MINISTRY OF JUSTICE
SECRETARIAT OF LEGISLATIVE AFFAIRS

ANSWERS TO THE QUESTIONNAIRE ADOPTED AS PART OF THE FOLLOW-UP MECHANISM FOR THE IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION

I. BRIEF DESCRIPTION OF THE LEGAL-INSTITUTIONAL SYSTEM

The Federative Republic of Brazil, formed by the indivisible union of the states, the municipalities and the Federal District, is a democratic State under the rule of law, founded upon the principles of sovereignty, citizenry, the dignity of the human person, the social values of work and free enterprise, and political pluralism.

Popular sovereignty is exercised through universal suffrage and by direct and secret ballot, with each person's vote carrying equal weight. When the law so prescribes, popular sovereignty is also exercised by plebiscite, referendum and popular initiative. Voter registration and voting are mandatory for those over the age of 18 and optional in the case of the illiterate, those over age 70, and those over 16 but under 18 years of age.

Article 2 of the Transitory Provisions of the 1988 Brazilian Constitution provided that a plebiscite was to be held in which voters would choose the system of government (parliamentary or presidential) and voice their opinion as to whether the country was to remain a republic or revert back to a constitutional monarchy. On April 21, 1993, in a heavy turnout, the people determined that the country would remain a republic, with a presidential system of government.

The branches of government

Under Article 2 of the Federal Constitution of Brazil, the Legislative, Executive and Judicial are the three branches of government, all three acting in concert with one another but each independent of the other two and with its own principal function, as well as other different functions spelled out in the Constitution.

The executive branch

Executive power is exercised by the President of the Republic, assisted by the ministers of State. The President and the Vice President of the Republic are elected simultaneously and by direct and secret vote. In presidential elections, the winner is determined by an absolute majority; in other words, the candidate who receives the largest number of votes is considered elected. The president serves four years in office, and may be re-elected to a second term only once.

Under the presidential system, the President of the Republic serves as chief of State and head of government. As chief of State, the President represents the Union in its relations with foreign States (Article 84, subparagraphs VII and VIII) and is the embodiment of the State's internal unity.

The President's chief function as head of government is that of directing the federal government. The President's functions include that of instituting the legislative process in the manner and in the cases set forth in the Constitution; approving, promulgating and ordering the publication of laws and issuing executive orders and regulations for faithful enforcement of the law. In performing other functions, the President introduces bills, adopts provisional measures (Article 62 of the Constitution), drafts delegated laws (Article 68 of the Constitution), and adjudicates matters

when he makes decisions in specific cases, as in the case of the Administrative Council for Protection of the Economy.

If indicted for common criminal offenses, the President is to be prosecuted and judged by the Federal Supreme Court. But he or she will be tried by the Federal Senate when charged with misconduct in public office constituting political-administrative offenses committed while in office against the existence of the Union, the free exercise of the Powers of the State, the country's internal security, probity in office, compliance with the laws and the decisions of the courts, and so on.

The legislative branch

Federal legislative power is exercised by the bicameral body that is the National Congress, which has two houses: the Chamber of Deputies and the Federal Senate. The Chamber of Deputies is composed of representatives of the people, elected by the system of proportional representation in every state, territory and the Federal District. An individual elected to a seat in the Chamber of Deputies will serve a four-year term. The Federal Senate is composed of representatives of the states and of the Federal District. Each of those units is represented by three senators, who serve eight-year terms. In those eight-year periods, one-third of the representation from each state and the Federal District will be renewed at the first four-year mark, while the other two thirds will be renewed after the next four years.

The judicial branch

The Constitution guarantees the judicial branch's functional, administrative and financial autonomy. It further provides that its members enjoy life tenure, may not be removed from office (except under certain circumstances), and may not have their salaries cut. Persons are admitted to the bench on the basis of open competition, and promotion from level to level is based, alternately, on seniority and merit (Art. 93 of the Constitution).

Article 92 of the Constitution lists the bodies that comprise the judicial branch. They are as follows:

● The **Federal Supreme Court,** which is the guardian of the rules and principles enshrined in the Constitution. Its judicial functions are to serve as a court of review. The justices on the Federal Supreme Court are nominated by the President, and then approved and chosen by an absolute majority of the Federal Senate. After repeated rulings, the Federal Supreme Court has the authority to declare constitutional precedent, making its decisions binding on lower courts in the judicial branch and on direct and indirect government departments at the federal, state and municipal levels.

