative branch are considered the "supreme law of the land" and, thus, are binding on the states and their citizens.

The federal and state judicial branches are responsible for resolving legal disputes and ensuring that enacted laws do not violate the U.S. or state constitutions. Under the common law system, judges may also interpret custom and tradition, and establish binding judicial precedent for interpreting the application of laws. The federal and state court systems are generally three-tiered, consisting of trial level courts, appeal level courts, and a supreme or ultimate court of appeal.

2. Ratification of the Convention and adherence to the Mechanism

According to the official registry of the General Secretariat of the OAS, the United States ratified the Inter-American Convention against Corruption on September 15, 2000 and deposited the respective instrument of ratification on September 29, 2000.³

Similarly, the United States signed the Declaration on the Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption on the June 4, 2001 at the 31st regular meeting of the General Assembly of the OAS, in San Jose, Costa Rica.

I. SUMMARY OF INFORMATION RECEIVED

1. Response of the United States

The Committee wishes to acknowledge the cooperation received from the United States throughout the review process, which was evidenced, *inter alia*, in its response to the questionnaire and in the constant willingness to clarify or complete its contents. Together with its response, the United States sent the provisions and documents it considered pertinent, a list of which is attached to this report.

For its review, the Committee took into account the information provided by the United States up to January 31, 2005, and that requested by the Secretariat and the members of the review subgroup, to carry out its functions in keeping with its Rules of Procedure and Other Provisions.

³ As noted below in Chapter II, Part A of this report, the United States' instrument of ratification contains the following reservation: "(1) APPLICATION OF ARTICLE I.--The United States of America understands that the phrase "at any level of its hierarchy" in the first and second subparagraphs of Article I of the Convention refers, in the case of the United States, to all levels of the hierarchy of the Federal Government of the United States, and that the Convention does not impose obligations with respect to the conduct of officials other than Federal officials."

2. Document presented by civil society

The Committee also received, pursuant to its Rules of Procedure and other Provisions, and within the time limit established at its Sixth Regular Meeting, the document prepared by Transparency International, USA (TI-USA), as a civil society organization.⁴

II. REVIEW OF THE IMPLEMENTATION OF THE SELECTED PROVISIONS BY THE UNITED STATES

A. CONSIDERATIONS ON THE SCOPE OF REVIEW IN THE CASE OF THE UNITED STATES

With respect to the review in this report on the implementation of the Convention in the United States, the Committee considers it pertinent to provide certain background information and formulate certain considerations.

As noted in the description of the legal-institutional framework, “the governmental system in the United States is a federal one, consisting of a national (federal) government and various state and local governments.”

Given the legal-institutional framework described above, the following background information related to the process of negotiation and ratification of the Convention should be highlighted:

- With respect to the phrase “at any level of its hierarchy” which appears in the definitions included in Article I of the Convention, in the Minutes of the “Specialized Conference on the Draft Inter-American Convention against Corruption”⁵, it is noted that following the conclusion of the negotiations, the U.S. Representative made the following statement: “The United States would like at this point to reaffirm for the record the statement made earlier by the President of the Working Group for the article on definitions, that the conclusions of the Working Group reflect the fact that the countries with federal systems of government may not be able to bind their states and municipalities to the obligations undertaken pursuant to the Convention.”⁶

- The April 1, 1998 letter from then-U.S. President William Clinton, transmitting the Convention to the Senate in order to obtain its advice and consent to ratification, includes the State Department

⁴ This Document was presented by Transparency International, USA (TI-USA) and is published in its entirety at the Mechanism’s webpage: http://www.oas.org/juridico/spanish/corresp_usa.htm. The introduction of this document explains that the submission is co-authored by Foley Hoag, LLP, and incorporates material provided in consultation with numerous civil society organizations and experts, including: Campaign Legal Center (www.campaignlegalcenter.org); Citizens for Responsibility and Ethics in Washington (CREW) (www.citizensforethics.org); George Washington University Law School - Government Procurement Law Program (www.law.gwu.edu); Government Accountability Project (www.whistleblower.org); International Business Ethics Institute (www.business-ethics.org); Judicial Watch (www.judicialwatch.org).

⁵ Minutes and Documents, Specialized Conference on the Draft Inter-American Convention against Corruption, Caracas, Venezuela, March 27 to 29, 1996, Document OAS/Ser.K/XXXIV 1.2.

⁶ Ibid., p. 157.

report which makes note of the Specialized Conference and also contains the text transcribed in the preceding paragraph.⁷

- In the Senate Resolution advising on and giving consent to the ratification of the Convention, it is noted that the decision to ratify the Convention is subject to the following understanding, *inter alia*: “(1) APPLICATION OF ARTICLE I.--The United States of America understands that the phrase "at any level of its hierarchy" in the first and second subparagraphs of Article I of the Convention refers, in the case of the United States, to all levels of the hierarchy of the Federal Government of the United States, and that the Convention does not impose obligations with respect to the conduct of officials other than Federal officials.”⁸

- The instrument of ratification signed by the President of the United States on September 15, 2000, and deposited with the General Secretariat of the OAS on September 29, 2000, notes that the ratification is made subject to, *inter alia*, the understanding established by the Senate and which is transcribed in the preceding paragraph.⁹

Accordingly, the information received both from the United States and from Transparency International, U.S.A., pertains to the Federal Government.

Taking the foregoing into account, the review in this report will be limited to the United States Federal Government.

Nevertheless, the Committee notes with satisfaction that, within the framework of the United States’ legal system, the Federal Government maintains formal and informal cooperation and coordination relationships, both generally and on specific issues, with State and local governments, with regard to issues addressed by the Convention, including those related to the implementation of those provisions of the Convention subject to review in the first round. These comprise, for example, the relationships that are developed (in areas such as those having to do with standards of conduct, systems for the declaration of income, assets and liabilities, and access to information), within the framework of the Council on Governmental Ethics Laws (“COGEL”)¹⁰, the Association of Inspectors General,¹¹ and the work of the Government Accountability Office with the relevant State and local authorities.¹² In addition there are the multiple forms of cooperation and coordination (including those related to enforcement of the standards of conduct or mutual legal assistance) that exist between federal oversight bodies and their State and local counterparts, such as those mentioned, *inter alia*, in Section 3 of this report.

The above-noted cooperation and coordination relationships contribute to the fulfillment of the objectives of the Convention. In this regard, the Committee will formulate a recommendation (See recommendation in Chapter III, Part A of this report).

⁷ Message from the President of the United States, transmitting the Inter-American Convention against Corruption to the Senate. March 29, 1996: Document IEL-I-B21. Senate Treaty Doc. 105-39. OAS 105TH CONGRESS 2d Session.

⁸ “Senate Resolution Advising and Consenting to the Treaty on Inter-American Convention on Corruption”, July 27, 2000.

⁹ <http://www.oas.org/juridico/english/sigs/b-58.html>

¹⁰ www.cogel.org

¹¹ www.inspectorsgeneral.org

¹² www.gao.gov

B. REVIEW OF THE IMPLEMENTATION BY THE UNITED STATES FEDERAL GOVERNMENT OF THE SELECTED PROVISIONS

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

1.1. CONFLICTS OF INTEREST

1.1.1. Existence of provisions in the legal framework and/or other measures and enforcement mechanisms

At the Federal level, the United States has a set of provisions¹³ related to the standards of conduct referred to above, among which special note should be made of the following:

- The U.S. Constitution, which creates the federal government, assigns powers to each of the three branches of government, and “anticipates checks and balances among the various branches of government through shared responsibilities and oversight, so that the power is not concentrated in one person or branch.”¹⁴

- Statutory criminal conflict of interest provisions applicable to federal officers and employees of all three branches of government (and to those who interact with them), contained in Chapter 11 of Title 18 of the United States Code, entitled, “Bribery, Graft, and Conflicts of Interest”, including: 18 U.S.C. Section 201, which prohibits directly or indirectly offering, giving, demanding, receiving, or agreeing to receive anything of value in exchange for being influenced in the performance of an official act; 18 U.S.C. Section 203, which prohibits offering, giving, demanding, receiving, or agreeing to receive compensation for representational services in any matter in which the United States is a party or in which the United States has a direct or substantial interest; 18 U.S.C. Section 205, which prohibits acting as agent or attorney for the prosecution of cases against the United States, as well as receiving any gratuity or share of interest in any such claim, in consideration of assistance given in that claim; Section 210, which prohibits the payment or offering of anything of value in order to obtain appointive office, and Section 211, which prohibits soliciting or receiving anything of value in exchange for assistance in obtaining appointive office; 18 U.S.C. Section 219, which prohibits acting as an agent of a foreign principal;¹⁵

- Statutory criminal conflict of interest provisions applicable to officers and employees of the executive branch of government, such as: 18 U.S.C. Section 208, which sets restrictions on the participation of an officer or employee in matters in which he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest; and 18 U.S.C. Section 209, which prohibits officers

¹³ For purposes of clarification, and as noted at p. 3 of the Updated Response, at p. 3 (www.oas.org/juridico/spanish/usa_res2.pdf), the three principal sources of law cited herein are as follows: (1) the U.S. Constitution; (2) statutes, which are enacted by Congress and usually signed into law by the President, issued as numbered Public Laws and compiled by topic in the U.S. Code (U.S.C.); and (3) regulations, which are promulgated by agencies to implement or interpret statutes and are published in the Code of Federal Regulations (C.F.R.).

¹⁴ Ibid., p. 2.

¹⁵ See Chapter 11 of Title 18 of the U.S.C., at <http://straylight.law.cornell.edu/uscode/18/p1ch11.html>

and employees from receiving a supplementation of salary as compensation for official duties from anyone other than the United States.¹⁶

- Statutory criminal conflict of interest provisions applicable to Members of Congress, such as 18 U.S.C. Section 204 which prohibits Members of Congress from practicing law before certain federal courts.

- Statutory criminal conflict of interest provisions which apply after government service and are applicable to officers and employees, including Members of Congress, in the executive and legislative branches, 18 U.S.C. Section 207.¹⁷

- Statutory civil provisions intended to prevent conflicting outside activities and employment and limiting outside earned income applicable to the most senior political officers and employees in all three branches of government, found in Sections 501 and 502 of the appendix to Title 5 of the U.S.C.¹⁸

- Statutes and regulations requiring the filing of public financial disclosure reports by senior officers and employees in all three branches of government, including Presidential nominees who must be confirmed by the Senate and candidates for the offices of President, Vice-president, and Members of Congress, (5 U.S.C. app Section 101(b) and (c)) and setting forth the mechanisms for enforcing effective compliance therewith, which serve as useful instruments for preventing, detecting, and sanctioning conflicts of interest, as discussed in greater detail in Section 2 of this report.¹⁹

- Administrative regulations, applicable to officers and employees in the executive branch, primarily: 5 Code of Federal Regulations, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch", which sets out general principles to be followed by employees, including provisions related to gifts, impartiality, the use of public office for private gain, outside employment, etc.²⁰ ; 5 C.F.R. Part 2636 which provides guidance on the outside earned income and activities restrictions found in title 5 app.; 5 C.F.R. part 2640 which provides for guidance on and regulatory waivers/exemptions of certain of the provisions of 18 U.S.C. 208; and 5 C.F.R. Parts 2637 and 2641, which provide regulatory guidance on the post-employment conflict of interest provisions contained in Title 18 of the U.S. Code.

- Administrative regulations that supplement the executive branch wide standards of conduct with respect to officers and employees of numerous executive branch agencies, such as: the Department of the Treasury (5 C.F.R. Part 3101); the Federal Deposit Insurance Corporation (5 C.F.R. Part 3201); the Department of Energy (5 C.F.R. Part 3301); the Department of the Interior (5 C.F.R. Part 3501); the Department of Defense (5 C.F.R. Part 3601); the Department of Justice (5 C.F.R. Part 3801); the Federal Communications Commission (5 C.F.R. Part 3901); the Office of Personnel Management (5 C.F.R. Part 4501); the Federal Trade Commission (5 C.F.R. Part 5701); the Board of Governors of

¹⁶ See 18 U.S.C. Sections 208 and 209, at <http://straylight.law.cornell.edu/uscode/18/plch11.html>

¹⁷ See 18 U.S.C. Sections and 207, at <http://straylight.law.cornell.edu/uscode/18/plch11.html>

¹⁸ See 5 U.S.C. Sections 501 and 502, at

http://straylight.law.cornell.edu/uscode/html/uscode05a/usc_sup_05_5_10_sq3_20_V.html

¹⁹ See Section 2 of this report, on "Systems for registering income, assets, and liabilities". (Article III, Paragraph 4 of the Convention)

²⁰ See the relevant provisions of the C.F.R., at

http://www.usoge.gov/pages/laws_regs_fedreg_stats/ogeregs/5cfr2635.html

the Federal Reserve System (5 C.F.R. Part 6801); and the Office of Management and Budget (5 C.F.R. Part 8701), to name just a few.²¹

- The provisions contained in the Hatch Act (for Federal Employees), 5 U.S.C. Sections 7321 to 7326, applicable to executive branch employees, which establish prohibitions on certain political activity, such as prohibitions on using official authority or influence for the purpose of interfering with or affecting the result of an election, and running for the nomination or as a candidate for election to a partisan political office (5 C.F.R. Section 7323).²²

- Regulations such as 5 C.F.R. Section 2638.701 *et seq*, requiring executive branch agencies to have an ethics training program in place in order to train employees regarding ethics rules and laws, as well as to direct them on where to go for ethics advice.²³

- Provisions applicable to the legislative branch, such as:

- The Code of Conduct adopted by the House of Representatives of the United States at the beginning of each session of Congress and which forms part of the Rules of the House. Thus, for example, Rules 23 to 26 of the Rules adopted by the 109th Congress comprise both the Code of Official Conduct (Rule 23), as well as related standards of conduct, and includes provisions relating to topics such as: limitations on the use of official funds (Rule 24); and limitations on outside earned income and the acceptance of gifts (Rule 25).²⁴
- The U.S. Senate Code of Official Conduct, contained in Rules 34 to 43 of the Standing Rules of the Senate, and which contains provisions such as: gifts (Rule 35); limitations on outside earned income (Rule 36); conflicts of interest (Rule 37); and a prohibition on unofficial office accounts (Rule 38).²⁵
- The Code of Ethics for Government Service, passed by a concurrent resolution of the House of Representatives and the Senate in 1958, and which contains several provisions related to the prevention of conflicts of interest, including, among others: the dispensation or acceptance of special favors or benefits (V); the use of confidential information for private profit (VIII); and a requirement that corruption be exposed wherever discovered (X).²⁶ According to the response of the United States, the House of Representatives continues to expect its Members and employees to adhere to this Code.²⁷

- Provisions applicable to the judicial branch, such as those established in the following three Codes of Conduct:

²¹ See the pertinent provisions of the C.F.R., at <http://www.gpoaccess.gov/cfr/index.html>

²² See the document Submitted by Transparency International, U.S.A. to the Committee of Experts, at p. 3, *supra*, note 4 and also <http://www.osc.gov/hatchact.htm>

²³ See the pertinent provisions of the C.F.R., at http://www.usoge.gov/pages/laws_regs_fedreg_stats/oge_regs/5cfr2635.html

²⁴ See the pertinent provisions, at http://www.house.gov/rules/house_rules_text.htm

²⁵ See the pertinent provisions, at <http://rules.senate.gov/senaterules/menu.htm>

²⁶ See the pertinent provisions, at <http://www.house.gov/ethics/Ethicforward.html>

²⁷ Updated Response, *supra* note 13, at p. 4.

- The Code of Conduct for United States Judges,²⁸ which applies to federal judges and contains such standards as: integrity and independence (Canon 1); the avoidance of impropriety or the appearance thereof (Canon 2); impartiality and diligence (Canon 3); disqualification (Canon 3.C) and conflicts of interest (Canon 5).
- The Code of Conduct for Judicial Employees,²⁹ which contains standards such as: integrity and independence (Canon 1); the avoidance of impropriety or the appearance thereof (Canon 2); and inappropriate political activity (Canon 5). In addition, Canon 3 of this Code lists various provisions of Title 18 of the U.S. Code related to the prevention of conflicts of interest as being applicable to judicial employees, such as those established in 18 U.S.C. Sections 201 (bribery) and 211 (acceptance of solicitation to obtain appointive office).
- The Code of Conduct for Federal Public Defender Employees,³⁰ which contains standards such as: integrity and independence (Canon 1); the avoidance of impropriety or the appearance thereof (Canon 2); and conflicts of interest (Canon 5). In addition, Canon 3 of this Code also lists 18 U.S.C. Sections 201 (bribery) and 211 (acceptance of solicitation to obtain appointive office) as being applicable to public defender employees.

The United States also has mechanisms for enforcing these standards of conduct, among which the following should be noted:

- 28 U.S.C. Section 535,³¹ which authorizes the Department of Justice (“DOJ”) and the Federal Bureau of Investigation (“FBI”) to investigate any violation of Title 18 of the United States Code involving Government officers or employees notwithstanding any other law.³² This Section also requires the head of any agency or department in the executive branch to expeditiously report to the Attorney General information, allegations, or complaints received which relate to a violation of Title 18.

- 18 U.S.C. Section 216, which provides criminal sanctions for violations of 18 U.S.C. Sections 203, 204, 205, 207, 208, or 209.³³ Pursuant to this section, the Attorney General may also bring a civil action for violations of the foregoing sections as well as petition a U.S. District Court to issue an order prohibiting any person from engaging in prohibited conduct.

- The Department of Justice, through the Public Integrity Section of its Criminal Division,³⁴ which oversees the federal effort to combat corruption through the prosecution of elected and appointed officials at all levels of government. In this regard, it should be noted that the Public Integrity Section receives criminal referrals from Federal agencies with regard to possible violation of the conflicts of interest statutes in 18 U.S.C. Sections 203 to 209. When an investigation is warranted, the Section coordinates the investigation with the Inspector General of the respective agency or with the FBI, or both. The Public Integrity Section has jurisdiction over allegations of criminal misconduct on the part of federal judges and also handles and monitors the investigation and prosecution of election and

²⁸ See the pertinent provisions, at <http://www.uscourts.gov/library/manuals.htm>

²⁹ See the pertinent provisions, at <http://www.uscourts.gov/guide/vol2/ch2a.html>

³⁰ See the pertinent provisions, at <http://www.uscourts.gov/guide/vol2/ch2b.html>

³¹ See the pertinent provisions of the U.S.C., at <http://straylight.law.cornell.edu/uscode/>

³² See the pertinent provisions of the U.S.C., at <http://straylight.law.cornell.edu/uscode/28/535.html>

³³ See the pertinent provisions of the U.S.C., at <http://straylight.law.cornell.edu/uscode/18/p1ch11.html>

³⁴ See the Public Integrity Section website, at <http://www.usdoj.gov/criminal/pin.html>

conflicts of interest crimes. It is important to note that all elected and appointed officers and employees of the Federal government do not have immunity from prosecution.

- 28 C.F.R. Part 600, discusses the circumstances under which the Attorney General may appoint a Special Counsel to handle investigations or prosecutions in cases where being responsible for the investigation or prosecution would present a conflict of interest for a U.S. Attorney's Office or the Department of Justice as well as any other instance when the Attorney General thinks appropriate.

- 5 C.F.R. Section Part 2638, which provides that: each executive agency has a designated agency ethics officer (DAEO), responsible for administering the administrative standards of conduct (5 C.F.R. Section 2638.101); DAEO's are responsible, *inter alia*, for monitoring administrative actions and sanctions (Section 2638.203). Corrective or disciplinary action for violations of the standards of conduct is taken by the employing agency following government-wide regulations or agency procedures (Section 2635.106).³⁵

- The Office of Government Ethics ("OGE"), which provides overall direction and leadership concerning executive branch policies related to preventing conflicts of interest; and issues advisory opinions in response to questions on conflict of interest laws and regulations, the standards of conduct, and the financial disclosure requirements in the executive branch.³⁶ In addition to these preventive functions, the Director of the OGE has functions related to remedying possible ethics violations, such as recommending to an agency head that an investigation be commenced if there is reason to believe that an employee has violated any ethics provision or recommending to the President that an investigation be commenced if the alleged wrongdoer is the head of an agency (5 C.F.R. Section 2638.503).³⁷ OGE's website also provides a compilation of federal ethics laws, including those related to conflicts of interest.

- The 57 Offices of the Inspectors General,³⁸ established pursuant to the Inspector General Act of 1978, and the functions of which include conducting and supervising audits and investigations of executive branch agencies and departments (5 U.S.C. App. Section 1 *et seq*). In carrying out their functions, this Act: empowers inspectors general to receive and investigate employee allegations concerning, *inter alia*, violations of law, rules or regulations (5 U.S.C. App. Section 7); and requires them to report possible violations of Federal criminal law to the Attorney General (5 U.S.C. App. Section 4(d)). In addition, the response of the United States points out that "One goal of [Inspector General] investigations is to have those investigations result in the narrowing of opportunities for misconduct and corruption in the Federal Government."³⁹

- The Office of the U.S. Special Counsel, created by 5 U.S.C. Section 1211 is responsible for investigating allegations of political activity prohibited by the Hatch Act.⁴⁰

³⁵ See the pertinent provisions of the C.F.R., at <http://www.gpoaccess.gov/cfr/index.html>

³⁶ See additional information on the Office of Government Ethics, at www.usoge.gov

³⁷ The position of Director of OGE which requires a Presidential nomination and Senate confirmation is currently vacant and has been since December 2003. However, the Office continues to fully function through delegations of authority to the career staff.

³⁸ The Offices of the Inspector Generals and their functions will be discussed in greater detail in Section 1.2, below. See additional information, at <http://www.ignet.gov>

³⁹ Updated Response, *supra* note 13, at p. 13.

⁴⁰ See the U.S. Office of the Special Counsel webpage, at <http://www.osc.gov/ppp.htm#q1>

- The U.S. Constitution, which at Article 1, Section 5 provides that each House of Congress may punish members for disorderly behaviour and with the concurrence of two-thirds, may expel a member.⁴¹

- The Senate Select Committee on Ethics, which exercises functions such as: investigating allegations of improper conduct which may reflect on the Senate; investigating violations of laws and rules and regulations of the Senate relating to the conduct of Members, officers and employees in their official duties; recommending disciplinary action, when appropriate; recommending additional Senate rules to ensure proper standards of conduct; and issuing advisory opinions and interpretative rulings explaining and clarifying the application of any law, rule, or regulation within its jurisdiction, and enforcing the Senate Code of Conduct.⁴²

- The House Committee on Standards of Official Conduct, which, pursuant to House Rule XI, clause 3, exercises functions such as: recommending administrative actions to establish or enforce standards of official conduct; investigating alleged violations of the Code of Official Conduct or any applicable rules, laws, or regulations governing the performance of official duties; reporting to the appropriate authorities substantial evidence of violation of laws applicable to the performance of official duties; and rendering advisory opinions on the propriety of any current or proposed conduct.⁴³

- Federal judges are governed at the circuit level, by the Judicial Council of each circuit, and at the national level, by the Judicial Conference of the United States. In this regard, the following should be noted:

- 28 U.S.C. Chapter 16 (Sections 351 et seq.), which sets out the procedure for filing complaints against judges, investigating those complaints, and remedying or sanctioning the conduct complained of, and which sets out a procedure whereby the Judicial Council of each circuit may report conduct which might constitute grounds for impeachment under Article II of the Constitution, to the Judicial Conference of the United States.⁴⁴
- The Judicial Council of the United States, a body composed of 27 Federal judges, including the Chief Justice of the U.S. Supreme Court, which is empowered to investigate impeachable offences referred to it by the Judicial Council of each circuit, as well as transmit to the House of Representatives for appropriate action, a determination that impeachment might be warranted (5 U.S.C. Section 372(c)(8)).
- The Committee on Codes of Conduct of the Judicial Conference, which renders advisory opinions concerning the application and interpretation of the Codes of Conduct for U.S. Judges, Judicial Employees, and Federal Public Defender Employees.⁴⁵

- It is also relevant to note the various mechanisms, programs, and opportunities for training and advising officers and employees, for the purposes of preventing conflicts of interest, in all three branches of government: Executive,⁴⁶ Legislative⁴⁷ and Judicial.⁴⁸

⁴¹ See this provision of the U.S. Constitution, at <http://www.law.cornell.edu/constitution/constitution.table.html>

⁴² See p. 14 of the Senate Ethics Manual, at <http://ethics.senate.gov/downloads/pdf/manual.pdf>

⁴³ See additional information on this Committee, at www.house.gov/ethics

⁴⁴ See the pertinent provisions, at <http://straylight.law.cornell.edu/uscode/28/372.html>

⁴⁵ See additional information, at www.uscourts.gov

1.1.2. Adequacy of the legal framework and/or other measures and enforcement mechanisms

The provisions in relation to conflicts of interest and the mechanisms for their enforcement, that the Committee has examined based on the information made available to it, make up, as a whole, a broad, harmonious, and relevant body of measures for promoting the purposes of the Convention.

Thus, this body of measures includes, among others, standards applicable to all officers and employees in the three branches of federal government, as well as an extensive range of provisions specifically applicable to each of the three respective branches. This includes provisions applicable to senior-level officers and employees of the numerous agencies of the executive branch; Members of the Senate and the House of Representatives and legislative branch employees; and Judges and judicial employees.

Similarly, the Committee notes that there are detailed provisions on the different times at which conflicts of interest may arise or be detected: prior to the commencement of functions, during employment, as well as post-employment conflict of interest provisions.

The Committee further notes the existence of a broad and relevant set of mechanisms intended to ensure compliance with standards related to conflicts of interest, such as: the Office of Government Ethics, which exercises various functions related to the prevention of conflicts of interest, such as the rendering of advisory opinions as well as general oversight with regard to ethics standards for agencies and departments in the executive branch; the Offices of the Inspectors General, which are required to report possible violations of law to the Department of Justice, including those related to conflicts of interest, such as those contained in Title 18 of the U.S.C.; the Attorney General and the Department of Justice, charged with investigating and prosecuting alleged violations; the Office of the Special Counsel, responsible for investigating and prosecuting violations of the Hatch Act (related to prohibited political activity) as well as rendering advisory opinions to persons seeking advice about any political activity under the Hatch Act; and the system of public financial disclosure, which promotes the timely detection of conflicts of interest.⁴⁹

The Committee notes that the system described above, due in part to the existence of a set of standards and enforcement mechanisms, including those related to conflicts of interest, as noted by the document submitted by Transparency International, U.S.A.,⁵⁰ “is not a static system, but rather one that must and does constantly evolve, reacting to attempts to circumvent it or to changes in practice.” This can be seen by the periodic revision and updating by the competent authorities, of the existing provisions, mechanisms and measures related to conflicts of interest, as evidenced, for example, by the various amendments that in the past have been made to the Federal ethics laws,⁵¹

⁴⁶ With respect to the training and advisory programs in the Executive branch, see the information available at www.usoge.gov

⁴⁷ With respect to the training and advisory programs in the Legislative branch, see the information available at <http://ethics.senate.gov/>; and at www.house.gov/ethics

⁴⁸ With respect to the training and advisory programs in the Judicial branch, see the information available at www.uscourts.gov

⁴⁹ The U.S. financial disclosure system is discussed in greater detail in Section 2 of this Report.

⁵⁰ See the Report of Civil Society to the Committee of Experts, *supra*, note 4, at p. 1.

⁵¹ See additional information in this regard, available, for example, at http://www.usoge.gov/pages/laws_regs_fedreg_stats/laws_regs.html

with respect to the executive branch; to the Codes of Conduct for Members of the Senate⁵² and the House of Representatives;⁵³ and those for Judges, judicial employees, and Public Defender Employees, respectively.⁵⁴

The Committee recognizes the importance that the process of periodic review and appropriate updating of the provisions, mechanisms and measures related to conflicts of interest, plays in the fulfillment of the objectives of the Convention. The Committee will formulate a recommendation in this regard. (See the recommendation in Part B, Chapter III, Section 1.1(a) of this report).

1.1.3. Results of the legal framework and/or other measures and enforcement mechanisms

Based on the information that has been reviewed in this area, the Committee notes that at the Federal level, the United States has results with respect to the provisions, measures and enforcement mechanisms addressing conflicts of interest, among which the following should be noted:

- The results of the annual evaluations performed by the OGE, through surveys of executive branch agencies and departments, with respect to the disciplinary measures that have been taken (such as removals, demotions, suspensions, and written reprimands), based either wholly or in part upon violations of the Standards of Conduct, including those related to conflicts of interest. In this regard, the response of the United States notes that “agencies make good-faith efforts at supplying this information, but OGE considers these figures to be approximate. With that caveat, agencies reported taking over 4,500 disciplinary actions during 2001 based on the Standards of Conduct.”⁵⁵

- The results of the evaluations carried out by OGE, by such means as the survey conducted in 2000, with respect to the efficiency of the executive branch ethics program, which was responded to by 2703 employees from 22 different executive branch departments and agencies. The Final Report of the survey provides detailed results, and in conclusion notes that “the Executive Branch Employee Survey 2000 has provided important, positive evidence of the effectiveness of the executive branch ethics program, and of a basically ethical culture within executive branch agencies. However, the U.S. Office of Government Ethics should not rest on their accomplishments. It should continue to refine its program, with added attention to supervisory leadership and enhanced communication efforts.”⁵⁶

According to the response of the United States outlining OGE’s activities since the 2000 Survey, “More recently, in 2003, OGE began conducting a modified version of this survey at selected individual agencies”, and as a result of the survey, “OGE continues to find that, overall, employees who responded to its survey are favorable in their assessment of their agency’s ethics program and ethical climate.”⁵⁷

⁵² See additional information in Chapter 1 of the Senate Ethics Manual, available, for example, at <http://ethics.senate.gov>

⁵³ See additional information, available, for example, at <http://www.house.gov/ethics/ethicsreform.html>

⁵⁴ See additional information, available, for example, at <http://www.uscourts.gov/ttb/>

⁵⁵ See the Updated Response, *supra* note 13, at p. 7. A more recent survey shows over 4,300 disciplinary actions taken during 2003 based on the Standards of Conduct.

⁵⁶ See the “Executive Branch Employee Ethics Survey 2000, Final Report, Report Prepared by Arthur Andersen for the U.S. Office of Government Ethics”, at www.usoge.gov

⁵⁷ See the Updated Response, *supra* note 4, at p. 7.

Similarly, the response also notes that the results of these surveys are “provided to agency ethics officials for use within their agency to assist in correction of problems that are noted in the survey, highlight program strengths, and provide an employee identified Standards of Conduct training needs assessment. In 2005, OGE plans to compile aggregate survey results to allow it and agencies to put agency survey results in perspective.”⁵⁸

The Committee wishes to highlight the importance of these evaluations, with regard to their relationship to the effectiveness of the provisions, measures, and enforcement mechanisms related to the standards of conduct for those who exercise public functions, including those standards related to conflicts of interest. For this reason, the Committee encourages the United States to continue to perform periodic evaluations and to promote or adopt the decisions designed to improve the effectiveness of those provisions, measures and mechanisms. The Committee will formulate a recommendation in the final chapter of this report. (See recommendation in Part B, Chapter III, Section 1.1(b) of this report)

- The results achieved by the OGE, as the executive branch agency principally responsible for leadership with respect to the prevention of conflicts of interest, which can be seen, *inter alia*, in the annual OGE reports submitted to Congress. The most recent report, corresponding to the year 2004, describes these results in a detailed and quantifiable manner, as appropriate. The following are a few examples of the results presented in the 2004 report: “OGE exceeded its goal by conducting 33 program reviews with 50 recommendations for improvements. All scheduled follow-up reviews were completed with 81% of agency program deficiencies being corrected”; “The Program Services Division staff responded to 2,600 requests for advice and information. The advice and information was adequate in over 99% of the cases and requests for advice and information were satisfied within two days for 90% of the cases”; “The Education Division performed one training needs analysis during FY 2004 with input from 78 agencies. A total of 115 training courses were conducted for agency ethics officials and 17 were conducted for employees (at their agencies’ request). Student evaluations indicate an overall score of 4.16 (on a 1-5 point scale) which exceeded our target of 4 points for the overall rating of our training courses. OGE’s web site received over 8,572,006 visits and 10,718 education products were downloaded from OGE’s web site.”⁵⁹

- The legal actions commenced with respect to the criminal conflict of interest statutes (Title 18 of the U.S.C., Sections 203, 205, 207, 208 and 209), which can be seen, *inter alia*, in the annual surveys that have been carried out by the OGE since 1990, among the U.S. Attorney Offices and the Public Integrity Section of the DOJ’s Criminal Division. For instance, the survey corresponding to 2003 indicates 10 new legal proceedings in this field.⁶⁰

- The results achieved by the DOJ, through the Public Integrity Section of its Criminal Division and the various U.S. Attorney’s Offices, in the investigation and prosecution of corruption cases, including cases related to crimes involving conflicts of interest, which can be seen, *inter alia*, in the annual reports submitted to Congress. Thus, the report corresponding to the year 2002 describes these results in a detailed and quantifiable manner. According to this report, for example, in 2002, 478 federal officials were indicted, 429 were convicted, and 119 were awaiting trial. In addition, Part II of

⁵⁸ Ibid, at p. 7.

⁵⁹ See the “US Office of Government Ethics, Performance Accountability Report. Fiscal Year 2004, November 2004”, at http://www.usoge.gov/pages/forms_pubs_otherdocs/forms_pubs_other.html

⁶⁰ See “OGE 2003 Conflict of Interest Prosecution Survey”, at http://www.usoge.gov/pages/laws_regs_fedreg_stats/lrfs_files/otr_gdnc/pros_srvy_03.html

this Report also provides summaries of cases involving acts or allegations of corruption handled by the Public Integrity Section and the U.S. Attorney's offices with respect to all three branches of government.⁶¹

- The results of the activities performed by the Senate Select Committee on Ethics in the area of conflicts of interest, such as, for example, the 444 interpretive rulings that have been issued by the Committee, the majority of which are compiled in the appendix to the "Senate Ethics Manual",⁶² as well as the training and advisory programs conducted by the Committee.⁶³

- The results of the work performed by the House Committee on Standards of Official Conduct, such as the 139 cases described in the Committee's publication dated November 9, 2004, titled "Historical Summary of Conduct Cases in the House of Representatives", which includes an explanation of the accusation in each respective case, the actions taken by the Committee and by the House of Representatives, and relevant commentary. Similarly, the biannual reports submitted by the Committee to the House of Representatives, pursuant to the Rules of the House (Rule XI, Clause 1(d)), demonstrate the activities that have been carried out in each session in fulfillment of the Committee's functions. For instance, the January 3, 2005 report describes the work performed by the Committee in the following areas: the rendering of advice and education in the form of advisory opinions, publication and distribution of advisory memoranda, and the conduct of periodic educational briefings for Members and staff; the review of the Financial Disclosure Statements filed by House Members, Officers, and employees, and candidates for the House; review of Member and Employee travel disclosure forms; implementing the disclosure and reporting requirements of the Foreign Gifts and Decorations Act; adoption of rules for the Committee's proceedings; and the investigation of alleged violations of laws, rules or standards of conduct. .⁶⁴

- The results of the work of the Judicial Conference of the United States' Committee on Codes of Conduct, such as, for example, those noted in the September 21, 2004 report, indicating that between March and September 2004, the Committee received 35 written inquiries and issued 29 written advisory responses. In addition, the Chair of the Committee received and responded to 73 informal inquiries, while the other Committee members responded to 135 informal inquiries.⁶⁵ Similarly, according to information provided by its Chairman, as of March, 2005, the Committee had published 104 consultative opinions "addressing topics of wide-spread and recurring interest."⁶⁶

⁶¹ See the Report to Congress on the Activities and Operations of the Public Integrity Section for 2002, available at http://www.usdoj.gov/criminal/pin/AR_Final_2002.pdf

⁶² See the Senate Ethics Manual, pp. 198 to 306, at <http://ethics.senate.gov/>

⁶³ See the corresponding information, at <http://ethics.senate.gov/>

⁶⁴ See the Summary of Activities of the Committee dated January 3, 2005, corresponding to the most recent biannual session ("108th Congress Summary of Activities"), at http://www.house.gov/ethics/108th_Summary_of_Activities.htm

⁶⁵ See <http://www.uscourts.gov/judconf/sep04proc.pdf>

⁶⁶ See <http://www.uscourts.gov/ttb/mar05ttb/>

1.2. STANDARDS OF CONDUCT AND MECHANISMS TO ENSURE THE PROPER CONSERVATION AND USE OF RESOURCES ENTRUSTED TO GOVERNMENT OFFICIALS

1.2.1. Existence of provisions in the legal framework and/or other measures and enforcement mechanisms

At the Federal level, the United States has a set of provisions related to the standards of conduct, among which special note should be made of the following:

- Article I, Section 9 of the United States Constitution, which provides that “no money shall be drawn from the treasury, but in consequence of appropriations made by law, and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.”⁶⁷ Pursuant to this provision, federal agencies are responsible for ensuring that use of public funds adheres to the terms of all pertinent authorization and appropriation acts, as well as to all other relevant statutory and regulatory provisions.

- Statutory provisions such as those in title 31 U.S.C. (Money and Finance),⁶⁸ which establishes the basic framework for the control of funds and contains specific provisions on the budget process; the appropriations process, accounting, auditing of accounts, settlement of disputes, payment of claims, collection of debt, recovery of erroneous payments, and other miscellaneous financial activities involving public finance. For example, included in this title are: Anti-Deficiency Act (31 U.S.C. 1341 to 1354),⁶⁹ which at Section 1341 prohibits expending and obligating amounts in excess of the respective appropriation or for which there has been no appropriation made; the Federal Managers Financial Integrity Act of 1982 (Public Law 97-255),⁷⁰ which at Section 2 requires, in part, that the internal accounting and administrative controls of each executive agency shall provide reasonable assurances that “funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation”; and the Chief Financial Officers Act of 1990 (Public Law 101-576),⁷¹ which establishes requirements intended to improve the systems of accounting, financial management, and internal controls to assure the issuance of reliable financial information and to deter fraud, waste, and abuse of Government Resources (Section 102(b)).

- Statutory provisions specific to the use, management and disposal of public buildings, property and works in title 40 U.S.C.⁷² and specific to public contracts in title 41 U.S.C.⁷³

- Regulations in title 31 (Money and Finance), title 41 (Public Contracts and Property Management), title 43 (Public Lands) and title 48 (Federal Acquisition System) of the Code of Federal Regulations that implement the extensive statutory provisions dealing with the proper conservation and use of resources.

⁶⁷ See <http://www.house.gov/Constitution/Constitution.html>

⁶⁸ See http://straylight.law.cornell.edu/uscode/html/uscode31/usc_sup_01_31.html

⁶⁹ See http://straylight.law.cornell.edu/uscode/html/uscode31/usc_sec_31_00001341----000-.html

⁷⁰ See <http://www.whitehouse.gov/omb/financial/fmfia1982.html>

⁷¹ See <http://govinfo.library.unt.edu/npr/library/misc/cfo.html>

⁷² See http://straylight.law.cornell.edu/uscode/html/uscode40/usc_sup_01_40.html

⁷³ See http://straylight.law.cornell.edu/uscode/html/uscode41/usc_sup_01_41.html

- Regulations such as: 5 C.F.R. Part 2635.704(a), which, *inter alia*, requires executive branch employees to protect and conserve government property, and prohibits them from using or allowing the use of that property for anything other than authorized purposes; and 5 C.F.R. Part 2635.705(a), which, *inter alia*, provides that an employee shall use official time in an honest effort to perform official duties.⁷⁴

- Regulations such as 5 C.F.R. Section 2638.701 *et seq*, referred to above in Section 1.1.1., which requires executive branch agencies to have an ethics training program in place in order to train employees regarding ethics rules and laws, as well as to direct them on where to go for ethics advice.