• **The National Council of Justice,** which became part of the Judicial Branch in 2004, is chaired by a justice of the Federal Supreme Court designated by that Court. The Council's function is to monitor the administrative and financial performance of the judicial branch and the judges' performance of their functions.

●The **Superior Court of Justice,** whose main function is to protect federal legislation and treaties, and ensure uniform jurisprudence;

●The **Federal Regional Courts** and the **Federal Judges,** which have jurisdiction over cases in which the Union's interests are at stake, cases involving crimes provided for in treaties, disputes over indigenous rights, and other matters;

● The **Labor Courts and Judges**, which have jurisdiction to arbitrate and decide individual and collective differences between workers and employers;

● The **Electoral Courts and Judges,** which are the guardians of decency in government and morality in the exercise of political office and which safeguard elections to ensure that they are routine and lawful and to protect them from the influence of economic persuasion or abuse of political power.

● The **Military Tribunals and Judges,** which have jurisdiction to prosecute and try the military crimes defined by law, and

● The **State Courts and Judges,** which have jurisdiction over all other cases.

The essential functions of the courts

The Public Prosecution does not come under the umbrella of the other powers of the Republic.[1] It is a permanent institution, essential to the jurisdictional function of the State. Its duty is to defend the juridical order, the democratic system and inalienable social and individual interests. The governing principles of the Public Prosecution are unity, indivisibility and functional independence, and its functional and administrative autonomy is ensured. Under the law, one of which is the Fiscal Accountability Act, the Public Prosecution may submit proposals to the legislative branch suggesting the creation or elimination of its offices and auxiliary services, which it is to fill through open competition involving tests or tests and academic credentials.

Under the Constitution, the Office of the Advocate General performs an essential function in the justice system, as it serves as legal representative of and provides legal counsel to the respective units of the Union and to the Public Defender's Office, which is required to provide free legal counsel and *pro bono* defense services to the needy, at all levels of the legal system.

The political-administrative structure of the Brazilian State

Under Articles 1 and 18 of the Federal Constitution, the political-administrative structure of the Brazilian State is to serve the basic purposes of national unity and decentralization among its autonomous units, namely the Union, the states, the Federal District and the municipalities.

Federalism is a system involving both political participation and autonomy, which is the federated units' capacity for self-organization and self-legislation, self-government and self-

[1] The Public Prosecutor's Office figures under Chapter III of the Federal Constitution – "The Essential Functions of the Justice System."

administration. It presupposes authorities and the constitutional separation of powers, with a view to enabling the units of the Federation to engage in and develop regulatory activities.

The legislative authorities of the Union, states, municipalities and the Federal District are enumerated in the Constitution. While the Union has certain exclusive powers, it does have other powers that it shares in common with, concurrent with, and/or ancillary to the powers of the Federation's other units.

The structure of the states in the Federation and the municipalities is determined in their respective state constitutions and municipal organic laws and through enactment of state laws and municipal ordinances, all of which must respect the principles and authorities set forth in the Federal Constitution. Even the Federal District is structured on the basis of its own Organic Law.

Self-government by the states of the Union means that governors, vice governors[2] and state deputies are elected by direct vote, to four-year terms. The state legislatures are unicameral bodies in which parliamentarians convene for the state's legislative assembly. The municipalities elect their respective mayors and deputy mayors by direct ballot; elections for town/city council members are held every four years. The Federal District elects its Governor and Deputy Governor and the District deputies. The latter are the members of the local legislative body. All these officials serve four-year terms.

The states of the Union and the municipalities administer their own affairs by exercising the administrative, legislative, and taxation authorities that the Federal Constitution confers upon them. The Federal District has the same legislative authorities that states and municipalities enjoy under the Constitution.

[2] The head of the executive branch in every unit of the Union –states and the Federal District- (governor and deputy governor) and municipalities (mayor and deputy mayor) may be re-elected to a second term.

In the Brazilian juridical system, administrative matters are governed by binding principles of constitutional law: legality, impersonality and morality; justice must be public in nature; it must be efficient, reasonable and proportionate; it must guarantee juridical security; and public interests must have priority over private interests. Article 37 of the Federal Constitution provides that the direct or indirect public administration and foundations of any branch of government –be it the government of the Union, the states, the Federal District or the municipalities- shall be governed by the following principles:

a) in the manner prescribed by law, a competitive entrance examination shall be required for placement in any public position or employment; the examination consists of tests or tests in combination with certification of professional and/or academic credentials, depending on the nature and complexity of the position; the exceptions are offices filled by commission which, by law, may be filled by discretionary appointment; accordingly, the incumbent in a commissioned office may be discharged at the superior's discretion.[3]

b) positions of trust, held exclusively by civil servants already in government service, and functions on commission, to be pre-filled by career public servants in the cases, under the conditions, and by the percentages prescribed by law and to be reserved solely for executive, leadership and advisory positions.

To ensure that these prohibitions are observed, the legal system establishes control mechanisms, which may be either internal or external. Every branch of government has its own internal control system to audit the accounts, finances, budgets, operations and assets of the Union and of entities of direct and indirect public administration, to ensure legality, legitimacy, economic efficiency, and accountability in the use of grants and in granting tax relief or expanding tax incentives.

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[3] Save for the exceptions allowed under the Federal Constitution, the Federal Supreme Court has insisted that the constitutional principle of open competition is a principle and a rule that must be applied to obtain any public office or employment. It has expressly disallowed the non-application of this principle; but it has also expressly prohibited its fraudulent application by transferring public servants to positions other than those for which they were originally selected (Federal Supreme Court – Lifting of Injunction No. 1,081-6/ES, *Diário da Justiça,* Section I,3 set. 1996,

Based on these principles, the Federal Court of Accounts and the state courts of accounts, acting in concert with legislative bodies, exercise external control of all branches of government and of all organs and agencies at every level of Brazilian government.

Brazil's juridical system

Brazil's juridical system follows the continental European tradition of written law.

Private law was heavily influence by Roman law, and later by French and German law. In criminal law, Brazil has basically followed the German and Italian traditions. Brazil's Penal Code is mainly structured around Hans Welzel's final-conduct doctrine. Nevertheless, some institutions have been borrowed from the Anglo-American tradition, such as leniency in exchange for information, inspired by the practice of plea bargaining and the opportunity to plead guilty to a lesser offense. Criminal law, in particular, is governed by the basic principles of legality, the principle of *nullum crime sine lege*, and the concept of guilt, as necessary elements that must be present to establish criminal responsibility.

With the phenomenon of "de-codification," many laws have been enacted to criminalize specific offenses and are now an important source of law. Such is the case, for example, with the Law on Money Laundering, the Law on Combating Organized Crime, the Drug Law, the Environmental Crimes Law, and others.

Brazil's criminal procedure system is patterned after the systems on the European continent, especially those of Germany and Italy. It is governed by a set of principles, salient among which are the following: due process of law, the right to confront one's accusers, the search for the real truth, the impartiality of the judge, reasoned judicial discretion, the public nature of proceedings, and the compulsory nature of procedural rules. Brazil is adopting the accusatory system. In Brazil,

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p.31.187; Lifting of Injunction No. 1,082-4/ES, *Diário da Justiça*, Section I, 3 set. 1996, p. 31.189. In all these cases,

proceedings are conducted in two stages: a preliminary or preparatory phase, in which the police authorities conduct a one-sided investigation; and the judicial phase, where the accused can confront his or her accuser. Court records are public and proceedings are in writing. It is a three-way proceeding involving the prosecution, the defendant and the judge.

In the case of lesser offenses, the proceedings are, as a rule, oral in nature and a settlement between the accusing party and the accused is permitted in the matter of civil damages and immediate enforcement of penalties involving deprivation of liberty. The Public Prosecutor's Office prosecutes the case when the crime (or crimes) involved are of the type that must be prosecuted by the State; in exceptional cases, the Public Prosecutor's Office may also prosecute crimes that would otherwise be brought by private parties, if the latter or their representatives so request. In privately prosecuted cases, settlement implies waiver of one's right to file a complaint.

Oversight and control of the constitutionality of the laws is both concentrated and diffuse in nature (with influences from Germany and the United States). As for unconstitutionality based on omission (in other words, the absence of the legislative measures necessary to make the constitutional provisions enforceable), the Brazilian lawmaker adopted the model provided by Portuguese law. When unconstitutionality is declared on the grounds that no means are available to render a constitutional clause effective, the competent authority shall be notified so that the necessary measures may be taken (Article 103, paragraph 2 of the Federal Constitution).