- Special provisions applicable to the legislative branch, such as the Rules of the House of Representatives, which, *inter alia*, restrict retaining “an employee who does not perform duties for the offices of the employing authority commensurate with the compensation he receives” (Rule 23), and sets limitations on the use of official and unofficial accounts (Rule 24);⁷⁵ the Code of Ethics for Government Service, which, *inter alia*, provides that employees should give a full day’s labor for a full day’s pay (Principle 3), and that they should seek to find and employ more efficient and economical ways of getting tasks accomplished (Principle 4);⁷⁶ and The Senate Code of Official Conduct, Rule 38, which prohibits unofficial office accounts, and Rule 39, which contains restriction on the use of official funds for foreign travel, including a restriction of receiving payment from official funds for expenses that were reimbursed by another source.⁷⁷

- Special provisions applicable to the judicial branch, such as those found in the three Codes of Conduct in the judicial branch, the general provisions of which cover issues such as the misuse of public resources.

The United States also has mechanisms for enforcing these standards of conduct. In this regard, the response of the United States notes, *inter alia*, that “The U.S. Federal Government ensures the conservation and proper use of resources through a system of financial record crosschecks and through active management reviews and investigations, followed by prosecution if necessary.”⁷⁸ Of the mechanisms in this field, the following should be noted:

- The enforcement mechanisms referred to in Section 1.1.1 above, which are also applicable to the standards of conduct relating to the proper conservation and use of resources entrusted to government officials in the performance of their functions, such as: the DOJ; the OGE; the DAEO’s in each of the agencies and departments of the Federal government; the Office of the U.S. Special Counsel; the Senate Select Committee on Ethics; the House of Representatives Committee on Standards of Conduct; the Judicial Conference of the United States, and in particular, the Conference’s Committee on Codes of Conduct; as well as the various mechanisms, programs, and opportunities for training and advising officers and employees in all three branches of government with respect to the standards of conduct, including those related to the proper conservation and use of resources entrusted to government officials in the performance of their functions.

⁷⁴ See http://www.access.gpo.gov/nara/cfr/waisidx_05/5cfr2635_05.html

⁷⁵ See http://www.house.gov/rules/house_rules_text.htm

⁷⁶ See <http://www.house.gov/ethics/Ethicforward.html>

⁷⁷ See <http://rules.senate.gov/senaterules/menu.htm>

⁷⁸ See the Updated Response, *supra* note 13, at p. 12.

- The Office of Management and Budget (OMB), which assists the President in overseeing the preparation of the federal budget and supervises its administration in executive branch agencies. OMB also ensures that agency reports, rules, and legislation are consistent with the President's budget and with Administration policies. In addition, the OMB oversees and coordinates the Administration's procurement, financial management, information, and regulatory policies. OMB also issues circulars such as OMB Circular A-11, which provides instructions on the preparation, submission, and execution of the Budget.⁷⁹

- The 57 Inspectors General ("IG's" or "OIG") in the various agencies and departments of the executive branch, which have two primary functions: (1) to independently find and report on current problems; and (2) to prevent future problems by fostering integrity, accountability, and excellence in government programs.⁸⁰ In accomplishing the foregoing, IG's carry out functions such as: conducting, supervising, and coordinating audits and investigations relating to the programs and operations of executive branch agencies and departments, in order to promote economy, efficiency and effectiveness with respect to those programs and operations, as well as to prevent and detect fraud, waste and abuse; reviewing existing and proposed legislation and regulations and making recommendations on their impact on the economy and efficiency or the prevention and detection of fraud and abuse; informing their agency heads and Congress of problems in their agencies' programs and operations and the necessity for and progress of corrective action; and reporting any reasonable grounds to believe that there has been a violation of Federal criminal law to the Attorney General.⁸¹

Each Inspector General Office also maintains a telephone "hotline" to facilitate the reporting (anonymously if the reporter so desires) of allegations of fraud, waste, abuse, mismanagement of programs or operations, or violations of law, rules or regulations by employees or program participants.

- The President's Council on Integrity and Efficiency ("PCIE") and the Executive Council on Integrity and Efficiency ("ECIE"), established by Executive Order 12805 on May 11, 1992.⁸² The PCIE is made up of IG's appointed by the President, while the ECIE is composed of Inspectors General appointed by agency heads. In addition, senior-level officers from various executive-level agencies form part of both Councils, such as the OMB, the FBI, the OGE, the Office of the Special Counsel, and the Office of Personnel Management. The functions of the Councils include addressing integrity, economy, and effectiveness issues that transcend individual Government agencies; and increasing the professionalism and effectiveness of personnel of the IG Offices.⁸³ In order to achieve the foregoing, the PCIE and the ECIE "conduct interagency and inter-entity audit, inspection, and investigation projects to promote economy and efficiency in Federal programs and operations and address more effectively government-wide issues of fraud, waste, and abuse. The Council members

⁷⁹ See <http://www.whitehouse.gov/omb/circulars/a11/02toc.html> and the Office of Management and Budget website, available at <http://www.whitehouse.gov/omb/>

⁸⁰ See the Fiscal Year 2003 Progress Report to the President, at <http://www.ignet.gov/randp/fy03apr.pdf>

⁸¹ See Section 2 of the Inspector General Act of 1978, available at http://www.access.gpo.gov/uscode/title5a/5a_2_.html and The Federal Inspectors General website, at <http://www.ignet.gov>

⁸² See Executive Order 12805, May 11, 1992, available at <http://www.ignet.gov/pande/exorder.html>

⁸³ <http://www.ignet.gov/>

also develop policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled IG workforce.”⁸⁴

- The Government Accountability Office (“GAO”), an agency which is independent of the executive branch, and which is headed by the Comptroller General of the United States, who is appointed to a 15-year term of office. GAO exists to support the Congress in meeting its constitutional responsibilities and to help improve the performance and ensure the accountability of the federal government for the benefit of the American people.⁸⁵ In accomplishing this task, GAO advises Congress and the heads of executive agencies on ways to make government more effective and efficient, by engaging in a range of oversight, insight, and foresight activities, which cover the breadth and scope of federal activities and programs. In this regard, GAO conducts audits of federal expenditures, conducts program reviews and evaluations of federal programs in a wide range of areas, conducts investigations, performs policy analyses, and issues legal opinions and analyses.

Additionally, as noted in the document submitted by Transparency International, USA,⁸⁶ GAO reports and rulings are available on-line, and members of the public can ask to be put on mailing lists to receive notification of every report and ruling. Members of the public can also report allegations of fraud, waste, abuse, or mismanagement of federal funds, anonymously by mail, fax, or online, via GAO’s “FraudNET”.⁸⁷ According to the GAO website, the purposes of FraudNET are to: operate an automated means that anyone may use to report allegations of fraud, waste, abuse, or mismanagement of federal funds; refer those allegations to the Inspector General of the respective federal agency; expedite responses to congressional requests; review Inspector General responses to allegations referred by GAO; advise GAO divisions and agency Inspectors General of audit leads; and provide information to federal, state, and local organizations about establishing their own telephone hotlines.

- Provisions which provide for sanctions such as fines and/or imprisonment, such as: 18 U.S.C. 371, relating to conspiracy to commit offense or to defraud the United States; 18 U.S.C. 641, regarding embezzlement and theft; 18 U.S.C. 872, related to extortion by officers or employees of the United States; 18 U.S.C. 1001, which covers false statements given in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States;⁸⁸ 31 U.S.C. 1350 (Anti-Deficiency Act), which provides fines and/or imprisonment for making or authorizing an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or project;⁸⁹ as well as other related statutes such as such as the Federal Managers Financial Integrity Act (P.L. 97-255) and the Chief Financial Officers Act (P.L. 101-576), which are noted in the response of the United States as being “particularly significant and fundamental statutory components of the mechanisms designed to prevent the unlawful use of public funds.”⁹⁰

- The United States Department of Justice, which, as noted above in Section 1.1.1., above and at the beginning of this Section, constitutes an important mechanism, due to the fact that, as mentioned

⁸⁴ *Ibid.*

⁸⁵ See GAO website, at <http://www.gao.gov/sp.html>

⁸⁶ See the document submitted by Transparency International, U.S.A. to the Committee of Experts, *supra*, note 4, at p. 7.

⁸⁷ See GAO website, at <http://www.gao.gov/fraudnet/fraudnet.htm>

⁸⁸ See Title 18 of the United States Code, available at http://straylight.law.cornell.edu/uscode/18/usc_sup_01_18_10_1.html

⁸⁹ See Title 31 of the United States Code, available at <http://straylight.law.cornell.edu/uscode/html/uscode31/>

⁹⁰ See the Updated Response, *supra* note 13, at p. 12.

above, it has the responsibility to investigate and prosecute suspected violations of law, including those related to the proper conservation and use of resources.⁹¹

1.2.2. Adequacy of the legal framework and/or other measures and enforcement mechanisms

The standards and measures in the area of the proper conservation and use of public resources entrusted to government officials, as well as the mechanisms for their enforcement that the Committee has examined, based on the information made available to it, are pertinent for promoting the purposes of the Convention.

Thus, the Committee observes that as a whole, these standards, measures and mechanisms make up a very broad body of provisions and instruments for the proper conservation and use of public resources entrusted to officers and employees in all three branches of the Federal government. In this regard the Committee notes that the existing provisions address relevant aspects for the proper enforcement of the provisions in this area, such as preventing the misuse of resources. In addition, there are standards and measures related to dissemination, training and the rendering of advice; adequate, efficient, and effective management of resources; the evaluation of policies and programs in order to improve their efficiency and effectiveness; the participation of the public and of civil society in the follow-up of the proper use of resources and complaints in the event of apparent violations; and sanctions and institutions to ensure that the sanctions are applied, when appropriate.

Transparency International, USA highlights the role played by the IG's and GAO in this area, stating that "Any discussion of the proper use of resources and oversight to prevent fraud, waste and abuse must include the critical role of the Inspectors General and the Government Accountability Office ("GAO" formerly, General Accounting Office)." In addition, after discussing the open dissemination of GAO reports and decisions, and the possibility for any person to make complaints directly to the GAO regarding the improper use of resources, the Transparency International, USA submission, notes that "This extensive and public effort to keep the executive branch accountable is commendable."⁹²

1.2.3. Results of the legal framework and/or other measures and enforcement mechanisms

Based on the information that has been reviewed in this area, the Committee notes that at the Federal level, the United States has results related to the provisions, measures and enforcement mechanisms for the purpose of ensuring the proper conservation and use of resources entrusted to government officials, among which the following should be noted:

- The results of the annual evaluations carried out by the OGE through surveys of executive branch agencies and departments, with respect to the disciplinary measures that have been taken, based either wholly or in part upon violations of the Standards of Conduct, including those related to the proper conservation and use of resources entrusted to government officials. The response of the United States notes with respect to the results of the 2003 OGE survey, "that agencies took over 4,306 disciplinary actions (including removal, demotion, suspension, and written reprimand) in response to

⁹¹ See the Department of Justice website, at <http://www.usdoj.gov/>

⁹² See the document submitted by Transparency International, U.S.A. to the Committee of Experts, *supra*, note 4, at p. 7.

employee misuse of position, Government resources, or information”, and warns that “one should view this number carefully since the survey would count lesser disciplinary actions, such as a written reprimand for misusing a Government telephone, no differently from more significant ones, such as an employee dismissal for theft of a Government automobile.”⁹³

- The results described in Section 1.1.3., above, which are also related to the standards of conduct for the proper conservation and use of resources entrusted to government officials, as well as the mechanisms for their enforcement. Specifically, these include the results noted in Section 1.1.3., on the evaluations carried out by the OGE with respect to observance of the ethical standards in the executive branch, and the results achieved by OGE itself, as the agency responsible for overall leadership with respect to the standards of conduct in the executive branch; the results of the corresponding legal proceedings that have been noted in the OGE surveys of the U.S. Attorney’s Offices and the Public Integrity Section of the DOJ’s Criminal Division; the results of the aforementioned Public Integrity Section with regard to the investigation and prosecution of corruption cases, which can be seen in the annual reports submitted to Congress; the results of the work performed by the Senate Select Committee on Ethics, the Committee on Standards of Conduct of the House of Representatives, and Committee on Codes of Conduct of the Judicial Conference of the United States; and the results from the various mechanisms, programs, activities and opportunities for training officers and employees with respect to providing them with advice on the standards of conduct, including those related to the conservation and proper use of public resources in all three branches of government.

- The results achieved by the Inspectors General which are available in the Semiannual Reports to the Congress prepared by each Office of Inspector General. The results achieved by the President’s Council on Integrity and Efficiency / Executive Council on Integrity and Efficiency (PCIE/ECIE) are available in the annual Progress Report to the President. ⁹⁴ The response of the United States notes the following results of the activities of the Inspectors General in fiscal year 2003, which have been compiled from the Fiscal Year 2003 Progress Report to the President:⁹⁵

- IG’s collectively issued more than 4,700 reports, closed more than 22,000 investigations, and processed almost 200,000 complaints;
- IG’s recommended ways that approximately \$26.4 billion could be put to better use, and management agreed with recommendations regarding approximately \$11.3 billion of that total;
- IG’s questioned approximately \$3.1 billion in costs, and management agreed with recommendations regarding approximately \$1.9 billion of that total.
- IG investigations resulted in the recovery of approximately \$4.5 billion;
- IG’s contributed to investigations that led to over 6,600 successful criminal prosecutions and nearly 653 civil actions;

⁹³ See the Updated Response, *supra* note 13, at p. 13. Of the 4,306 disciplinary actions, 2,050 were taken because of misconduct that could be considered improper conservation and misuse of government resources.

⁹⁴ See the Fiscal Year 2003 Progress Report to the President, at <http://www.ignet.gov>

⁹⁵ See the Updated Response, *supra* note 13, at p. 14

- IG investigations contributed to nearly 7,607 suspensions and debarments of contractors, grantees, and other entities or individuals doing business with the Government; and
- IG actions contributed to nearly 2,000 personnel actions (reprimands, suspensions, demotions, or terminations) taken against Federal, state, and local (and Federal contractor/grantee) employees.

- The results achieved by the Government Accountability Office with respect to all of its functions. The last annual report, which was issued in January 2005 and which corresponds to activities carried out in fiscal year 2004, notes results recorded by the GAO for that period, including the following:⁹⁶

- GAO documented “\$44 billion in financial benefits—a return of \$95 for every dollar spent, or \$13.7 million per employee.”
- GAO’s work resulted in 1,197 other benefits, including “74 instances where information provided to the Congress resulted in statutory or regulatory changes, 570 instances where federal agencies improved services to the public, and 553 instances where agencies improved core business processes or government-wide reforms were advanced.”
- The percentage of GAO recommendations “implemented by the Congress or federal agencies rose to 83%.”
- GAO issued “over 2,700 new recommendations in fiscal year 2004.”
- GAO experts have “testified at 217 congressional hearings covering a wide range of complex issues.”

1.3. MEASURES AND SYSTEMS REQUIRING GOVERNMENT OFFICIALS TO REPORT TO APPROPRIATE AUTHORITIES ACTS OF CORRUPTION IN THE PERFORMANCE OF PUBLIC FUNCTIONS OF WHICH THEY ARE AWARE

1.3.1. Existence and provisions in the legal framework and/or other measures and enforcement mechanisms

At the Federal level, the United States has a set of provisions related to the standards of conduct referred to, among which the following should be noted:

- 5 C.F.R. 2635.101(b)(11), which requires employees to disclose waste, fraud, abuse, and corruption to the appropriate authorities, which may be a supervisor, or an investigative authority such as an agency's Inspector General Office.⁹⁷

- 28 U.S.C. 535, which requires the head of each agency within the executive branch to report to the U.S. Attorney General or to his delegates, any information, allegation, or complaint received in their

⁹⁶ See the “GAO Performance and Accountability Highlights 2004”, at <http://www.gao.gov/>

⁹⁷ See http://www.access.gpo.gov/nara/cfr/waisidx_05/5cfr2635_05.html

respective agency regarding a violation of the U.S. criminal code by an executive branch officer or employee.⁹⁸

- Special provisions applicable to the legislative branch, such as the 1958 Code of Ethics for Government Service, applicable to Members, officers and employees of the House of Representatives, Article X of which requires them to expose corruption wherever discovered and the Rules of the House Committee on Standards of Official Conduct which provides the Committee with investigative authority;⁹⁹ the Senate Ethics Manual which also requires Senators and staff to expose corruption wherever discovered and Senate Resolution 338 of the 2nd Session of the 88th Congress, which provides that the Senate Select Committee on Ethics “shall receive complaints and investigate allegations of improper conduct which may reflect upon the Senate, violations of law, violations of the Senate Code of Official Conduct and violations of the rules and regulations of the Senate.”¹⁰⁰

- Special provisions applicable to the judicial branch, such as Canon 3 of the Code of Conduct for United States Judges, which states that a judge should initiate appropriate action when the judge becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by a judge or lawyer, and which also requires judges to hold court officials, staff and others under the judge’s direction and control, to the same standards applicable to the judge; and Canon 3 of the Code of Conduct for Judicial Employees and of the Code of Conduct for Federal Public Defender Employees, both of which require reporting any attempt to induce the judicial employee or public defender, respectively, to violate the respective Code of Conduct.¹⁰¹

The United States also has mechanisms for enforcing these standards of conduct, among which note should be made of the following:

- The mechanisms and administrative sanctions described above in Section 1.1.1. of this report, which also serve to enforce the standards of conduct requiring officers and employees to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware. These include, for example, the OGE, the DAEO’s in all Federal agencies and departments, the Senate Select Committee on Ethics, the Committee on Standards of Official Conduct of the House of Representatives, the Judicial Conference of the United States, and, in particular, its Committee on Codes of Conduct.

- The various mechanisms, programs and activities which provide training and advice to officers and employees with respect to the standards of conduct, including those related to the requirement that they inform the competent authorities of acts of corruption in public service of which they are aware.

- The Offices of the Inspectors General, discussed above in Sections 1.1.1 and 1.2.1 above, to which federal employees may report suspected or known violations of rules, regulations, or laws. As noted in the response of the United States, the IG Offices have created hotlines which allow employees and others to report, fraud, waste, abuse, and corruption either anonymously or otherwise.¹⁰²

⁹⁸ See http://straylight.law.cornell.edu/uscode/html/uscode28/usc_sec_28_00000535----000-.html

⁹⁹ See <http://www.house.gov/ethics/Ethicforward.html>

¹⁰⁰ See <http://ethics.senate.gov/downloads/pdf/manual.pdf>

¹⁰¹ See the three Codes of Conduct for the Judiciary, available at <http://www.uscourts.gov/library/manuals.htm>

¹⁰² See the Updated Response, *supra* note 13, at p. 15 and the list of Federal Inspectors General websites, available at <http://www.ignet.gov/igs/homepage1.html>

- The U.S. Office of the Special Counsel Disclosure Unit, which receives and evaluates whistleblower disclosures from federal employees, former employees, and applicants for federal employment. Disclosures are reviewed to determine whether there is substantial likelihood evidence of, *inter alia*: violations of law, rule, or regulation; gross mismanagement; and gross waste of funds.¹⁰³

- The U.S. Department of Justice, which, as discussed above in Sections 1.1.1 and 1.2.1 above, plays a critical role in the investigation and prosecution of suspected violations of law.¹⁰⁴

1.3.2. Adequacy of the legal framework and/or other measures and enforcement mechanisms

According to the available information examined by the Committee, the standards with respect to the mechanisms and systems requiring officers and employees to report to appropriate authorities acts of corruption of which they are aware in the performance of public functions, as well as enforcement mechanisms, are pertinent for accomplishing the purposes of the Convention.

In this connection, the Committee notes, *inter alia*, that there are provisions on the requirement that officers and employees report to appropriate authorities acts of corruption of which they are aware in the performance of public functions; measures for dissemination and publicity of those standards; and mechanisms for their enforcement, including those connected with penalties for persons who violate provisions in this area and protection from prohibited personnel practicing for those who do report.

1.3.3. Results of the legal framework and/or other measures and enforcement mechanisms

According to the information examined by the Committee, the United States has results at the Federal level connected with provisions, measures and enforcement mechanisms in relation to the requirement for officers and employees to report to appropriate authorities, acts of corruption of which they are aware in the performance of public functions, including the following:

- According to the response of the United States to the questionnaire, “An executive branch employee who is fully aware of fraud, waste, abuse, or corruption and fails to report the misconduct is subject to administrative discipline”¹⁰⁵. In this connection, the United States adds that “administrative sanctions would be available for knowing violation of” the provisions of the respective Codes of Conduct in the area under review.

- With respect to results, the response of the United States to the questionnaire also mentions that “Offices of Inspector General have created telephone hotlines that allow employees and others to report, fraud, waste, abuse, and corruption either anonymously or otherwise. These hotlines are tools that facilitate and improve enforcement”.

- The results of the DOJ efforts in the investigation and prosecution of corruption cases, including those resulting from disclosures by officers and employees in performance of the duty established in this regard in the respective standards of conduct. As mentioned in Section 1.1.3 above, those results are mentioned, *inter alia*, in the annual reports submitted by the Public Integrity Section to the U.S.

¹⁰³ See www.osc.gov

¹⁰⁴ See DOJ website, at <http://www.usdoj.gov/>

¹⁰⁵ See the Updated Response, p. 15.

Congress. Thus, the most recent available report -for 2003- mentioned that in that fiscal year 479 officers and employees were indicted, 421 convicted, and 129 were awaiting trial.

- The results of the U.S. Office of Special Counsel (OSC), in the performance of its functions to protect the identity of federal employees, former employees and applicants for federal employment whose disclosures tend to determine a substantial likelihood of, *inter alia*, a violation of law, rule or regulation, gross mismanagement, gross waste of funds, or abuse of authority. Those results are mentioned, *inter alia*, in the annual reports of the OSC to Congress, which include information and data on cases in this area for each fiscal year.¹⁰⁶

With respect to the results of the OSC, the Committee notes that at the request of the U.S. Congress, the GAO prepared the report, "U.S. Office of Special Counsel: Strategy for Reducing Persistent Backlog of Cases Should Be Provided to Congress" (GAO 04-36) of March 2004.¹⁰⁷ This report recommended, *inter alia*, "that the Special Counsel provide Congress with a detailed strategy designed to allow more consistent processing of cases within statutory time limits and a reduction in the backlog of cases, for which these limits have already passed." Furthermore, the OSC Fiscal Year 2004 Performance and Accountability Report of November 15, 2004, mentions that upon taking up his duties on December 9, 2003, the current Special Counsel "announced the priority for the agency to resolve and reduce the chronic number of older cases in backlog" and, for that purpose he established a comprehensive plan on that regard.¹⁰⁸ Recently, on May 17, 2005, the Special Counsel submitted a detailed follow-up report to the GAO. The report notes that, *inter alia*, "because of the success of this plan, I am happy to report that OSC has reduced the overall case backlog by 82 percent, from 1121 to 201 cases, by the end of Calendar Year (CY) 2004." As regards the results of its "Whistleblower Disclosure Unit" (DU), the report says that the "OSC substantially reduced the DU backlog from 690 cases in FY 2003 to 108 in Fiscal Year 2004, an 85% reduction. Moreover, DU achieved this large backlog reduction while processed [*sic*] almost three times as many cases in FY 2004 as compared to Fiscal Year 2003. In addition, the FY 2004 ending inventory for DU was over 600% less than FY 2003, 108 cases vs. 690 cases. Moreover, the Agency referrals (to Agency Head or IG) increased from 14 in FY 2003 to 26 in FY 2004"¹⁰⁹. These results were recognized in a communication from the Chairman of the Committee on Government Reform and the Chairman of the Subcommittee on the Federal Workforce of the House of Representatives¹¹⁰.

The Committee underscores the importance of the progress mentioned in the foregoing paragraph. The Committee will put forward a recommendation in Chapter III of this report (See the recommendation in Part B, Chapter III, Section 1.3. of this report).

¹⁰⁶ See in this respect, "FY2004 Performance and Accountability Report, U.S. Office of Special Counsel, November 15, 2004"; and "Report to Congress from the U.S. Office of Special Counsel for Fiscal Year 2003", at <http://www.osc.gov>

¹⁰⁷ See report "U.S. Office of Special Counsel: Strategy for Reducing Persistent Backlog of Cases Should Be Provided to Congress" (GAO 04-36) of March 2004, at: <http://www.gao.gov>

¹⁰⁸ "FY204 Performance and Accountability Report, US Office of Special Counsel, November 15, 2004", p. 16.

¹⁰⁹ See "OSC Response to GAO", at: http://www.osc.gov/documents/press/2005/pr05_11.htm

¹¹⁰ See communication of May 17, 200, addressed to Special Counsel, Scott J. Bloch, from the Chairman of the Committee on Government Reform, Rep. Tom Davis, and the Chairman of the Subcommittee on the Federal Workforce, Rep. Jon Porter, at: http://www.osc.gov/documents/press/2005/pr05_11.htm

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

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

At the Federal level, the United States has a set of provisions and other measures relating to the aforementioned systems, among which note should be made of the following:

- The Ethics in Government Act of 1978,¹¹¹ as amended (5 U.S.C. app. Section 101 *et seq*), which contains provisions related to the system of public financial disclosure, such as:

- Section 101(f), which lists those persons in all three branches of government who are required to file public financial disclosure reports, and includes persons such as: the President, the Vice-President, officers and employees in the executive branch above a certain classification and salary level, the Director of OGE, DAEO's, Members of the House and the Senate, Justices of the U.S. Supreme Court, U.S. Court of Appeals and District Court judges, and judicial employees above a certain salary level.
- Section 101 (a) through (e), which establishes the various times at which the officials subject to the public reporting requirement are required to file reports. Pursuant to this Section: officers and employees subject to the Act must file reports within 30 days of assuming their position (subsection (a)); Presidential nominees who must be approved by the Senate must file reports within 5 days of the transmittal of the letter of nomination to the Senate (subsection (b)); and candidates for the office of President, Vice-President, or Member of Congress, must file reports no later than 30 days before their respective election (subsection (c)). This Section also requires annual reporting by those required to file disclosure reports, by no later than May 15 of each calendar year (subsection (d)); as well as the filing of a report within 30 days following the termination of employment (subsection (e)). Subsection (g) provides for reasonable extension of time for filing.
- Section 102, which stipulates the contents of financial disclosure reports, and requires filers to report such things as: the amount and source of income received; gifts and reimbursements in excess of a certain dollar amount; transactions over USD \$1000; interests in property; liabilities; positions held in corporations, organizations, etc.; and descriptions of any agreements pertaining to future employment. Additionally, this Section requires the reporting of certain financial interests of the filer's spouse and dependent children (subsection (e)).
- Section 103, which specifies where reports are to be filed, and provides that: executive branch employees shall file their reports with the designated agency ethics official at their agency (Section 103 (a)); the President and Vice-President shall file their reports with the Director of the OGE (Section 103 (b)); members and employees of the House of Representatives and the Senate shall file their reports with the Clerk of the House and the Secretary of the Senate, respectively (Section 103 (h)); and officers and employees of the judicial branch shall file with

¹¹¹ See http://www.house.gov/ethics/ETHICS_IN_GOVERNMENT_ACT_LINK_PAGE.htm

the Judicial Conference. This Section, at subsection (g), requires supervising ethics offices¹¹² to develop and make available forms for the filing of reports.

- Section 104, which fixes a penalty of US\$200 for late filing of reports (subsection (d)), and allows the Attorney General to bring a civil action for failure to file or for filing false reports, carrying a possible civil penalty up to US\$11,000 (subsection (a)).
- Section 105, which requires each agency, supervising ethics office in the executive and judicial branches, and the Clerk of the House and the Secretary of the Senate, to allow access to public reports.¹¹³
- Section 106, which requires that reports be reviewed within 60 days of their filing. Once reviewed, this Section establishes procedures whereby filers may be asked to submit additional information to complete a filing or may be informed that a filing is not in compliance with applicable laws and regulations. Filers are generally given an opportunity to respond or to take certain steps as suggested to comply with those laws and regulations.¹¹⁴ This Section also requires that appropriate action be taken for failure to take the steps for assuring compliance.
- Section 108, which provides that the Comptroller General (head of the Government Accountability Office) shall have access to disclosure reports for the purposes of carrying out his statutory responsibilities.
- Section 110, which requires individuals who have agreed to take actions to comply with any law or regulation governing conflicts of interest or establishing standards of conduct, to notify in writing the DAEO, OGE, the appropriate committee of the Senate, a congressional ethics committee, or the Judicial Conference, as appropriate, of the actions taken by the individual pursuant to that agreement.
- Section 111, which provides that the Act shall be administered: for executive branch officers and employees, by the Director of OGE, the DAEO, or the Secretary concerned, as appropriate; for Members, officers and employees of the House and Senate, by the Committee on Standards of Official Conduct for the House and the Select Committee on Ethics of the Senate, respectively; and for judicial officers and employees, by the Judicial Conference.

- Regulations governing the executive branch's financial disclosure systems, such as those contained in 5 C.F.R. Part 2634,¹¹⁵ which contains provisions such as: Section 2634.201, on general requirements, filing dates and extensions; Sections 2634.301 to 2634.311 addressing the contents of reports; and Sections 2634.701 to 2634.704, setting forth the penalties for failure to file, false filing, or late filing.

¹¹² Pursuant to 5 U.S.C. App. Section 109(18), the term "supervising ethics office includes: the Senate Select Committee on Ethics with respect to Member, officers and employees thereof; the Committee on Standards of Official Conduct for the House with respect to Members, officers and employees thereof, the Judicial Conference, for judicial officers and employees; and the Office of Government Ethics for all executive branch officers and employees.

¹¹³ This issue will be discussed in greater detail in Section 4.2, on mechanisms for access to information.

¹¹⁴ According to Section 106(b)(3), these steps may include: divestiture, restitution, the establishment of a blind trust, a request for an exemption, or a request for transfer, reassignment, limitation of duties, or resignation.

¹¹⁵ See 5 C.F.R. Part 2634, at http://www.access.gpo.gov/nara/cfr/waisidx_05/5cfr2634_05.html

- Section 107 of the Ethics in Government Act of 1978, which provides that supervising ethics offices may require officers and employees to file confidential financial disclosure reports, which shall not be disclosed to the public. (Section 107(2))
- Subpart I of 5 C.F.R. Part 2634,¹¹⁶ which regulates the system of confidential disclosure reports, and contains provisions covering such areas as: general requirements, filing dates and extensions (Section 2634.903); the definition of confidential filers (Section 2634.904); and the contents of confidential reports (Section 2634.907); and penalties (Section 2634.909).
- 18 U.S.C. Section 1001, noted above in Section 1.2.1. of this report, and which provides civil and criminal penalties for making false statements or writings with respect to any matter within the jurisdiction of any of the three branches of government and can be used in conjunction with both public and confidential financial disclosure reports.
- Instructional booklets prepared by both the Senate and the House of Representatives, which provide detailed information on all aspects related to the filing of financial disclosure, including the proper completion of the financial disclosure forms.¹¹⁷
- Guidelines for the presentation of financial disclosure reports for the judicial branch, prepared by the Judicial Conference Committee on Financial Disclosure and the Administrative Office of the United States Courts.¹¹⁸ In addition, judges' secretaries and assistants also receive training to help them assist judges in preparing financial disclosure reports.
- Training programs that are provided in all three branches of government on the system of financial disclosure and the requirements thereof. Information in this regard is available, *inter alia*, on the websites of OGE (executive branch); the Committee on Standards of Official conduct of the House of Representatives and the Senate Select Committee on Ethics (legislative branch); and the Judicial Conference of the United States (judicial branch).
- Advisory opinions rendered in all three branches of government, in response to questions presented with respect to the financial disclosure system, such as: advisory opinions issued by the Office of Government Ethics¹¹⁹, advisory memoranda, also known as "pink sheets", issued by the House of Representatives Committee on Standards of Official Conduct¹²⁰; advisory opinions issued by the Senate Select Committee on Ethics, in the form of private letter rulings providing advice on the application of laws or rules, including those regarding the financial disclosure system¹²¹; the Judicial Conference's Committee on Codes of Conduct, which renders advisory responses to written and informal inquiries regarding the Codes of Conduct in the judicial branch.¹²²

¹¹⁶ *Ibid.*

¹¹⁷ See <http://ethics.senate.gov/downloads/pdffiles/fdinstr.pdf> for the Senate instructional booklet, and <http://www.house.gov/ethics/FDIOC2003.htm> for the House of Representatives booklet.

¹¹⁸ See generally, the U.S. Courts website at <http://www.uscourts.gov> and the 2004 Annual Report of the Director of the Administrative Office of the United States Courts, at <http://www.uscourts.gov/library/dirrpt04/2004YearinReview.pdf>

¹¹⁹ See http://www.usoge.gov/pages/advisory_opinions/advisory_opins.html

¹²⁰ See http://www.house.gov/ethics/ethics_memos.html

¹²¹ See <http://ethics.senate.gov/downloads/pdffiles/manual.pdf>

¹²² See the Codes of Conduct for the Judicial branch, available at <http://www.uscourts.gov/library/manuals.htm>

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

The standards and measures related to the systems under review that the Committee has examined, based on the information available to it, are pertinent for promoting the purposes of the Convention.

In this sense, the Committee notes that there are a wide range of provisions and measures applicable to officials and employees in all three branches of government. In addition, there are detailed provisions addressing: the content of reports; the times at which reports must be presented as well as penalties for late filing or providing false information; verification of reports; and public access to reports. Agencies can also seek approval from OGE to request additional information on a confidential basis. As an example, Transparency International, USA states that “it is notable that some agencies, such as the Securities and Exchange Commission (SEC), where employees might have greater access to information that could influence markets, require employees to register all transactions. Similarly, the Department of Defense, where employees regularly work closely with government contractors, has heightened requirements.”¹²³

As noted with respect to the standards of conduct and the mechanisms for their enforcement, the Committee observes that the United States’ system of financial disclosure is a dynamic rather than a static system. The system is periodically updated by the competent authorities, based in part on the results of evaluations of the system, past experience and new developments in the field. This is evidenced by the “Report to Congress Evaluating the Financial Disclosure Process for Employees of the Executive Branch, and Recommending Improvements to it”.¹²⁴

The report, prepared by OGE in response to a request from Congress, notes that the system of financial disclosure “contributes significantly to the goal of maintaining the integrity of Government operations by facilitating ethics officials’ conflict of interest reviews”; and that making the information public “contributes to public confidence in Government and helps to deter officials from becoming involved in official matters in which they hold conflicting financial interests.”¹²⁵ In addition, the report notes that “Since 2001, OGE has implemented a number of non-legislative improvements to the executive branch financial disclosure review process”¹²⁶ and presents suggestions for possible legal reforms which might simplify and streamline the system.

In this regard, the document submitted by Transparency International, USA notes that “the system would benefit from a simplification of reporting forms and reducing the number of filers.”¹²⁷

The Committee recognizes the importance, in terms of achieving the purposes of the Convention, of this process of periodic review for purposes of determining appropriate updates to the system of financial disclosure. In this regard, the Committee will formulate a recommendation. (See the recommendation in Part B, Chapter III, Section 2 of this report).

¹²³ See the document submitted by Transparency International, U.S.A., *supra* note 4, at p. 15.

¹²⁴ See the “Report to Congress Evaluating the Financial Disclosure Process for Employees of the Executive Branch, and Recommending Improvements to it, Office of Government Ethics, March 2005”, at http://www.iecjournal.org/iec/files/rpogc_fin_dis_03_05.pdf

¹²⁵ *Ibid.*, at p. 2.

¹²⁶ *Ibid.*, at p. 5.

¹²⁷ See the document submitted by Transparency International, U.S.A., *supra* note 4, at p. 15.

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

The information reviewed by the Committee indicates that at the Federal level, the United States has results with respect to the standards and measures related to the systems under review, among which the following should be noted:

- The results of the evaluations performed by OGE, by means such as the 2000 survey on executive branch employees opinions on the efficiency of the executive branch ethics program, and compliance with ethical standards in the executive branch, as discussed in Section 1.1.3 of this report. The results of the 2000 survey indicate that “awareness (of ethics program and resources) is far greater among officials required to file public financial disclosure reports (99 percent) of confidential financial disclosure reports (95 percent)”;

“public and confidential filers rate the usefulness of training higher (4.09 and 3.98, respectively) eighty-nine percent of public filers said they received training at least once per year, as did 77 percent of confidential filers”;

“public filers (71 percent) and confidential filers (50 percent) were more likely to seek ethics advice”;

public filers (93 percent) and confidential filers (83 percent) more often relied on their agency ethics officials for advice and rated the helpfulness of those officials higher (4.61 and 4.45, respectively); and “on questions relating to program effectiveness, filers consistently gave higher ratings than non-filers.”¹²⁸

- The response of the United States, which notes that “with regard to annual filings, the most recent annual OGE survey indicated that of the approximately 23,000 executive branch officers and employees required to file public reports in 2003, only 251 had not yet done so when the agencies answered the survey. Executive branch agencies also reported collecting \$200 late filing fees from 48 individuals who filed their public financial disclosure reports after the date triggering the fee. In cases where a filer does not submit the report, agencies are required to make good-faith additional attempts at securing the report (during which time the \$200 late filing fee is triggered) and, if unsuccessful, to refer the case to DOJ for a failure to file.”¹²⁹

- The results achieved by the OGE, as the executive branch agency principally responsible for leadership with respect to the system of financial disclosure in that branch, which can be seen, *inter alia*, in the annual OGE Performance and Accountability Report submitted to Congress. In addition to the results mentioned in this regard in Section 1.1.3 of this report, the fiscal year 2004 annual OGE report submitted to Congress, notes, the following results achieved by OGE: “Monitored the ethics agreements of approximately 97 presidential appointees of the new administration concerning their financial interests and ensured that such agreements are completed within 90 days of confirmation”;

“Tracked, collected, reviewed and certified approximately 1,000 annual and termination financial disclosure statements of presidential appointees confirmed by the Senate”;

“Released over 900 financial disclosure statements to the news media and the public”;

and “There were 236 nominee financial disclosure statements received in FY 2004. Of these 96.2% were certified and opinions rendered to the Senate within two weeks of either the nomination or OGE’s receipt of receiving the final certified form from the agency. OGE received 950 annual and termination statements from various agencies and reviewed 80.9% within 60 days of receipt.”¹³⁰

¹²⁸ See the “Results of the Executive Branch Employee Ethics Survey 2000”, DAEOgram DO-01-0007, March 13, 2001, pp. 2-3, at <http://www.usoge.gov>

¹²⁹ See the Updated Response, *supra* note 13, at p. 21.

¹³⁰ See the U.S. Office of Government Ethics, Performance Accountability Report, Fiscal Year 2004, November 2004, pp. 6 and 14, at http://www.usoge.gov/pages/forms_pubs_otherdocs/forms_pubs_other_pg3.html

- The legal proceedings commenced with respect to violations of the criminal conflict of interest statutes, the detection of which is facilitated by disclosure statements. As noted in Section 1.1.3. above, these actions can be seen, *inter alia*, in the results of the annual surveys that have been carried out by OGE since 1990 with respect to the United States Attorneys Offices and the Public Integrity Section of the DOJ's Criminal Division, which are published on the OGE's website.