Chief Justice Sepúlveda Pertence was the justice who wrote the decision.

II. CONTENT OF THE QUESTIONNAIRE

CHAPTER ONE

MEASURES AND MECHANISMS REGARDING STANDARDS OF CONDUCT FOR THE CORRECT, HONORABLE, AND PROPER FULFILLMENT OF PUBLIC FUNCTIONS (ARTICLE III, 1 AND 2 OF THE CONVENTION)

1. ***General standards of conduct and mechanisms***

a. Are there standards of conduct in your country for the correct, honorable and adequate fulfillment of public functions? If so, briefly describe them and list and attach a copy of the related provisions and documents.

Brazil's Federal Constitution establishes standards of conduct for public servants. There are also administrative laws spelling out the duties and restrictions on all persons discharging public functions, as explained below:

Constitutional provisions applicable to public servants

The **Federal Constitution** devotes particular attention to the question of proper conduct by civil servants and the rectitude of public affairs. That concern is reflected everywhere in the Constitution, but most especially in Article 37, which sets forth the basic principles of direct and indirect public administration in the branches of government of the Union, the states, the Federal District and the municipalities, which are: legality, impersonality, morality, disclosure, and the principle of efficiency.

In subparagraph 4, Clause XXII of Article 37, the Constitution stipulates that persons found guilty of government misconduct shall lose their political rights and public office. They will not be allowed to transfer personal property and will be required to reimburse the Public Treasury in the manner and to the degree prescribed by law. They may also face criminal prosecution.

The Federal Constitution also holds public servants liable for damages caused to third parties when those damages were intentionally inflicted or caused by negligence. There is no statute of limitations on actions seeking recovery of damages from the government. Finally, the Constitution prohibits the use of any image, name or symbol that amounts to self promotion in advertising the actions, programs, works, services and campaigns of public agencies.

Ordinary laws applicable to public servants

Law No. 8,429, of June 3, 1992, establishes penalties for acts of government impropriety committed either by public servants or private individuals and detrimental to public property. Those acts are divided into three categories:

a) illicit enrichment whereby one gains illicit assets by virtue of one's office, mandate, function, employment or government business (Article 9);

b) acts detrimental to the public treasury whereby one causes a loss of assets, diverts funds, embezzles, squanders or destroys public property or the effects of public entities (Article 10);

c) acts that violate the principles of government: acts that violate duties of probity, impartiality, lawfulness and loyalty to public institutions (Art. 12).

Law No. 8,429, of 1992, employed a broad definition of a public servant, defining him or her as being anyone who, by election, appointment, designation, contracting or other form of investiture or association, exercises –even without remuneration- some mandate, post, employment or function in the direct or indirect public administration of the branches of government[4] of the

[4] Executive, legislative and judicial.

Union and their foundations, the states, the Federal District, the municipalities and territories, in private law entities that are part of the indirect administration, in businesses that are public property, and in entities of any kind where public monies pay over 50% of the cost of their creation or upkeep or where government procurement accounts for more than 50% of their annual earnings.

Law No. 8,112, of December 11, 1990, sets up the juridical regime governing the civil servants employed by the Union, by the autonomous governing agencies and by federal public foundations. This law regulates the filling of government positions, job stability, rights and duties of public servants, among them the following:

a) performing the functions of one's position with zeal and dedication;

b) loyalty to the institutions one must serve;

c) observing the rules and regulations;

d) alerting the authorities to any irregularities to which one is privy by reason of one's post;

e) conducting oneself in a manner compatible with administrative morality, and

f) reporting any violation of the law, omission or abuse of power.

Law No. 8,027, of April 12, 1990, contains the Standards of Conduct of Civil Public Servants of the Union, autonomous government entities and public foundations. It spells out the following:

a) the duties of every civil public servant, such as reporting violations of the law, omissions and abuse of power;

b) penalties involving warning, suspension for up to 90 days and dismissal, applied in cases of administrative wrongdoing by public civil servants; and

c) the civil, administrative and criminal liability incurred for irregularities in the exercise of one's functions and duties.