- Results in the legislative branch, such as those included in the Summary of Activities of the 108th Congress, which notes that "in calendar years 2003 and 2004, the Legislative Resource Center of the Clerk of the House referred a total of 5134 financial disclosure statements to the House Committee on Standards of Official Conduct for review. Where the Committee review indicates that a filed statement has a deficiency, such as a failure to include required information, the Committee requests an amendment from the filer. The Committee also follows up with any filer whose statement indicates non-compliance with applicable law, such as the outside employment and earned income limitations."¹³¹

- Results in the judicial branch, such as those noted in the response of the United States, namely, that "all financial disclosure reports required of judicial branch personnel during the last completed filing cycle were filed."¹³² Further, the Annual Report of the Administrative Office of the U.S. Courts, filed February 25, 2005, notes that various efforts have reduced the time to fewer than 20 days to provide a requestor with cost information and other guidance to finalize his or her request. This has resulted in all but the largest request (500 or more reports) being released in 30 days or less when all the requested reports are on file.

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

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

At the Federal level, the United States has a set of provisions with respect to the oversight bodies charged with performing the functions related to implementing the provisions contained in paragraphs 1, 2, 4, and 11 of Article III of the Convention, among which the following should be noted:

- The Office of Government Ethics, which exercises numerous functions related, *inter alia*, to the standards of conduct, including those related to conflicts of interest and the financial disclosure requirements in the executive branch.¹³³

- The Department of Justice, which is the main entity responsible for detecting, investigating and prosecuting violations of federal criminal laws, including the criminal statutes related to the provisions outlined in the Convention, and which have been discussed in the corresponding sections of this report. In addition, various departments and entities falling under the purview of the DOJ, exercise oversight functions with respect to the provisions of the Convention under review, such as the following:

¹³¹ See the Summary of Activities of the 108th Congress, available at: http://www.house.gov/ethics/108th_Summary_of_Activities.htm

¹³² See the Updated Response, *supra* note 13, at p. 21.

¹³³ Additional information on OGE's functions with respect to the provisions under review can be found in sections 1.1.1, 1.2.1, 1.3.1 and 2.1. of this report, as well as at the OGE website, at <http://www.usoge.gov/>

- The Federal Bureau of Investigation, an investigative agency falling under the jurisdiction of the Department of Justice, is responsible for investigating suspected or alleged violations of Federal criminal laws, including those concerning acts of corruption.¹³⁴ One of the FBI's stated priorities is combating public corruption at all levels of Government.¹³⁵ The Public Corruption Unit within the FBI's Criminal Investigative Division investigates corruption related to law enforcement officers (typically, involving drug trafficking), as well as allegations of corruption in all branches of the U.S. Government, including State and local governments. This Unit also provides in-service training courses for the investigation of corruption.
- DOJ's Criminal Division, which, *inter alia*, develops, enforces, and supervises the application of all federal laws which are not specifically assigned to other divisions. Within the Criminal Division, the Public Integrity Section (noted in Section 1.1.1. above), oversees the federal effort to combat corruption through the prosecution of elected and appointed public officials at all levels of Government.¹³⁶
- DOJ's Office of Professional Responsibility ("OPR"), which is responsible for investigating allegations of professional misconduct involving Department attorneys, investigators, or law enforcement personnel where the allegations relate to the exercise of an attorney's authority to investigate, litigate or provide legal advice.¹³⁷

- The Offices of the Inspectors General, discussed in various sections above, which perform oversight functions related to combating fraud, waste and abuse, such as conducting investigations, financial audits, and management studies.

-The Office of Information and Privacy (OIP) in the Department of Justice oversees the activities of the executive branch agencies in performance of the duties established under the Freedom of Information Act, 5 U.S.C. 552. These include the establishment of Reading Rooms for public use where many documents are automatically available in electronic form. OIP also conducts FOIA training courses for executive agency personnel with FOIA duties.

-The Committee Management Secretariat in the General Services Administration oversees the activities of the executive branch in the performance of the requirements for creating and operating public advisory committees under the Federal Advisory Committee Act,¹³⁸ ("FACA") 5 U.S.C. App.1, *et seq*, as amended by the Government in the Sunshine Act,¹³⁹ 5 USC 552(b). These include the necessity to conduct open committee meetings and to allow members of the public to attend, appear before, or file statements with the advisory committee.

- The President's Council on Integrity and Efficiency ("PCIE") and the Executive Council on Integrity and Efficiency ("ECIE"), established by Executive Order 12805 on May 11, 1992.¹⁴⁰ The

¹³⁴ See <http://www.fbi.gov/homepage.htm>

¹³⁵ See the FBI webpage, at <http://www.fbi.gov/priorities/priorities.htm>

¹³⁶ See <http://www.usdoj.gov/criminal/pin.html>

¹³⁷ See <http://www.usdoj.gov/opr/>

¹³⁸ See 5 U.S.C. App. 1 *et seq*, at

http://straylight.law.cornell.edu/uscode/html/uscode05a/usc_sup_05_5_10_sq1.html

¹³⁹ See 5 U.S.C. 552(b), at http://straylight.law.cornell.edu/uscode/html/uscode05/usc_sec_05_00000552---b000-.html

¹⁴⁰ See Executive Order 12805, May 11, 1992, available at <http://www.ignet.gov/pande/exorder.html>

PCIE is made up of IG's appointed by the President, while the ECIE is composed of Inspectors General appointed by agency heads. In addition, senior-level officers from various executive-level agencies form part of both Councils, such as the OMB, the FBI, the OGE, the Office of the Special Counsel, and the Office of Personnel Management. The functions of the Councils include addressing integrity, economy, and effectiveness issues that transcend individual Government agencies; and increasing the professionalism and effectiveness of personnel of the IG Offices.

- The Government Accountability Office, described, *inter alia*, in Section 1.2. of this report, and which exercises oversight activities related to the objectives of the Convention, such as: audits of federal expenditures; program reviews; evaluations of federal programs; investigations; policy analyses, and the issuance of legal opinions and analyses. As also noted in Section 1.2., GAO's FraudNET allows the anonymous reporting of allegations of fraud, waste, abuse, or mismanagement of federal funds.

- The Office of the U.S. Special Counsel, which, as discussed in the preceding sections of this report, is charged with functions such as those related to protecting employees, ex-employees, and applicants for employment ("whistleblowers"), as provided by law, as well as, *inter alia*, facilitating compliance by officers and employees with the requirement that they inform the appropriate authorities of acts of corruption in public service of which they are aware.

- The Senate Select Committee on Ethics and the House Committee on Standards of Official Conduct, which, as discussed in the preceding sections of this report, exercise various oversight functions related to the pertinent provisions of the Convention, such as: enforcing the respective Congressional standards of conduct; reviewing the financial disclosure reports submitted by Members and employees of the legislative branch; and rendering advisory opinions on various issues including conflicts of interest and financial declarations.

- The Judicial Conference, which, as discussed above in the preceding sections of this report, *inter alia*, enforces the three Codes of Conduct in the judicial branch. In addition, the Conference's Committee on Codes of Conduct renders advisory opinions with respect to the Codes of Conduct; and the Conference's Committee on Financial Disclosure as well as the Administrative Office of United States Courts creates the administrative financial disclosure guidelines for the judicial branch.

In its response to the questionnaire, the United States also notes that: "At the Federal level of Government, a number of entities have or can have investigative responsibilities with regard to violations of standards of conduct, violations of financial disclosure requirements, or other ethical misconduct."¹⁴¹ In addition to those already noted, the response also mentions the following entities: in the executive branch, the Investigative Commands within the Military Departments of the Department of Defense, which can engage in internal criminal investigations of activities that include acts of corruption; in the legislative branch, Congressional oversight committees or investigative committees appointed by either the House of Representatives or the Senate; and in the judicial branch, the judicial council of a Federal circuit and the Office of Audit of the Administrative Office of the United States Courts.

In addition, the United States has a set of mechanisms which facilitate and ensure formal and informal coordination and cooperation between the oversight bodies. In this regard, the "Evaluation Report on the United States of America" carried out by the Group of States Against Corruption ("GRECO")

¹⁴¹ See the Updated Response, *supra* note 13, at p. 23.

within the framework of the Council of Europe, notes that there is “a web of laws, rules, agreements, policies, practice, and procedures which facilitate effective cooperation among Federal entities.”¹⁴²

Similarly, as noted above in Section II.A, on the scope of review with respect to this report, the United States has mechanisms for coordination and cooperation with State and local authorities. This coordination and cooperation also takes place with respect to the performance of the functions which are the responsibility of the oversight bodies.

In this connection, the most recent GRECO Report notes, for example, that “Formal cooperation appears mainly in the form of reporting and sharing of information. Section 535 of title 28, U.S.C. provides that all Federal departments and agencies must report to the DOJ information indicating possible violations of Federal criminal law, e.g. public corruption. In addition, Offices of IG’s are required by statute to report possible violations of Federal criminal law to the DOJ. Particularly with respect to matters involving possible public corruption, the FBI maintains close working relationships with the IG’s and other Federal, State, and local law enforcement agencies. The Attorney General has directed that where investigations include allegations invoking both criminal and civil laws, there must be coordination between the criminal and civil investigative and prosecution components.”¹⁴³

In addition, the GRECO Report states that “many forms of informal cooperation take place. The most notable may be the formation of local, regional and national task forces to focus on corruption issues. Task forces may consist of representatives from multiple Federal and State investigative agencies, and from one or more prosecution offices, if they have broad anti-corruption agendas, but sometimes are formed to address specific, narrowly defined, issues, such as alleged corruption of legislators, judges, or law enforcement officers. The development of joint training programmes is often a direct result of the formation of task forces. Task forces bring together very experienced investigators and prosecutors who are in an excellent position to develop training programmes for others.”¹⁴⁴

Finally, the Report states that “In addition to task forces, there are numerous bilateral agreements, referred to as ‘Memoranda of Understanding’. These agreements are reached between individual Federal investigative and prosecution agencies in order to establish mechanisms by which two agencies assist each other and cooperate in matters of mutual concern, including investigations involving public corruption. The agreements create cooperative working environments so that joint investigations can focus on substantive issues rather than protocol. The agreements provide a context of previously established procedural guidelines to effectively delegate responsibilities and functions between the components involved as they handle ongoing and newly emerging issues.”¹⁴⁵

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

Based on the information available to it, the Committee notes that the United States has a legal framework and other measures related to the oversight bodies charged with functions related to the implementation of the provisions of paragraphs 1, 2, 4 and 11 of Article III of the Convention.

¹⁴² See the Evaluation Report on the United States of America, adopted by GRECO at its 17th Plenary Meeting held from March 22 to 25, 2005, at p. 20, available at

[http://www.greco.coe.int/evaluations/cycle1/GrecoEval1Rep\(2003\)2E-USA.pdf](http://www.greco.coe.int/evaluations/cycle1/GrecoEval1Rep(2003)2E-USA.pdf)

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

Similarly, the Committee notes with satisfaction that, with respect to the oversight bodies, the United States has formal and informal mechanisms which facilitate coordination and cooperation between federal oversight bodies that carry out functions, among others, related to the implementation of the aforementioned provisions of the Convention, as well as with the competent State and local authorities.

The Committee recognizes the importance that this process of coordination and cooperation among Federal oversight bodies plays with respect to fulfilling the purposes of the Convention. In this regard the Committee will formulate a recommendation. (See the recommendation in Part B, Chapter III, Section 3 of this report)

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

Based on the information that has been examined, the Committee notes that at the Federal level, the United States has results with respect to its legal framework and other measures related to oversight bodies charged with performing the functions related to the implementation of the provisions of Article III, Paragraphs 1, 2, 4 and 11 of the Convention.

In this regard, information on the results with respect to each oversight body and the functions that they perform related to the provisions of the Convention under review, can be found in the following sections of this report: the Office of Government Ethics (Sections 1.1.3. and 2.3., above); the Department of Justice, including its Public Integrity Section (Sections 1.1.3. and 1.3.3., above); and the Office of Information and Privacy (Sections 1.1.3, 1.3.3 above, and 4.2.1 below); the respective ethics Committee of the House of Representatives and the Senate (Sections 1.1.3. and 2.3., above); The Judicial Conference of the United States, including its Committee on Codes of Conduct (Sections 1.1.3. and 2.3., above); the Inspectors General Offices (Sections 1.2.3. and 1.3.3., above); the Government Accountability Office (Sections 1.2.3. and 1.3.3., above); and the General Services Administration (Section 3.1, above).

4. MECHANISMS TO PROMOTE THE PARTICIPATION OF CIVIL SOCIETY AND NON-GOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11 OF THE CONVENTION)

4.1. GENERAL PARTICIPATION MECHANISMS

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

At the Federal level, the United States has a set of provisions and measures related to the aforementioned mechanisms.

In this regard, it should be noted that, according to the response of the United States to the questionnaire, “there are a broad legal framework and appropriate implementing mechanisms to support and encourage active participation by civil society and non-governmental organizations in the workings of government in the United States in general, and in the efforts to prevent corruption in particular. An active civil society in the United States has evolved under and is sustained by certain constitutional rights, such as freedom of speech, and related laws that facilitate public discourse and

interaction with government, and the creation and operation of NGO's, media organizations, and other elements of civil society.”¹⁴⁶

The foregoing is confirmed by the document submitted by Transparency International, USA¹⁴⁷, which notes that “The U.S. Government response describes accurately the very broad opportunities for citizen participation in the policymaking process. They are rooted in the First Amendment to the Constitution guaranteeing free speech and the right to petition the government.”

Notwithstanding the comments that will be made in the following sections of this report, as part of the review, in accordance with the methodology agreed to by the Committee for the review of the implementation of the Convention with respect to these issues¹⁴⁸, it should be noted, as expressed in the response of the United States, that “Civil society participation in government is facilitated by the public's access to certain information and documents under the control of the government. Such access is at the very heart of the democratic process in the United States. Also extremely important are the numerous laws and mechanisms that provide for citizen consultation, participation in, and oversight of, public administration. Such mechanisms include, among many others, requirements for open hearings in legislative bodies, public review and comment in government rulemaking, public release of judicial decisions, public release of campaign finance information, public release of national budget information, public release of all procurement opportunities and awards, public access to and participation in certain Federal advisory committees, and the “qui tam” ability of private citizens to sue the government for redress of the corrupt and fraudulent acts of public officials.”¹⁴⁹

According to Transparency International, USA's submission, “The increased use of the Internet by all branches of government, providing reports, statistics, proposed regulations, judicial decisions and other vital information, has enabled the public to provide more meaningful input and to participate more actively.”¹⁵⁰

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

Based on the information at its disposal, the Committee observes that the United States has standards and measures such as those noted in the foregoing section, with respect to the participation of civil society and non-governmental organizations in public activities. These standards and measures are either intended to promote, or as a direct or indirect effect, facilitate the prevention of corruption.

Notwithstanding the foregoing, and mindful of the classification referred to in the methodology for the review of the implementation of Article III, paragraph 11 of the Convention, the Committee will make the appropriate comments in each of the respective areas of this Section 4, and, in the final chapter, will formulate recommendations with respect to this area.

¹⁴⁶ See the Updated Response, *supra* note 13, at p. 24.

¹⁴⁷ See the document submitted by Transparency International, U.S.A., *supra* note 4, p. at 14.

¹⁴⁸ Methodology for the review of the implementation of the provisions of the Convention selected within the framework of the first round, Chapter V.D., available at http://www.oas.org/juridico/english/followup_method.htm

¹⁴⁹ See the Updated Response, *supra* note 13, at p. 25.

¹⁵⁰ See the document submitted by Transparency International, U.S.A., *supra* note 4, p. 14, at: http://www.oas.org/juridico/spanish/usa_res3.pdf

4.1.3. Results of the legal framework and other measures

With respect to the results of the general participation mechanisms, the response of the United States notes that “the ethics laws described above and the mechanisms implementing those laws have resulted in the active and valuable participation of civil society and non-governmental organizations in the efforts to prevent corruption. For example, when the Congress was considering the Ethics in Government Act, there was significant commentary from non-governmental organizations. Likewise, when the Office of Government Ethics published proposed regulations in the Federal Register establishing the Standards of Ethical Conduct for Employees of the Executive Branch, it received over 1,000 comments from individuals and non-governmental organizations. More recently, the formal petition to the Senate from ten major non-governmental organizations accelerated ratification by the United States of the Inter-American Convention against Corruption.”¹⁵¹

4.2. MECHANISMS FOR ACCESS TO INFORMATION

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

The United States has, at the Federal level, a set of provisions and measures related to the aforementioned mechanisms, among which the following should be noted:

- The Freedom of Information Act, 5 U.S.C. Section 552 (“FOIA”)¹⁵², enacted in 1966 and amended on various occasions since that time, which contains provisions and measures such as:

- The requirement that each Federal agency disclose, through publication in the Federal Register, certain information related to the transaction of agency business, such as, for example, descriptions of agency organizations, functions, and procedures; substantive agency rules; and statements of general agency policy (FOIA Section 552(a)(1)).
- The requirement that certain types of records, such as final agency opinions and orders rendered in the adjudication of cases, specific policy statements, and certain administrative staff manuals, among others, be routinely made available for public inspection and copying by Federal agencies (FOIA Section 552(a)(2)).
- The obligation that each agency release records that have been properly requested pursuant to published rules (FOIA Section 552(a)(3)).
- Subsection 552(a)(4)(B) of the FOIA, which allows a requester to file a complaint “in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia...” In addition, this subsection empowers those courts to determine whether records have been improperly withheld, and to examine those records in camera to determine whether the records or any part thereof should be withheld under one of the exception listed in subsection (b) of the FOIA, described above. If such a court finds that records were improperly withheld, it may enjoin the agency from withholding the records and order their production, as well as assess against the United States reasonable attorneys fees and other litigation costs. (5 U.S.C. Section 552(a)(4)(A)(vii)(E)) In addition, sanctions are provided for failure to comply

¹⁵¹ See the Updated Response, *supra* note 4, at p. 25.

¹⁵² 5 U.S.C. Section 552. http://www.usdoj.gov/oip/foia_updates/Vol_XVII_4/page2.htm

with a court order regarding the production of records. (5 U.S.C. Section 552(a)(4)(A)(vii)(G)) Furthermore, in those cases where the court finds that the circumstances surrounding the withholding of records raises questions as to whether agency personnel acted arbitrarily or capriciously in withholding the records, the court may issue a written finding to that effect. (5 U.S.C. Section 552(a)(4)(A)(vii)(F)) This matter will then be investigated by a Special Counsel who will determine whether disciplinary proceedings are warranted against the employee primarily responsible for the withholding.

- Subsection (b) of the FOIA, which excludes various types of records from the disclosure requirements of the Act, such as: records specifically authorized to be kept secret in the interest of national defense or foreign policy (Section 552(b)(1)); records related solely to the internal personnel rules of an agency (Section 552(b)(2)); records exempted from disclosure by statute (Section 552(b)(3)); trade secrets and commercial or financial information obtained from a person and privileged or confidential (Section 552(b)(4)); inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency (Section 552(b)(5)); certain personnel and medical files (Section 552(b)(6)); certain records or information compiled for law enforcement purposes (Section 552(b)(7)); certain records prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions (Section 552(b)(8)); and geological and geophysical information and data concerning wells (Section 552(b)(9)).
- Subsection (c) of the FOIA, which excludes three special categories of law enforcement - related records from the applicability of the Act, in order to prevent interference with enforcement proceedings or to safeguard against unique types of harm. The types of records excluded pursuant to this subsection are: certain types of records compiled for law enforcement purposes (Section 552(c)(1)); records on informants maintained by a criminal law enforcement agency (Section 552(c)(2)); and certain records maintained by the FBI pertaining to foreign intelligence or counterintelligence, or international terrorism (Section 552(c)(3)).
- Subsection (e) of the FOIA, which was modified as part of the Electronic Freedom of Information Act Amendments of 1996, which in pertinent part: requires each agency to submit a report regarding FOIA operations, including such information as the number of requests received, processed or denied, appeals of determinations not to release information, etc. (Section 552(e)(1)); requires each agency to make its annual FOIA report available on its own FOIA website (Section 552(e)(2)); requires the DOJ and the Office of Management and Budget to prepare reporting and performance guidelines with respect to the required annual FOIA reports (Section 552(e)(4)); requires the DOJ to submit an annual report to congress regarding both FOIA litigation and the DOJ's efforts to encourage compliance with the FOIA (Section 552(e)(5)); and requires the DOJ to publish a compilation of all submitted annual FOIA reports on a single internet website (Section 552(e)(3)).
- Subsection (g) of the FOIA, which requires each agency to prepare and make publicly available, a guide for requesting records or information from that particular agency.