Decree No. 1,171, of June 22, 1994, approved the Code of Professional Ethics for Civil Public Servants in the Executive Branch of the Federal Government. It provides for the following:

a) creation of an Ethics Commission in all organs of the direct and indirect federal government;
b) the rules of professional responsibility and legal ethics, such as the principles of morality, legality, impersonality, the public nature of proceedings, probity, the pre-eminence of public law over private law, etc.;
c) the public servant's main duties, such as integrity, advising one's superior of any and every act or fact not in the public interest, the duty to refrain from engaging in any function or exercising any power or authority whose purpose is not in keeping with the public interest; and
d) restrictions on public servants, such as the use of one's position to obtain any kind of advantage or receive any kind of financial assistance or advantage of any kind in exchange for the performance of one's function.

Decree No. 4,081, of January 11, 2002, introduced the Code of Ethical Conduct for Public Servants serving in the Office of the President and the Office of the Vice President of the Republic. It sets out:
a) the duties of these public servants, which are informed by the principles of legality, impersonality, transparency, efficiency, morality and probity;
b) the rule to the effect that no public servant shall render service to or receive gifts from an interested party who is not in government, and
c) the rule whereby a public servant shall, for a period of four months (quarantine)[5] following separation from public service, refrain from working on behalf of any natural person or legal entity in any matter or affair in which said public servant has had some role or on which he or she has advised, using information not publicly disclosed regarding government programs or policies.

The **Code of Conduct for High-ranking Government Officials in the Executive Branch of the Federal Government** was submitted to the President of the Republic in Statement of

[5] This waiting period applies to the following authorities: members of the Council of Government, the National Monetary Board, the Economic Policy Chamber and the Foreign Trade Chamber of the Council of Government, the Management Committee of the Foreign Trade Chamber and the Monetary Policy Board of Brazil's Central Bank;
b) directors of regulatory agencies, in the form of a specific law (MP 2,216-37, August 31, 2001).

Reasons No. 37 from the Office of Civil Affairs and was given presidential approval on August 21, 2000. It contains a set of rules that public servants whom the President of the Republic has appointed to high-level positions in the federal government must observe. The purpose of the Code of Conduct is to avert conflicts of interest.

Law No. 8,730, of November 10, 1993, stipulates that disclosure of assets and income is mandatory for positions, employment and service in the executive, legislative and judicial branches.

Supplementary Law No. 101, of May 4, 2000 –the Fiscal Accountability Act- introduced rules regarding public funds. Those rules seek to achieve accountability in fiscal management. Responsible fiscal management presupposes careful planning and transparency, anticipating risks and correcting deviations that might upset the balance of public accounts. That kind of careful fiscal management is achieved by fulfilling revenue and spending performance targets and adhering to the limits and conditions on granting tax relief or expanding tax incentives, generation of personnel and social security expenditures and the like, consolidated and secured debt, loan transactions, including loans made on the basis of anticipated income, guarantees, and outstanding liabilities.

Law No. 1,079, of April 10, 1950, and **Decree-Law No. 201**, of February 27, 1967, make provision for political-administrative penalties (loss of position and disqualification from any government job or position for a period of up to 5 years) and criminal penalties (imprisonment for up to 12 years) for public servants whose dishonest conduct is detrimental to Government. Law No. 1,079, from 1950, concerns misconduct by the President of the Republic, Ministers of State, Justices of the Federal Supreme Court, the Attorney General of the Republic, the Governors and Secretaries of State. The law devotes a specific chapter to misconduct violating principles of honesty in government. Decree-Law No. 201/1967 concerns misconduct and political-administrative violations committed by mayors and members of city/town councils.

Law No. 6,880, of December 9, 1980 (Statute of the Military), spells out the principles of military ethics, which are: a) discharging one's duties with authority, efficiency and integrity; b) complying with and enforcing the laws, regulations, instructions and orders received from the competent authorities; c) keeping one's public and private conduct unimpeachable; d) refraining from using one's position or rank to obtain personal advantages of any kind or to run one's own business or the business of another. Honor and loyalty, under all circumstances, are among the duties of the military. Under the Statute of the Military (Article 30), the Commanders of the three branches of the service (Army, Navy and Air Force) may designate military officers in each one's branch of service to report on the source and nature of his or her goods, provided there are grounds for such a measure.

Law No. 9,784, of January 29, 1999 – Law on Disciplinary Administrative Process – makes express provision, in our legal system, for a number of principles implicit in the Constitution, among them proportionality, decency and reasoned judgment.

Provisions from the Constitution and lesser laws that apply to the judicial branch of government.

Article 95, sole paragraph, of the Federal Constitution provides that judges may not hold any other office, employment or position. The only exception is teaching. They are not to receive, by whatever nomenclature or for any reason, compensation for court costs or participation in lawsuits. Nor may they receive assistance or contributions from any natural person or public or private entity, with the exceptions that the law stipulates. Judges shall not engage in political and/or partisan activities, serve as attorneys in any case or before any court from whence he or she has resigned or been removed, for the three years following his or her resignation or removal.

Supplementary Law No. 35, of March 14, 1979 – Organic Law of the Judiciary –spells out the duties of magistrates, which include the following:

a) obeying and enforcing the law and official orders, with independence, composure and accuracy;
b) in public and private life, conducting oneself in a manner that is above reproach;
It also provides that magistrates shall not:
a) engage in business or participate in any business partnership, even a mixed-capital company, except as a shareholder or stockholder;
d) work in management or as a technician in private business or for any association or foundation of any kind or having any purpose, except in the case of professional associations, and without remuneration;
e) express, via any mode of communication, his or her opinion on cases not yet decided, whether it be his or her own case or someone else's; make any disparaging comments regarding rulings, opinions or judgments of judicial bodies, except critiques in reports and technical papers or in the practice of teaching.

Provisions from the Constitution and lesser laws that apply to the legislative branch of government.

Articles 54 and 55 of the Constitution set forth the prohibitions to which deputies and senators are subject and that take effect:
I – upon issuance of the credentials certifying their election victory:
a) enter into or continue a contract with a public legal entity, autonomous government agency, public company, mixed-capital company or public utility company, unless the contract is executed in accordance with uniform clauses; b) accept or exercise any remunerated position, function or employment, including those from which they may be dismissed *ad nutum* in the entities mentioned in the preceding subparagraph;

II – once they take office:
a) own, control or direct a company that in any way benefits by a contract with a legal entity under public law, or discharge some remunerated service therein;

b) hold an office or function from which they may be dismissed *ad nutum*, in the entities mentioned in subparagraph I.a;
c) serve as attorney in a case in which any of the entities referred to in subparagraph I.a has a stake;
d) be the holders of more than one public elective position or office.

The Constitution expressly states that a deputy or senator shall be removed from office if his or her conduct is found not to comport with parliamentary decorum; if he fails to appear for one third of the regular meetings of his chamber in any given legislative session, except for a leave of absence or a mission authorized by the chamber concerned: if his political rights are lost or suspended; if a final judgment convicts him of a crime, and if he violates any prohibition enumerated under articles 54 and 55

The legislative branch of government also has a **Board of Ethics and Parliamentary Decorum,** in charge of disciplinary proceedings to enforce the sanctions required in cases of a failure to comply with the rules regarding parliamentary decorum. The Board's functions include that of monitoring for the observance of ethical principles, preservation of parliamentary dignity, instituting the disciplinary process and taking all measures necessary to conduct it.

b) Are there mechanisms to enforce compliance with the above standards of conduct? If so, briefly describe them and list and attach a copy of the related provisions and documents.

The Brazilian legal system has a number of mechanisms to enforce compliance with the above-described standards of conduct. The mechanism used is determined by the conduct of the public official. Some laws apply to civil servants in government in general, while others apply specifically to the judicial branch.

Mechanisms that apply in all branches of government

Law No. 8,112, of December 11, 1990, applies to civil servants in all branches of government and establishes civil, criminal and administrative penalties for civil servants found guilty of irregularities in the performance of their functions. It also makes provision for disciplinary penalties. Verification of dereliction of duty is either through an investigation or some disciplinary administrative proceeding. The accused is assured the right to confront his or her accuser and to stage a defense. Law No. 8,112 of 1990 provides for the following disciplinary penalties once a disciplinary violation has been established: admonition, temporary suspension, dismissal, loss of retirement and/or leave, loss of appointment and removal from a commissioned office. Dismissal, considered to be one of the most severe penalties that a public servant can receive, is applied in the following cases: crimes against government; abandonment of post; habitual absence; administrative dishonesty or indecency; administrative unrestraint and scandalous office conduct; grievous insubordination on the job; physical assault while on the job, either of a colleague or a private citizen, except in a case of legitimate self-defense or in defense of another; misuse of public funds; revealing secrets to which one is privy by reason of one's position; theft of public funds and destruction of government property; corruption; unlawful accumulation of public offices, jobs or functions; and violation of paragraphs IX to XVI of Article 117.