- In fulfillment or development of the provisions of the FOIA, or related thereto, the set of measures or mechanisms which facilitate or ensure knowledge of, and the application of the provisions of the FOIA, such as:

- The multiple functions performed by the DOJ, through its Office of Information and Privacy (“OIP”), which serves as the principal and central contact point between the executive branch for advice and policy guidance on matters pertaining to the administration of the Freedom of Information Act. Additionally, OIP’s FOIA Counselor service allows anyone to contact an experienced FOIA adviser by telephone with respect to FOIA-related inquiries.
- The designation of a point of contact for all FOIA-related issues in each agency. This is a result of the decentralized nature of the system, and the fact that there is no central office in the government responsible for processing FOIA requests for all Federal agencies. The complete list of agency FOIA contacts is available on the DOJ’s website.¹⁵³
- Guides which facilitate and ensure that agencies fulfill their obligations both with regard both to access to information, as well as to the reports that they must prepare, such as:
 - The “Justice Department Guide to the Freedom of Information Act”¹⁵⁴, which is published in furtherance of the DOJ’s statutory authority to encourage uniform, government-wide compliance with the act. This Guide is updated and revised biennially by the Office of Information and Privacy. The Guide provides an overview of the FOIA exemptions, its law enforcement record exclusions, and its most important procedural aspects.
 - The obligation of each agency to publish their own agency-specific FOIA Reference Guides or Handbooks, in order to facilitate access to information, as well as the guide prepared by the OMB instructing Federal agencies on the preparation of the respective agency guides.¹⁵⁵
 - The online FOIA Reading Rooms created by the Federal agencies pursuant to subsection 552(a)(2) of the FOIA, as amended, which requires agencies to make certain records automatically available in electronic form. These FOIA Reading Rooms provide a central internet location where visitors can find electronic copies of final opinions rendered in the adjudication of administrative cases; specific agency policy statements; certain administrative staff manuals; and find frequently requested documents that have been released pursuant to the FOIA.
 - The Guidelines for Agency Preparation and Submission of Annual FOIA Reports, prepared by the DOJ. These guidelines provide detailed instructions on what agencies should include in their annual FOIA reports, and includes information pertaining to matters such as: the number of requests received, requests granted or denied, exemptions relied upon, appeals of decisions and the results of those appeals, compliance with time limits, average time to process requests, and fees collected.

¹⁵³ See <http://www.usdoj.gov/04foia/foiacontacts.htm>

¹⁵⁴ See <http://www.usdoj.gov/oip/foi-act.htm>

¹⁵⁵ See 5 U.S.C. Section 552 (g). See also, for example, the DOJ’s FOIA Reference Guide, available at http://www.usdoj.gov/04foia/04_3.html

- The reports that Federal agencies must complete in compliance with FOIA requirements and the 1996 Electronic FOIA amendments which require the DOJ make these reports available at single Internet location.¹⁵⁶

- The different measures, mechanisms and instruments which are aimed at facilitating public access to information, such as, for example:

- The FOIA Update,¹⁵⁷ a newsletter containing FOIA information and guidance for Federal agencies that was published by DOJ's OIP from 1979 to 2000. Archived issues of the FOIA Update are available at the DOJ's website.
- The FOIA Post,¹⁵⁸ a Web-based means of disseminating FOIA policy and related information to Federal agencies government-wide, which in 2001 replaced the FOIA Update. In addition to providing the guidance and information contained in its predecessor, the FOIA Post also contains all new FOIA decisions that are received by the OIP.
- The Federal Citizen Information Center ("FCIC"), which serves as a one-stop source for answers to questions about Federal agencies, programs and services. The FCIC can answer questions from the public related to all aspects of the Federal government, or can direct them to the appropriate government contact. Members of the public can obtain information from the FCIC through printed publications, by telephone, or through the FCIC's family of websites, which include: www.firstgov.gov, which pulls together more than 180 million Federal, state, and local government web pages, and allows citizens to get easy to understand information from the government; www.pueblo.gsa.gov, which allows individuals to access consumer-related information, such as product recalls, scams, and updates of consumer news from various Federal agencies; www.kids.gov, the official interagency children's portal to the U.S. government; and www.consumeraction.gov, a website where citizens can access the Consumer Action Handbook, which provides information on the best and most direct source for assistance with their consumer problems and questions, as well as offering tips on such topics as protecting against fraud and sample complaint letters.
- Publications such as: "Your Right to Federal Records",¹⁵⁹ a pamphlet produced jointly by the General Services Administration and the DOJ, and which provides an introduction to the FOIA as well as information on how to make use of the Act; "A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records",¹⁶⁰ published by the Committee on Government Reform of the House of Representatives. The report is available at the DOJ's FOIA website, and may be purchased through the Government Printing Office; and the "U.S. Government Manual",¹⁶¹ published by the National Archives and Records Administration, and which serves as the official handbook of the Federal government. It describes the programs of each Federal agency, lists the names of top personnel, the mailing addresses, and a general information telephone number.

¹⁵⁶ These reports are available at http://www.usdoj.gov/04foia/04_6.html

¹⁵⁷ <http://www.usdoj.gov/oip/foi-upd.htm>

¹⁵⁸ <http://www.usdoj.gov/oip/foiapost/2001foiapost1.htm>

¹⁵⁹ http://www.pueblo.gsa.gov/cic_text/fed_prog/foia/foia.htm

¹⁶⁰ <http://www.fas.org/sgp/foia/citizen.html>

¹⁶¹ <http://www.gpoaccess.gov/gmanual/>

- In addition to the foregoing, DOJ's OIP conducts numerous training courses and conferences for the purpose of facilitating and ensuring compliance with the FOIA. These include half-day introductory sessions for FOIA personnel as well as advanced programs for highly experienced FOIA personnel, individualized training seminars targeted at the needs of specific agencies, and presentations on government information policies and practices, to name just a few.

- As noted by the updated response of the United States, "Other statutes provide mechanisms for the public to access information and documents under the control of the federal government. For example, the Ethics in Government Act (5 U.S.C. app. Section 101 *et seq*) provides for the release of certain financial disclosure reports of public officials. Here too, the system is decentralized and usually the report can readily be obtained from the agency employing the official whose report is sought."¹⁶²

- The complete network made up of the websites of the federal agencies, which provide information on agency organization, operations and activities, and are accessible by any member of the public. In this regard, the response of the United States notes that "In addition, federal agencies make extensive use of websites on the Internet to provide substantive information, to inform the public about official activities and how to obtain additional documents."¹⁶³ Similarly, the Transparency International, USA's submission notes that "The increased use of the Internet by all branches of government, providing reports, statistics, proposed regulations, judicial decisions and other vital information, has also enabled the public to provide more meaningful input and to participate more actively."¹⁶⁴

- Finally, as also noted in the response of the United States, "Many government institutions are also required to publicly release numerous government reports and announcements regarding the inner workings of government."¹⁶⁵

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

The standards and measures related to access to information that the Committee has examined, based on the information available to it, are pertinent for promoting the purposes of the Convention.

Specifically, the Committee observes the existence of provisions and measures which, *inter alia*, regulate and facilitate access to information under the control of public institutions, as well as mechanisms to ensure compliance with the right to access information. In addition, various mechanisms have been established to provide training to officers and employees with functions related to access to information, as well as inform members of the public on the right to access information. Finally, there is a set of measures and mechanisms which ensures the accountability of officials with regard to the enforcement of the statutes and regulations related to access to information. This is visible, in part, in the various reports that must be submitted on an annual or periodic basis, pursuant to the corresponding provisions. As noted by Transparency International,

¹⁶² See the Updated Response, *supra* note 13, at p. 26.

¹⁶³ *Ibid.*

¹⁶⁴ See the document submitted by Transparency International, U.S.A. to the Committee of Experts, *supra* note 4, at p. 16.

¹⁶⁵ See the Updated Response, *supra* note 13, at p. 26.

USA, “supporting this legislative regime is a long history of judicial enforcement and doctrine that reinforces and protects the U.S. information culture described above.”¹⁶⁶

Thus, the Committee observes that the United States has a broad and pertinent set of provisions, measures and mechanisms which effectively ensure the right to access information held by the government. These provisions, measures and mechanisms also encourage and facilitate civil society and nongovernmental organizations in efforts aimed at the prevention of corruption.

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

Based on the information examined by the Committee, the United States, at the federal level, has results on standards and measures with respect to mechanisms for access to information, including the following:

- First, the Annual Freedom of Information Reports that have been prepared by the 90 Federal agencies (15 Departments and 75 other Federal agencies) since 1998, pursuant to the requirements set forth in Section 552(e) of the FOIA as well as in the “Guidelines for Agency Preparation and Submission of Annual FOIA Reports”, which is prepared by the DOJ. The Guidelines specify what information must be included in the Reports, including information such as the number of requests received, the median number of days before a request is responded to, the number of requests processed, the number of requests denied, appeals of decisions, and the result of appeals. In addition, pursuant to Section 552(e) of the FOIA, the Department of Justice has created a “single electronic access point” from which each of those reports can be found, at www.usdoj.gov/04foia/04_6.html.

In this regard, the Committee notes with satisfaction that as a whole, the reports, due to the annual preparation requirement, the level of detail with respect to the information that must be provided, and the uniform format that the reports must adhere to, constitute a very complete system of accountability system, which, according to Transparency International, USA, “allows citizens to review the responsiveness and adequacy of FOIA implementation year to year.”¹⁶⁷

The Committee further notes that the system has allowed: Congress to exercise the necessary amount of control of agency compliance with the provisions of the FOIA; the GAO, pursuant to requests from Congress, to evaluate and submit successive reports on progress achieved in implementing the 1996 Electronic FOIA Amendments¹⁶⁸; and federal agencies to adopt corrective measures with respect to those areas in which the need for improvement has been detected.

For instance, according to the latest such GAO report,¹⁶⁹ “with regard to the current status of FOIA implementation, the 25 agencies under review reported receiving and processing about 2.3 million requests; 88 percent of the requests received were granted in full. Government wide, these agencies reported spending approximately \$283 million on FOIA activities and collecting about \$6 million in

¹⁶⁶ See document submitted by Transparency International, U.S.A. to the Committee of Experts, *supra* note 4, at p. 16.

¹⁶⁷ *Ibid.*

¹⁶⁸ *Office of Management and Budget, Information Management: Progress in Implementing the 1996 Freedom of Information Act Amendments*, GAO-01-378 (Washington D.C., March 16, 2001), and *Information Management Update on Implementation of the 1996 Electronic Freedom of Information Act Amendments*, GAO-02-493 (Washington D.C., August 30, 2002 and *Update on Freedom of Information Act Implementation*, GAO-04-257 (Washington, D.C., February, 2004).

¹⁶⁹ *Update on Freedom of Information Act Implementation*, GAO-04-257 (Washington, D.C., February, 2004).

fees. These agencies also reported dedicating about 4,900 full-time-equivalent personnel to the handling of FOIA requests”. In addition, with respect to the data on trends from 2000 to 2002, the report notes that “agencies reported receiving and processing more requests Governmentwide”; “agencies reported a decrease in the backlog of pending requests remaining at the end of each year”; and “the number of FOIA requests denied Governmentwide dropped dramatically between 2000 and 2001, and remained low in 2002”.

With respect to the above results, the Committee will formulate a recommendation. (See the recommendation in Part B, Chapter III, Section 4.2 of this report).

- Second, the results reflected in the Annual Reports are submitted by the DOJ to Congress, pursuant to Section 552(e)(5) of the FOIA, regarding Freedom of Information Act litigation cases as well as a description of DOJ’s efforts to encourage agency compliance with the FOIA during each calendar year.

With respect to the foregoing, and by way of example, the last of these reports presented notes,¹⁷⁰ *inter alia*, the following results corresponding to the year 2004:

- A complete list of the FOIA cases received;
- A complete list of the FOIA cases in which a decision was rendered;
- 2004 Addendum to the Annual Report, which lists the FOIA cases in which decisions were rendered in prior years; and
- A detailed description, including statistical data, of the efforts undertaken by the DOJ to encourage agency compliance with FOIA requirements in the following substantive areas: Counseling and Consultations; Policy Guidance; FOIA Post; Additional FOIA Reference Materials; Briefings and Inter-agency Coordination Activities; and Congressional and Public Inquiries.

- Third, the results demonstrated by the vast amount of information that is available at the federal agency websites, and by the number of individuals that have access to these websites. The United States response notes by way of example, that there were over a million monthly visitors to the DOJ’s website as of January, 2005.¹⁷¹

- Fourth, the results reflected by the various reports and publications that Federal agencies must submit or issue. In this regard, the response of the United States notes that “A few examples include the daily Congressional Record transcripts of all Congressional proceedings and introduced bills, the Commerce Business Daily Announcements of government procurement opportunities, and semi-annual reports describing the work of each Inspector General.”¹⁷²

¹⁷⁰ See the Department of Justice’s “2004 Litigation and Compliance Report”, available at: www.usdoj.gov/04foia/04introduction.htm

¹⁷¹ See the Updated Response, *supra* note 13, at p. 26.

¹⁷² *Ibid.*

- Lastly, as an example of the results of access to specific types of records, since 2001, the National Archives and Records Administration has publicly released over 880,000 pages of presidential records (as of April 2005); the incumbent and former Presidents have asserted constitutionally based privileges over a total of only 64 pages (of Reagan Presidential records).

4.3. MECHANISMS FOR CONSULTATION

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

At the Federal level, the United States has a set of provisions and measures related to the mechanisms under review, among which the following should be noted:

- The Administrative Procedure Act,¹⁷³ 5 U.S.C. 551, which according to the response of the United States, is one of the principal mechanisms for seeking consultation in the executive branch of government. In pertinent part, the Act requires agencies to: publish a notice of proposed rulemaking in the Federal Register (Subsection 553(b)); allow interested members of the public to participate in rulemaking, through the submission of written data, views, or arguments (Subsection 553(c)); and publish rules at least 30 days prior to their effective date, with limited exceptions¹⁷⁴ (Subsection 553(d)). Additionally, subsection 553(e) requires that agencies give interested members of the public the right to petition for the issuance, amendment, or repeal of a rule.

- The Federal Advisory Committee Act (“FACA”),¹⁷⁵ 5 U.S.C. App. 1, *et seq*, as amended by the Government in the Sunshine Act,¹⁷⁶ 5 U.S.C. 552(b). Section 10 of the Federal Advisory Committee Act requires that meetings of advisory committees be open to the public (subsection 10(a)(1)) and that interested persons be permitted to attend, appear before, or file statements with the advisory committee (subsection 10(a)(3)). In reference to advisory committees, the response of the United States notes that “These public meetings provide civil society and non-governmental organizations an important mechanism to consult with both the agency personnel and the members of the public advisory committees on matters within their sphere of competence, including, of course, matters dealing with corruption prevention.”¹⁷⁷

- The Inspector General hotlines referred to above in Sections 1.1., 1.2., and 1.3., and cited in the response of the United States as another mechanism which encourages direct input by civil society.¹⁷⁸ As noted earlier in this report, these hotlines are maintained by each of the 57 Inspector General Offices, and allow for the confidential reporting of allegations of fraud, waste, abuse, mismanagement of programs or operations, or violations of law, rules or regulations, by employees or program participants.

¹⁷³ See 5 U.S.C. 551, *et seq*, at

http://straylight.law.cornell.edu/uscode/html/uscode05/usc_sup_01_5_10_I_30_5_40_II.html

¹⁷⁴ Subsection 553(d) of the Administrative Procedure Act allows the following exceptions to the 30 days notice requirement: (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; and (3) as otherwise provided by the agency for good cause found and published with the rule.

¹⁷⁵ See 5 U.S.C. App. 1 *et seq*, at

http://straylight.law.cornell.edu/uscode/html/uscode05a/usc_sup_05_5_10_sq1.html

¹⁷⁶ See 5 U.S.C. 552(b), at http://straylight.law.cornell.edu/uscode/html/uscode05/usc_sec_05_00000552---b000-.html

¹⁷⁷ See the Response of the United States; *supra* note 13, at p. 27.

¹⁷⁸ *Ibid*.

- Other complementary measures which assist in disseminating knowledge of the consultation mechanisms and which also facilitate the use of these mechanisms by members of the public through the use of the internet, such as: www.regulations.gov, a website designed to facilitate public participation in Federal rulemaking and which allows members of the public to find, review, and submit comments on Federal documents, including proposed rules and amendments, published for comment in the Federal Register pursuant to the Administrative Procedure Act; and www.firstgov.gov, which, as noted above in Section 4.2.1., pulls together more than 180 million Federal, state, and local government web pages, and allows citizens to get easy to understand information from the government.

- Programs which provide training on the operation of the mechanisms for consultation, such as the Federal Register Public Workshops.¹⁷⁹ These workshops are conducted by staff members of the Office of Federal Register, National Archives and Records Administration, and provide, among other aspects, a discussion of the regulatory process, with a focus on participation and explanations on the use of the Federal Register and the Code of Federal Regulations.

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

The standards and measures in relation to the mechanisms for consultation that the Committee has examined, based on the information made available to it, are pertinent for promoting the purposes of the Convention.

In this regard, the Committee observes that the provisions and measures described in the preceding section, *inter alia*, contribute to promoting civil society and non-governmental organization participation in efforts intended to prevent corruption and facilitate the purposes of the Convention.

Notwithstanding, the Committee notes the process of periodic evaluation performed by the Advisory Committees, which is demonstrated, *inter alia*, by the 2002¹⁸⁰ GAO report mentioned by Transparency International, USA, and an April 1, 2004¹⁸¹ GAO report which cite the importance of these reports in public policy making in the United States. These Reports also formulate specific recommendations to continue perfecting this important mechanism for consultation. In this regard, the Committee notes the importance of the periodic evaluation of this type of mechanism as well as the adoption of the pertinent measures to ensure fulfillment of the objectives of the Advisory Committees, and thereby contribute to the fulfillment of the purposes of the Convention. Taking this into account, the Committee will formulate a recommendation. (See the recommendation in Part B, Chapter III, Section 4.3. of this report)

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

The information examined by the Committee indicates that at the Federal level, the United States has results with respect to the mechanisms under review.

In this regard, the response of the United States notes that “These mechanisms for consultation have resulted in well established practices through which civil society as individuals and non-governmental

¹⁷⁹ See http://www.archives.gov/federal_register/about/workshop.html

¹⁸⁰ See the document submitted by Transparency International, USA, *supra* note 4, at p. 17, and the GAO Report identified therein as 02-876.

¹⁸¹ See the GAO Report on Federal Advisory Committees, identified as GAO-04-328.

organizations have made their views known.”¹⁸² The United States’ response also notes the following specific results related to the mechanisms for consultation:

- With respect to the existing public notice and commentary procedures related to rulemaking provided for in the Administrative Procedure Act, the response notes by way of example, that when the Standards of Ethical Conduct for Employees of the Executive Branch were proposed in 1991, over 1,000 comments were received and responded to.¹⁸³
- With respect to the procedure under the Federal Advisory Committee Act, the response notes that in 2004, there were 994 public advisory committees functioning under the Act, with over 65,000 public members, most of who served without compensation.¹⁸⁴

With respect to the Inspectors General hotlines, the Committee notes that based on information available on the Federal Inspectors General website (IGNet), all of the 57 Inspector General Offices have established such a hotline. Furthermore, the Committee notes that knowledge of these hotlines is disseminated via the internet as well as by other means, which facilitates the effective use of this mechanism by members of the public.