Law No. 8,027, of April 12, 1990, provides that when a civil servant is guilty of some irregularity in the performance of his or her functions, said civil servant shall face the following penalties: admonition, suspension, dismissal, as well as any civil, criminal and administrative responsibilities, which are mutually independent and cumulative.

Law No. 8,429, of June 3, 1992, stipulates the sanctions that apply to civil servants who are guilty of unlawful enrichment in the performance of their office, position, employment or function in direct and indirect government or its foundations. Article 12 of that law provides that apart from the necessary civil, administrative and criminal penalties, the following shall also be required: full restitution of whatever damages may have been caused; loss of government post;

suspension of political rights; payment of a fine; preclusion from entering into any contract with the government or from enjoying tax or credit benefits or incentives.

Any **person** may file a report with the competent administrative authority to have an inquiry launched to investigate impropriety. Under this law, the interested party may also report directly to the Public Prosecutor's Office, which may order a police inquiry or administrative proceeding. Once the administrative proceeding has been instituted, the processing authority will inform the Court of Accounts and the Public Prosecutor's Office, which may designate representatives to monitor the administrative proceeding.

Decree No. 5,480, of June 30, 2005, contains provisions concerning the Federal Executive Branch's Oversight System, which includes activities related to prevention and investigation of irregularities by instituting and conducting correctional procedures. The Oversight System will be used for preliminary inquiry, inspection, investigation, the general administrative proceeding and the disciplinary administrative proceeding.

Decree No. 5,483, of June 30, 2005, which requires that an inquiry be launched whenever an authority hears substantiated reports or sees evidence of any form of unlawful enrichment provided for in Law No. 8429, of 1992, among them an increase in a civil servant's assets that is not commensurate with his or her resources and means.

The **Code of Conduct for High-ranking Government Officials** provides that violation of the provisions of the Code shall carry the following penalties, varying according to the seriousness of the offense and applied by the Public Ethics Board: admonition, used in the case of officials in office; censure, applied to former officials who have already left office. If so warranted, the Board may recommend to the official's superior that the official be dismissed.

Mechanisms applied in the judicial branch

In the **judicial branch,** administrative and financial oversight of judges' conduct is handled by the National Council of the Judiciary. The disciplinary measures applicable to the members of the judicial branch are as follows: admonition, censure, compulsory removal, leave of absence proportionate to length of service, compulsory retirement to take effect at differing times determined by length of service, and dismissal.

Mechanisms applicable in the legislative branch

In the **legislative branch,** the Boards of Ethics and Parliamentary Decorum of the House of Deputies and the Federal Senate are in charge of disciplinary procedures to apply penalties in cases involving nonobservance of the rules of parliamentary decorum.

Penal Code

Articles 312 to 326, Title XI, Chapter I of the **Penal Code** criminalize offenses committed by public officials against the government in general. These include acceptance of bribes, embezzlement, demanding unfair advantages, intentional or reckless breach of public duty, criminal acquiescence, violation of professional confidentiality, and misuse of public property or funds.

In Chapter II, offenses committed by private citizens against the government in general are criminalized (articles 328 to 337-A), which include bribery, contraband or misappropriation, usurpation of public office, influence peddling, and theft of social security payments. Chapter II-A criminalizes offenses that private persons commit against foreign governments (articles 337-B and 337-C): bribery in international business transactions and influence peddling in international business transactions.

c) Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.

According to data obtained from the Office of the Comptroller General of the Union, 3,654 cases of government misconduct have been prosecuted against public servants: of these, 2,183 are still under consideration; the remaining 1,471 were decided.

As for complaints, in 2004 the Office of the Comptroller General received close to 10,000 documents reporting diversions of public funds or misconduct on the part of public servants, or to add to or answer inquiries in cases already in progress. **In 2004, 2,136 complaints and reports were received and the appropriate action taken.** This number does not include complaints involving the use of public funds by municipal governments. The volume of such complaints and the nature of the investigations they require are such that they must be treated differently. Such investigations generally involve audits and inspections.