Taking the foregoing into account, the Committee encourages the United States to continue its efforts with respect to the systematization of information on the results of the mechanisms under review. In this regard, the Committee will formulate a recommendation. (See general recommendations 7.2 and 7.3 in Chapter III of this report.)

4.4. MECHANISMS TO ENCOURAGE PARTICIPATION IN PUBLIC ADMINISTRATION

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

At the Federal level, the United States has a set of provisions and measures related to the mechanisms under review, among which the following should be noted:

- Measures and provisions related to the mechanisms for access to information and consultation, as noted in the preceding sections of this report, which are also aimed at encouraging civil society and non-governmental organization participation in public administration. In this regard, the response of the United States notes that “in addition to providing access to information, and opportunities for consultation, the mechanisms mentioned above serve to encourage active participation by civil society and non-governmental organizations in the process of public policy making and decision-making. This occurs not just in the executive branch, where information about proposed policies and matters on which agencies are contemplating decisions alerts the public as to where it should make its positions known, but also in the legislative branch where lobbying and access to the legislative process allow civil society to participate in policy making and decision making, both generally and in particular on anti-corruption legislation.”¹⁸⁵

¹⁸² See the Updated Response, *supra* note 4, at p. 27.

¹⁸³ *Ibid.*

¹⁸⁴ *Ibid.*

¹⁸⁵ *Ibid.*, at p. 28.

- Measures and provisions related to the *qui tam* action,¹⁸⁶ which are highlighted both by the United States in its response as well as by Transparency International, USA in its submission. In particular, the United States notes that these actions “permit a private citizen to file a complaint under the False Claims Act, alleging corruption to obtain a public contract. If successful, the citizen may recover a percentage of the proceeds of the settlement or judgment.”¹⁸⁷ With respect to the impact of *qui tam* actions, Transparency International, USA explains that “these civil fraud actions are typically first brought by a private relator (the “whistleblower”) and then, if appropriate, joined by the Justice Department. Because the relator may recover a substantial bounty, and any unsuccessful defendant can also be required to pay the relator’s attorney fees, a sizeable community of private attorneys has emerged to handle these cases.”¹⁸⁸

- The filing of amicus curiae briefs in judicial proceedings, as well as public appearances before Congress in connection with hearings and markups, as cited in the response of the United States as additional participation mechanisms.¹⁸⁹ Amicus curiae briefs (Latin for “friend of the court”), are legal documents presented to a court by an individual or group who is not an actual party to an ongoing case. These briefs are often presented by someone who feels that a point of law or fact may have been overlooked by the court, or by someone with an interest in or who will be affected by the outcome of the case. Also, these briefs may be submitted for the purpose of providing an academic or historical perspective on an issue in an ongoing case.

- The procedures whereby disappointed bidders can challenge Federal contract awards under the Federal Acquisition Regulations.¹⁹⁰ In this regard, Transparency International, USA’s submission notes that “the bid protest (or “challenge” procedure, as it is known in many countries) is in practice a robust means of ensuring careful stewardship of public resources expended by [the] United States through the procurement process. Under current law, an “interested party” (generally a disappointed bidder) may bring a bid protest in one of three different forums: the U.S. Court of Federal Claims, the Government Accountability Office, or the contracting agency (under an “agency-level” bid protest).”¹⁹¹

4.4.2. Adequacy of the legal framework and/or other provisions

The standards and measures in relation to the mechanisms to encourage participation in public administration that the Committee has examined, based on the information made available to it, are pertinent for the promotion of the purposes of the Convention.

Specifically, the Committee notes that as demonstrated by the available information, including the response of the United States and the document submitted by Transparency International, USA, these standards and measures, as a whole, effectively and efficiently encourage the participation of civil society and non-governmental organizations in public administration in the United States.

¹⁸⁶ 31 U.S.C. Section 3730, available at

http://www4.law.cornell.edu/uscode/html/uscode31/usc_sec_31_00003730----000-.html

¹⁸⁷ See the Updated Response, *supra* note 13, at p. 28.

¹⁸⁸ See the document submitted by Transparency International, U.S.A., *supra* note 4, at p. 8.

¹⁸⁹ See the Updated Response, *supra* note 13, at p. 28.

¹⁹⁰ See the Federal Acquisition Regulation homepage, at <http://www.arnet.gov/far/>

¹⁹¹ See the document submitted by Transparency International, U.S.A., *supra* note 4, at p. 8.

Taking note of the foregoing, the Committee encourages the United States to continue strengthening the aforementioned mechanisms to encourage civil society and nongovernmental organization participation in public administration, including a periodic evaluation of both the strengths of the mechanisms as well as areas where improvement is needed. This evaluation should also include the adoption of such measures as are considered necessary. Taking the foregoing into account, the Committee will formulate a recommendation. (See the recommendation in Part B, Chapter III, Section 4.4. of this report)

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

With respect to the results in this field, the response of the United States expresses that “in the ways described above, the standard open-government practices of the executive and legislative branches have resulted in countless instances of the influence of civil society and non-governmental organizations upon the making of policy and decisions generally, and in the anti-corruption area in particular.”¹⁹²

Transparency International, USA, in its submission to the Committee of Experts, highlights the following pertinent results:

- With respect to *qui tam* actions, it notes that “the damage awards can also be severe: defendant contractors can be forced to pay treble damages *plus* penalties of up to \$11,000 per false “claim” (i.e., invoice). Through these types of actions, private relators and the Civil Division of the U.S. Justice Department have recovered billions of dollars for fraud against the government. The threat of these lawsuits serves as a worthwhile deterrent against fraud by U.S. contractors.”¹⁹³
- With respect to bid protests, it notes that protesting to the Government Accountability Office is by far the most popular of the three methods for challenging bids mentioned in section 4.4.1 above. In this regard, “the GAO hears and disposes of approximately 1200 to 1300 bid protests per year. *See, e.g.,* Report of GAO to Congress (Jan. 30, 2004), *available at* <http://www/gao/gov/special.pubs/bidpro03.pdf>. The GAO also provides an on-line registry service that will automatically email a synopsis of every GAO report and bid protest decision to any individual requesting it on a daily basis.”¹⁹⁴

Taking the foregoing into account, the Committee encourages the United States to continue its efforts with respect to the systematization of information on the results of the mechanisms under review. In this regard, the Committee will formulate a recommendation. (See general recommendations 7.2 and 7.3 in Chapter III of this report).

¹⁹² See the Updated Response, *supra* note 13, at p. 28.

¹⁹³ See the document submitted by Transparency International, U.S.A., *supra* note 4, at p. 8.

¹⁹⁴ *Ibid.*

4.5. MECHANISMS FOR PARTICIPATION IN THE FOLLOW-UP OF PUBLIC ADMINISTRATION

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

At the Federal level, the United States has a set of provisions and measures related to the mechanisms under review, among which the following should be noted:

- Provisions and measures related to the mechanisms for access to information, which, as noted by the United States in its response, allow civil society and non-governmental organizations to carry out “watchdog” functions. In this regard, the United States indicates that “access to information under the Freedom of Information Act and the other mechanisms cited above provides civil society and non-governmental organizations with data and documents about the manner in which executive agencies are implementing the laws and regulations designed to prevent, detect, punish and eradicate acts of public corruption. With that information, they perform watchdog functions, expressing satisfaction or dissatisfaction with the conduct of public agencies.”¹⁹⁵

- Provisions and measures noted by the United States and related to the possibility that exists for civil society and non-governmental organizations to “provide views in testimony before legislative bodies and public comment meetings of executive branch agencies.”¹⁹⁶

- Provisions and measures which allow civil society and non-governmental organizations to express their views “in litigation that can bring injunctive relief and require the agency to cease and desist from activities found to be improper or illegal.”¹⁹⁷

- The telephone hotline process, which, in addition to the purposes stated in the preceding sections of this report, also allows the follow-up of public administration by civil society and non-governmental organizations, due to the fact that, as noted by the United States , “individuals who have referred an allegation can inquire about the progress of the case.”¹⁹⁸

- The standards and measures provided for in the Whistleblower Protection Act (5 U.S.C. 2303), which, as noted in the response of the United States, allow for the follow-up of public administration by civil society and non-governmental organizations. In this regard, the United States notes that “legislation not only protects federal employees who have alleged wrongdoing in their agencies, but also brings the allegations to the attention of civil society and non-governmental organizations with a particular interest in the subject matter of the allegations.”¹⁹⁹

With reference to the provisions and measures in relation to the mechanisms under review, the United States points out that “there is a long history in the United States of the ability of the American public to question the effectiveness of public administration, individually, through the press, and through the legislative and electoral process.”²⁰⁰

¹⁹⁵ See the Updated Response, *supra* note 13, at p. 28.

¹⁹⁶ *Ibid.*, at p. 29

¹⁹⁷ *Ibid.*

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ibid.*

²⁰⁰ *Ibid.*

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

The standards and measures in relation to the participation mechanisms under review examined by the Committee, based on the information made available to it, are pertinent for promoting the purposes of the Convention.

Specifically, the Committee observes that, as demonstrated by the information at its disposal, these standards and measures, as a whole, allow civil society and non-governmental organizations to participate effectively in the follow-up of public administration in the United States.

Taking the foregoing into account, the Committee encourages the United States to continue strengthening the aforementioned mechanisms for participation in the follow-up of public administration, including a periodic evaluation of both the strengths of the mechanisms and of areas where improvement is needed. This evaluation should also include the adoption of such measures as are considered necessary. Taking the foregoing into account, the Committee will formulate a recommendation. (See the recommendation in Part B, Chapter III, Section 4.5. of this report).

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

With respect to results in this field, the response of the United States notes that one of the major results of the participation of civil society and non-governmental organizations in monitoring of public administration has been the recognition that such participation is expected as a norm. Such participation is made effective through broad access to government information. Even in special circumstances, like criminal investigations, national defense and public health, when the release of information to the public would damage a governmental mission, civil society and non-governmental organizations, through the press and through their legislative representatives, are able to monitor public administration. The cumulative impact of all the statutes and mechanisms cited is the assurance that this monitoring and follow-up can occur.²⁰¹

The results in this field also include those discussed in the preceding sections of this report with respect to the Inspector General hotlines.

Taking the foregoing into account, the Committee welcomes the United States efforts with respect to the systematization of information on the results of the mechanisms under review. In this regard, the Committee will formulate a recommendation. (See general recommendations 7.2 and 7.3 in Chapter III of this report).

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

5.1. MUTUAL ASSISTANCE

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

At the Federal level, the United States has a set of provisions and other measures related to this area, among which the following should be noted:

²⁰¹ Ibid.

- U.S. domestic law, which, as noted by the country under review, “provides for the execution of foreign requests for mutual legal assistance in criminal matters, and the United States is also able to request assistance from other countries. 28 U.S.C. Section 1782 gives a U.S. district judge the authority, pursuant to a letter rogatory or letter of request from a foreign country, to order a person in his district to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation.”²⁰² With regard to the scope of this mechanism, the response of the United States adds that “The provision is broadly drafted, and the United States would be able to offer assistance in response to an appropriate request, in most instances, provided that such assistance would not be contrary to fundamental legal principles or any legally applicable privilege.”²⁰³

- The bilateral Mutual Legal Assistance Treaties (“MLAT’s”) to which the United States has subscribed with 50 countries and which are in force worldwide. In its response, the country under review points out that this includes “MLAT’s in force with the following OAS countries: Belize, Canada, Bahamas, Mexico, Argentina, Uruguay, Jamaica, Panama, Antigua and Barbuda, St. Vincent and the Grenadines, Grenada, Trinidad and Tobago, St. Lucia, St. Christopher and Nevis, Barbados, Dominica, and Brazil.”²⁰⁴ The response goes on to note that “the United States has negotiated bilateral MLAT’s that have not yet entered into force with the following OAS countries: Colombia, and Venezuela.”²⁰⁵

- The Inter-American Convention on Mutual Assistance in Criminal Matters, which was ratified by and is in force in the United States, which serves as the legal basis for providing mutual legal assistance, particularly in those cases in which there is no existing bilateral mutual legal assistance treaty.²⁰⁶

- The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions²⁰⁷ and the Council of Europe Criminal Law Convention against Corruption,²⁰⁸ which have been signed and ratified by the United States and which, as stated in its response, “contain provisions on mutual legal assistance that may apply to some OAS States Parties.”²⁰⁹

- As noted by the response of the United States, the more than 60 case-specific agreements providing for legal assistance on corruption that the United States has concluded over the past thirty years, many of which have been “superseded by the bilateral MLAT’s and other treaties described above.”²¹⁰

- General agreements that law enforcement and other United States’ agencies have entered into, and which, according to the response, “in most instances, cover cases involving corruption.”²¹¹ The response highlights the following agreements:

²⁰² Ibid.

²⁰³ Ibid., at p. 30.

²⁰⁴ Ibid.

²⁰⁵ Ibid.

²⁰⁶ In addition to the United States, as of the date of this report, the following countries have ratified this Convention: Antigua and Barbuda, Canada, Chile, Colombia, Dominica, Ecuador, El Salvador, Grenada, Guatemala, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, and Venezuela.

²⁰⁷ See www.oecd.org

²⁰⁸ See www.coe.int

²⁰⁹ See the Updated Response, *supra* note 13, at p. 30.

²¹⁰ Ibid.

- The Customs Mutual Assistance Agreements (“CMAA’s”) that the United States Customs Service has signed with 51 customs administrations, which allow the Customs Service to assist another party in a wide variety of cases.
- Other similarly broad agreements signed by law enforcement agencies, including the FBI and the Drug Enforcement Administration (“DEA”).
- The general Memoranda of Understanding entered into by the Securities and Exchange Commission (“SEC”) with other countries on mutual assistance and exchange of information.

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

The provisions related to mutual assistance that have been examined by the Committee, based on the information made available to it, are pertinent for promoting the purposes of the Convention.

In this regard, the Transparency International, U.S.A. submission points out that “The United States is to be commended not only for its ratification of the Inter-American Convention on Mutual Legal Assistance in Criminal Matters and numerous bilateral treaties to facilitate mutual assistance, but also for its efforts to promote improved mutual legal assistance mechanisms in the Summit of the Americas, Organization of American States, and other international fora. Such treaties and mechanisms are the only way to speed what is, without special arrangements, an incredibly slow and burdensome process.”²¹²

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

With respect to the results of the provisions related to mutual assistance in the United States, the following should be noted:

- The information provided in the response of the country under review, namely that: “Since the United States ratified the Convention in September, 2000, the United States has received only one request (and a supplemental request in the same case) for mutual assistance under the Convention. In that case, it was determined that the particular evidence sought in the first instance could not be disclosed.”²¹³ The response also points out that “although the United States has received few requests under the Convention, it should be noted that the United States is very actively engaged in requesting and providing mutual assistance in corruption investigations under bilateral mutual assistance treaties and via letters rogatory.”²¹⁴
- The signing of bilateral MLAT’s with 50 countries that are in force, 17 of which are with Member States of the OAS. MLAT’s have also been negotiated with two additional OAS Member States, but they have not yet entered into force.
- The United States’ ratification of another Inter-American treaty (Inter-American Convention on Mutual Assistance in Criminal Matters) and two other international Conventions (the OECD and the Council of Europe conventions), the purposes of which coincide with those of Inter-

²¹¹ Ibid.

²¹² See the document submitted by Transparency International, U.S.A., *supra* note 4, at p. 18.

²¹³ See the Response of the United States to the Questionnaire, *supra* note 13, at p. 30.

²¹⁴ Ibid.

American Convention against Corruption and facilitate mutual assistance between OAS Member States in cases related to acts of corruption.

- The signing of more than 60 agreements related to specific cases in the last 30 years, some of which remain in force, and the remainder of which have been superseded by the bilateral MLAT's and other treaties.
- The signing of general agreements by law enforcement and other United States' agencies, such as the 51 Customs Mutual Assistance Manuals signed by the U.S. Customs Service.

5.2. MUTUAL TECHNICAL COOPERATION

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

At the Federal level, the United States has a set of provisions and other measures related to this area, among which the following should be noted:

- The technical cooperation programs which, since 2002, have been carried out by the Department of Justice, through its Criminal Division's Office of Overseas Prosecutorial Development, Assistance and Training ("OPDAT"), which are funded by the State Department's Bureau for International Narcotics and Law Enforcement Affairs ("INL"). These programs have provided technical assistance and training with respect to the Inter-American Convention against Corruption, as described in detail by the United States in its response,²¹⁵ and have assisted government institutions and employees in countries such as Colombia, Trinidad and Tobago, Guyana, Dominican Republic, Mexico, Panama, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Ecuador, Uruguay, Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, Saint Vincent and the Grenadines, and Suriname.

- The technical cooperation programs which, since 2002, have been carried out by the DOJ's International Criminal Investigative Training Assistance Program ("ICITAP"), which are funded by the State Department and the U.S. Agency for International Development ("USAID"). These programs have supported law enforcement developments as part of the larger United States Government program to improve the administration of justice in the recipient countries, including the development of capabilities and mechanisms to combat corruption in the government and in law enforcement. These programs are discussed in detail in the response of the United States,²¹⁶ and have assisted government employees and institutions, *inter alia*, in countries such as Bolivia, El Salvador, Nicaragua, Guatemala, and Honduras.

- The technical cooperation agreements signed by the USAID, which assist national and local governments to improve the rule of law and justice systems, increase citizen participation, and strengthen public sector capacity, and are discussed in greater detail by the country under review in its response.²¹⁷

²¹⁵ Ibid., at pp. 31 to 33.

²¹⁶ Ibid., at p. 33.

²¹⁷ Ibid.

- The technical cooperation agreements signed by OGE with entities in certain States Parties, which allow exchange of experiences, information and best practices relevant to specific corruption prevention measures, such as the agreement between the Anti-Corruption Office of Argentina's Ministry of Justice and Human Rights, and the Memorandum of Understanding creating the Network of Government Institutions of Public Ethics in the Americas, which are discussed in greater detail in the United States' response.²¹⁸

- The United States' sponsorship of various initiatives led by international agencies and organizations to foster implementation of the Convention. This includes initiatives such as those developed by the General Secretariat of the OAS as part of its legal cooperation programs in this area, including those with respect to supporting the drafting of criminal legislation and those related to the preventive measures in the Convention.

- The technical cooperation programs carried out by the United States "that are not specifically aimed at implementing the Convention, but which relate to aspects referred to in the Convention." This includes various regional initiatives funded by the USAID, such as those related to the support of the implementation of Integrated Financial Management Systems ("IFMS"), judicial anti-corruption efforts, Offices of the Ombudsman, civil society oversight efforts and coordination through the Donor Consultative Group ("DCG").²¹⁹

- The technical cooperation programs carried out by the United States with the World Bank, the OECD, the Council of Europe, the United Nations, the Egmont Group, the Lyon-Roma Group and other entities "on specific programs relating to anti-corruption diagnostics, mutual multilateral evaluation of anti-corruption efforts, developing judicial integrity, developing best practices in various anti-corruption areas, and implementing multilateral anti-corruption commitments similar to those found in the Convention."²²⁰

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

The provisions and other measures related to mutual technical cooperation that the Committee has examined, based on the information made available to it, are pertinent for the promotion of the purposes of the Convention.

The Committee highlights the importance and usefulness of the technical cooperation programs promoted by the United States in order to support the effective implementation of the Convention and of measures intended to contribute to the Convention's objectives. In this regard, the Committee observes that the Transparency International, U.S.A. submission states that "On the technical cooperation side, the U.S. has been a world leader in promoting participation in multilateral and bilateral efforts to improve the ability of law enforcement and prosecutors to reach across international borders." The Transparency International, U.S.A. submission goes on to discuss several technical cooperation initiatives promoted by the United States, and states that "This sustained dedication to international cooperation is among the most positive aspects of U.S. efforts in the anti-corruption arena, particularly as corruption becomes ever more a transnational crime."²²¹

²¹⁸ Ibid., at p. 34.

²¹⁹ Ibid., at p. 35.

²²⁰ Ibid., at p. 35.

²²¹ See the document submitted by Transparency International, U.S.A., *supra* note 4, at p. 35

The Committee commends the United States for its continued efforts to support implementation of the Convention, as well the numerous initiatives it has undertaken in order to promote or strengthen international cooperation against corruption, the result of which has been to contribute to fulfilling the objectives of the Convention. Taking the foregoing into account, the Committee encourages the United States to continue to consider the offering of technical cooperation for these purposes, and to support mutual technical cooperation initiatives, through the exchange of information within the framework of the networks of competent government authorities, in areas related to the Convention. The Committee will formulate a recommendation in this regard. (See the recommendation in Part B, Chapter III, Section 5 (a) and 5 (b). of this report).

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

The response of the United States to the questionnaire lists numerous examples of the results of the provisions and other measures adopted by the United States in the area of mutual technical cooperation,²²² such as the following:

- The results of the programs carried out by OPDAT and funded by the State Department's INL, as well as the anti-corruption assessments conducted in Trinidad and Tobago and Guyana; the two anti-corruption programs for approximately 30 law enforcement personnel each in the Dominican Republic; the six anti-corruption programs to provide training for more than 130 Mexican judges and prosecutors, developed in coordination with the Narcotics Affairs Section ("NAS") in the U.S. Embassy in Mexico City and the Mexican Attorney General's Office ("PGR"); the regional anti-corruption program conducted in Panama for four representatives each from seven Central American countries; the programs conducted in Ecuador and Uruguay focused on the techniques and tools needed to investigate and prosecute public corruption; a Caribbean-regional workshop conducted on investigating and prosecuting corruption and in which representatives from 12 countries of that sub-region were participants; and the establishment of the first Resident Legal Advisor dedicated to anti-corruption issues in Managua, Nicaragua.
- The results of the programs developed by ICITAP and funded by the State Department's INL, such as those resulting from the technical assistance provided to Bolivia for the rewriting of the Police Organic Law, in order to incorporate certain improvements thereto, such as: increased transparency and accountability in the management of resources; and a more effective disciplinary code. In addition, assistance was provided to Nicaragua and Guatemala in the development of anti-corruption task forces to investigate major cases of public corruption and organized crime; and to Honduras in the development, organization, and implementation of an Internal Affairs Unit.
- The results of the programs developed by the USAID, such as those resulting from technical assistance rendered to implement "new criminal procedural codes in other States Parties that will improve the overall effectiveness and transparency of their justice systems and reduce impunity"; to the "audit agencies to strengthen their capacities to better detect fraud and misuse of public resources"; and to "civil society organizations in those countries to educate citizens, to advocate for more accountable governments and greater access to information and to monitor government activity and expenditures." Similarly, these results also include the Integrated Financial Management Systems created or consolidated in different Member States with the

²²² See the Updated Response, *supra* note 13, at pp. 31 to 35.

help of USAID; those which have resulted from the coordination between the Donor Consultative Group (“DCG”) and the support given to judicial anti-corruption efforts and the Offices of the Ombudsman.

- The results of the programs developed by the OGE, such as the assistance provided to Argentina’s Anticorruption Office in the form of videoconferences, and assistance in the creation of the Network of Government Institutions of Public Ethics in the Americas.
- The results of the technical cooperation projects, financed with United States cooperation resources, and implemented by international organizations, such as those executed by the General Secretariat of the OAS as part of its legal cooperation programs. These programs were also partly financed by the International Development Bank, and supported 22 OAS Member States in adapting their criminal legislation to the provisions of the Convention. Programs were also carried out in five Central American countries, in order to help them, through the development of model laws, to implement five of the preventive measures provided for in the Convention.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

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

In its updated response, the United States notes that it has designated the U.S. Permanent Mission to the Organization of American States, as the Central Authority for technical cooperation matters as provided for in the Convention, and also provides the Mission’s contact information.

Similarly, the updated response notes that the United States has designated the Office of International Affairs, within the Department of Justice’s Criminal Division, as the Central Authority for mutual assistance matters as provided for in the Convention, and also provides this Office’s contact information. The OIA coordinates the Justice Department’s international criminal law enforcement activity in the areas of extradition, legal assistance, and treaty negotiation. It provides advice and assistance on mutual legal assistance to federal, state, and local prosecutors in the United States, and works closely with foreign authorities to help them obtain evidence in the United States for use in criminal proceedings abroad.²²³

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

The provisions and other measures adopted by the United States in relation to Central Authorities that the Committee has examined, based on the information made available to it, are pertinent for promoting the purposes of the Convention.

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

The Committee has already discussed the results with respect to the central authorities for mutual legal assistance in Section 5.1.3. of this report, in connection with mutual legal assistance.

²²³ Ibid., at p. 37.

III. CONCLUSIONS AND RECOMMENDATIONS

Based on the review conducted in Chapter II of this report, the Committee offers the following conclusions and makes the following recommendations regarding the implementation, in the United States, of the provisions contained in Articles III, (1) and (2), (standards of conduct and mechanisms to enforce them), Article III (4) (systems for registering income, assets and liabilities), Article III (9) (oversight bodies, exclusively in relation to their performance of functions in relation to compliance with the provisions provided for in paragraphs 1, 2, 4 and 11 of Article III of the Convention), Article III (11) (mechanisms for encouraging the participation of civil society and nongovernmental organizations in efforts to prevent corruption), Article XIV (assistance and cooperation), and Article XVIII (central authorities) of the Convention, all of which were selected for review within the framework of the first round.

A. COOPERATION AND COORDINATION BETWEEN THE FEDERAL GOVERNMENT AND STATE AND LOCAL AUTHORITIES

Based on the comments made in Part A of Chapter II of this report, the Committee encourages the United States to continue consolidating and strengthening the cooperation and coordination between the Federal Government and State and local governments in those areas referred to in the Convention.

B. CONCLUSIONS AND RECOMMENDATIONS AT THE FEDERAL LEVEL

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

1.1. Standards of conduct intended to prevent conflicts of interest and enforcement mechanisms

The United States has considered and adopted measures intended to create, maintain, and strengthen standards of conduct to prevent conflicts of interest and mechanisms to enforce compliance, as indicated in Part B, Chapter II, Section 1.1. of this report.

In view of the comments made in that section, the Committee suggests that the United States consider the following recommendation:

Continue to improve the provisions, measures and mechanisms for enforcement relating to conflicts of interest.

To comply with this recommendation, the United States may wish to take the following measures into account:

- a) Continue the process of periodic review and appropriate updating of the provisions, measures and mechanisms for enforcement related to conflicts of interest. (See Part B, Chapter II, Section 1.1.2. of this report)
- b) Continue to carry out periodic evaluations, by means such as the surveys conducted by OGE, or by other means that are considered appropriate, with respect to the effectiveness of the provisions, measures and enforcement mechanisms related to conflicts of interest; and continue to promote or adopt appropriate decisions based on the results of evaluations designed to improve those provisions, measures and mechanisms. (See Part B, Chapter II, Section 1.1.3 of this report).

1.2. Standards of conduct and mechanisms to ensure the proper conservation and use of resources entrusted to government officials in the performance of their functions and enforcement mechanisms

The United States has considered and adopted measures aimed at creating, maintaining, and strengthening standards of conduct geared to ensuring the proper conservation and use of resources entrusted to public officials in the performance of their functions, as stated in Part B, Chapter II, Section 1.2. of this report.

In view of the comments made in that section, the Committee suggests that the United States consider the following recommendation:

Continue to strengthen the implementation of the standards of conduct in order to ensure the conservation and proper use of the resources entrusted to public officials in the performance of their functions.

1.3. Standards of conduct and mechanisms concerning measures and systems requiring officers and employees to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware

The United States has considered and adopted measures intended to create, maintain, and strengthen standards of conduct and mechanisms relating to measures and systems that require government officials to report acts of corruption in the performance of public functions of which they are aware to the appropriate authorities, as discussed in Part B, Chapter II, Section 1.3 of this report.

In view of the comments made in that section, the Committee suggests that the United States consider the following recommendation:

Continue to strengthen the mechanisms related to the existing 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.

To comply with this recommendation, the United States may wish to take the following measure into account:

- a) Continue to implement measures that allow timely consideration by the U.S. Special Counsel's Office of those cases related to protecting employees, ex-employees, and those seeking Federal employment ("whistleblowers), as provided for by law, and thus, *inter alia*, facilitate compliance with the requirement that officers and employees report acts of corruption in the performance of public functions of which they are aware to the appropriate authorities. (See Part B, Chapter II, Section 1.3.3 of this report).

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

The United States has considered and adopted measures to establish, maintain, and strengthen systems for registering income, assets and liabilities by those persons who perform public functions in certain posts as specified by law and, where appropriate, for making such registrations public, as stated in Part B, Chapter II, Section 2 of this report.

In view of the comments made in that section, the Committee suggests that the United States consider the following recommendation:

Continue to strengthen the systems for registering income, assets and liabilities.

To comply with this recommendation, the United States may wish to take the following measure into account:

- a) Continue the process of periodic review and appropriate updating of the system of financial disclosure. (See Part B, Chapter II, Section 2.2. of this report).

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

The United States has considered and adopted measures intended to establish, maintain and strengthen oversight bodies with functions related to effective compliance with the provisions selected for analysis within the framework of the first round (Article III, paragraphs 1, 2, 4, and 11 of the Convention), as noted in Part B, Chapter II, Section 3 of this report.

In view of the comments made in that section, the Committee suggests that the United States consider strengthening the cooperation and coordination relationships among the federal oversight bodies regarding the functions they carry out with respect to the provisions of paragraphs 1, 2, 4, and 11 of the Convention.

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

The United States has considered and adopted measures intended to establish, maintain and strengthen mechanisms to encourage the participation of civil society and nongovernmental organizations in efforts aimed at preventing corruption, as discussed in Part B, Chapter II, Section 4 of this report.

In view of the comments made in that section, the Committee suggests that the United States consider the following recommendations:

4.1. General participation mechanisms

No recommendations are formulated by the Committee in this section.

4.2. Mechanisms for access to information

Continue to strengthen the mechanisms for access to public information.

To comply with this recommendation, the United States may wish to take the following measures into account:

- a) Continue the process of evaluating and perfecting implementation of the Freedom of Information Act, as amended by the 1996 Electronic Freedom of Information Act Amendments. (See Part B, Chapter II, Section 4.2.3. of this report)

4.3. Mechanisms for Consultation

Continue to perfect the Advisory Committees' role as a mechanism for consultation.

To comply with this recommendation, the United States may wish to take the following measure into account:

- a) Continue the periodic evaluation of the functioning of the Advisory Committees, and taking into account the results thereof, adopt the pertinent measures to ensure the fulfillment of the objectives of the mechanisms, and *inter alia*, contribute to the fulfillment of the purposes of the Convention. (See Part B, Chapter II, Section 4.3.2 of this report).
- b) Consider, where appropriate, the creation and use of advisory committees by agencies which do not currently utilize them. (See Part B, Chapter II, Section 4.3.2 of this report).

4.4. Mechanisms to encourage participation in public administration

Continue to strengthen the mechanisms to encourage civil society and nongovernmental organizations in public administration.

To comply with this recommendation, the United States may wish to take the following measure into account:

- a) Perform periodic evaluations of the existing mechanisms to encourage civil society and nongovernmental participation in public administration, in order to, *inter alia*, determine the strengths of the mechanisms and identify those areas where improvements are needed, and based on the results of those evaluations, adopt the pertinent measures to ensure the fulfillment of the objectives of the mechanisms and *inter alia*, contribute to the fulfillment of the purposes of the Convention. (See Part B, Chapter II, Section 4.4.2. of this report).

4.5. Mechanisms for participation in the follow-up of public administration

Continue to strengthen the mechanisms for participation in the follow-up of public administration.

To comply with this recommendation, the United States may wish to take the following measure into account:

- a) Perform periodic evaluations of the existing mechanisms to encourage civil society and nongovernmental participation in the follow-up of public administration, in order to, *inter alia*, determine the strengths of the mechanisms and identify those areas where improvements are needed, and based on the results of those evaluations, adopt the pertinent measures to ensure the fulfillment of the objectives of the mechanisms and *inter alia*, contribute to the fulfillment of the purposes of the Convention. (See Part B, Chapter II, Section 4.5.2. of this report).

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

The United States has adopted measures in relation to mutual assistance and technical cooperation, in accordance with the provisions of Article XIV of the Convention, as discussed in Part B, Chapter II, Section 5 of this report.

In view of the comments made in that section, the Committee suggests that the United States consider the following recommendations:

- a) Continue to consider offering the technical cooperation requested by other States Parties, in order to support implementation of the Convention and of the recommendations made to that effect by the Committee in the respective country reports.
- b) Continue to consider participating in and supporting mutual technical cooperation initiatives, through the exchange of information within the framework of the networks of competent government authorities, in areas related to the Convention.
- c) Consider entering into mutual legal assistance treaties with OAS Member States with which the US does not have an existing Mutual Legal Assistance Treaty in the areas covered under the Convention.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

The United States has adopted certain measures related to the designation of the central authority referred to in Article XVIII of the Convention, as discussed in Part B, Chapter II, Section 6 of this report.

No recommendations are formulated by the Committee in this section.

7. GENERAL RECOMMENDATIONS

Based on the analysis and the contributions that appear throughout this report, the Committee suggests that the United States give due consideration to the following recommendations:

- 7.1. Design and implement, as appropriate, programs to provide training for public officials responsible for implementing the systems, standards, measures and mechanisms considered in this report, in order to ensure that they are adequately understood, managed and implemented.

- 7.2. Select and develop procedures and indicators, as appropriate, for verifying follow-up of the recommendations made in this report, and notify the Committee, through the Technical Secretariat, in this regard. For the purposes indicated, the United States could consider taking into account the list of the most widely used indicators, applicable in the Inter-American system that were available for the selection indicated by the country under analysis, which has been published on the OAS website by the Technical Secretariat of the Committee, as well as information derived from the analysis of the mechanisms developed in accordance with recommendation 7.3, which follows.
- 7.3. Develop, when appropriate and where they do not yet exist, procedures for analyzing the mechanisms mentioned in this report, as well as the recommendations contained herein.

8. FOLLOW-UP

The Committee will consider the periodical reports from the United States on progress in implementing the foregoing recommendations, in the context of its plenary meetings, in accordance with the provisions of Article 30 of the Rules of Procedure.

In addition, the Committee will analyze the progress made in implementing the recommendations made in this Report, in accordance with the provisions of Article 31 and, whenever appropriate, Article 32 of the Rules of Procedure.

The Committee wishes to place on record the request made by the United States to the Secretariat to publish this report on the Mechanism's webpage and by any other means of communication, in accordance with the provisions of Article 25(g) of the Rules of Procedure and Other Provisions.

ANNEX I
TO THE REPORT ON THE IMPLEMENTATION IN THE UNITED STATES OF THE
CONVENTION PROVISIONS SELECTED FOR REVIEW WITHIN THE FRAMEWORK
OF THE FIRST ROUND

The United States submitted, along with its reply, attachments containing the following provisions:

1. The Constitution of the United States of America.
2. Title 5 of the United States Code, "Government Organization and Employees"
 - Administrative Procedure Act (5 U.S.C. 551)
 - Freedom of Information Act (1966) (5 U.S.C. 552), as amended on various occasions, including by the 1996 Electronic Freedom of Information Act.
 - Government in the Sunshine Act (5 U.S.C. 552(b))
 - Hatch Act (for Federal Employees) (5 U.S.C. 7321 *et seq*)
 - Ethics in Government Act of 1978 (5 U.S.C. Appendix 101 *et seq*)
 - Inspector General Act of 1978 (5 U.S.C. Appendix 1 *et seq*)
 - Federal Advisory Committee Act (5 U.S.C. Appendix)
 - Whistleblower Protection Act (5 U.S.C. 2303)
 - Sections 372, 1211, 1212, 1216, 2301 and 2302
3. Title 18 of the United States Code, "Crimes and Criminal Procedure"
 - Chapter 11, Bribery, Graft and Conflict of Interest
 - Sections 235, 371, 641, 872 and 1001
4. Title 28 of the United States Code, "Judiciary and Judicial Procedure"
 - Sections 535 and 1782
5. Title 31 of the United States Code, "Money and Finance"
 - The Anti-Deficiency Act (31 U.S.C. 1341 *et seq*)
 - Section 3730
6. Title 40 of the United States Code, "Public Buildings, Property, and Works"
7. Title 41 of the United States Code, "Public Contracts"
8. Federal Managers Financial Integrity Act (1982) (Public Law 97-255)
9. Chief Financial Officers Act (1990) (Public Law 101-576)

10. Title 5 of the Code of Federal Regulations, “Administrative Personnel”
 - Executive Branch Financial Disclosure, Qualified Trusts and Certificates of Divestiture (5 C.F.R. pt. 2634);
 - Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. Part 2635);
 - Regulations Concerning Post Employment Conflict of Interest (5 C.F.R. Part 2637);
 - Office of Government Ethics and Executive Agency Ethics Program Responsibilities, (5 C.F.R. Part 2638);
 - Post Employment Conflict of Interest Restrictions (5 C.F.R. pt. 2641);
 - Supplemental Codes of Conduct for Executive Branch Agencies and Departments (5 C.F.R. Parts 3101 to 8701);
 - 5 C.F.R. § 7323
11. Title 28 of the Code of Federal Regulations, “Judicial Administration”
 - 28 C.F.R. Part 600
12. Senate Code of Official Conduct (Rules 34-43 of the Standing Rules of the Senate)
13. Rules on the Select Committee on Ethics
14. Senate Ethics Manual
15. Code of Official Conduct of the House of Representatives (House Rules XXIII to XXV)
16. Rules of the House Committee on Standards of Official Conduct
17. Code of Ethics for Government Service (1958)
18. Code of Conduct for United States Judges
19. Code of Conduct for Judicial Employees
20. Code of Conduct for Federal Public Defender Employees

ANNEX II
ALPHABETICAL LIST OF ACRONYMS USED IN THE REPORT

1. C.F.R. – Code of Federal Regulations
2. CMAA – Customs Mutual Assistance Treaty
3. COGEL – Council on Governmental Ethics Laws
4. CY – Calendar Year
5. DAEO – Designated Agency Ethics Official
6. DCG – Donor Consultative Group
7. DEA – Drug Enforcement Agency
8. DOJ – Department of Justice
9. DU – Whistleblower Disclosure Unit
10. ECIE – Executive Council on Integrity and Efficiency
11. EFOIA – Electronic Freedom of Information Act
12. FACA – Federal Advisory Committee Act
13. FBI – Federal Bureau of Investigation
14. FY – Fiscal Year
15. GAO – Government Accountability Office
16. GRECO – Group of States against Corruption
17. ICITAP – International Criminal Investigative Training Assistance Program (Dept. of Justice)
18. IFMA – Integrated Financial Management Systems
19. IFMS – Integrated Financial Management Systems
20. IG – Inspector(s) General
21. IGS – Federal Inspectors General website
22. INL – Bureau for International Narcotics and Law Enforcement Affairs (State Department)
23. MLAT – Mutual Legal Assistance Treaty
24. NAS – Narcotics Affairs Section
25. OGE – Office of Government Ethics
26. OIA – Office of International Affairs
27. OIG – Office(s) of the Inspector(s) General
28. OIP – Office of Information and Privacy
29. OMB – Office of Management and Budget
30. OPDAT – Office of Overseas Prosecutorial Development, Assistance and Training (Dept. of Justice)
31. OPR – Office of Professional Responsibility (Dept. of Justice)
32. OSC – Office of the Special Counsel
33. PCIE – President’s Council on Integrity and Efficiency
34. PGR – Mexican Attorney General’s Office
35. SEC – Securities and Exchange Commission
36. TI – Transparency International, USA
37. USAID – United States Agency for International Development
38. U.S.C. – United States Code