Because of the number of complaints it was receiving, in 2004 the Office of the Comptroller General began to prioritize those complaints that involved, for example, large sums of money or officials of higher rank. The other complaints now undergo a simplified procedure: they are forwarded to the Federal Secretariat of Internal Control so that the necessary measures may be requested of the offices where the irregularities are alleged to have occurred. The Federal Secretariat also follows up on the inquiries those offices conduct.

In 2004, the Office of the Comptroller General of the Union **completed its analysis of 2,234 complaints.** It requested that **141 inquiries be instituted,** as well as disciplinary administrative procedures. The Office of the Comptroller General oversaw and reviewed the **findings of 207 disciplinary proceedings.**

In the period from January 1, 2002 to July 30, 2005, 1,020 sanctions were applied to federal public servants (admonition, loss of retirement, dismissal, removal from office, suspension, nullification of an appointment) as a result of the disciplinary procedures instituted to determine who was to blame for the irregularities that occurred (government misconduct).

In 2004, 5,904 external control procedures were adjudicated by the Court of Accounts of the Union; final decisions were delivered in 6,837 cases; 8,556 collective judgments were delivered; 1,325 cases were heard; irregularities were found in the accounts of 1,044 defendants; 18 of those found guilty of irregularities were disqualified from performing any commissioned office or position of trust in the Federal Government; 21 businesses were declared ineligible to bid on contracts with the federal government. Some 1029 audits were conducted, 414 in public works. The following table summarizes the increase in the number of external control procedures between 2002 and 2004:

Procedures conducted (not including personnel-related)	2002	2003	2004
Follow up	85	49	41
Audit, inspection and investigation	842	807	699
Inquiry	25	27	32
Disclosure of assets and income	201	199	213
Complaint	148	187	190
Monitoring	-	16	27
Rendering of accounts	1.425	646	590
Reports	896	953	1.089
Request	531	606	395
Request from Congress	32	69	38
Examination of accounts	1.397	1.429	1.080

Special examination of accounts	911	1.530	1.424
Other procedures *	38	33	86

(*) Other procedures: notification, voucher request, etc.

In 2004, the upward trend in the number of complaints and reports filed with the Court of Accounts continued. The activity in 2004 was up 22% over 2002, and 12% over 2003.

In the first quarter of 2005, the Court of Accounts had 1,204 cases involving external-control issues; 1,028 cases were concluded. During that same period, the Court of Accounts received 15,060 personnel actions, 13,195 of which were evaluated. The following table shows the actions and decisions, classified by issue, and the number of personnel actions received and evaluated during the quarter.

Personnel-related cases and actions	Number of proceedings conducted	Number of cases adjudicated
Follow up	2	8
Audit, inspection and investigation	145	113
Inquiry	7	7
Complaint	45	41
Monitoring	4	10
Rendering of accounts	10	58
Report	239	223
Request	124	69
Request by Congress	7	4
Examination of accounts	7	99
Special examination of accounts	598	383
Other procedures (*)	16	13

Total procedures	1,204	1,028
Personnel actions	15,060	13,195

(*) Follow up of requests, certification, etc.

Of the 540 cases conclusively decided during the quarter, irregularities were found in 204 (37.8%), with the result that 268 of those found guilty were ordered to pay fines and/or reimburse amounts owed for a total of R$ 65,036,408.69, adjusted for currency changes and default interest, where owed, as of March 31, 2005. In another 17 cases involving audits, complaints or reports, fines were levied against 29 persons responsible for the irregularities committed, for a total of R$ 129,005.92.

d) If no such standards and mechanisms exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen the standards of conduct for the correct, honorable and proper fulfillment of public functions, and mechanisms to enforce compliance, in accordance with Article III (1) and (2) of the Convention.

Not applicable.

2. Conflicts of interests

a. Are there standards of conduct in your country regarding the prevention of conflicts of interest in the performance of public functions? If yes, briefly describe them, indicating aspects such as to whom they apply and the concept on which they are based, and list and attach a copy of the related provisions and documents.

Constitutional provisions that apply to the legislative and executive branches of government

Legislative branch

In the case of the legislative branch, Articles 54 and 55 of the Federal Constitution expressly set forth the functional, contractual, political and professional restrictions that deputies and senators (see item II.a above) must observe and violation of which could cost them their office. These restrictions are intended to prevent those who hold power from engaging in conduct inimical to the social interests. From the time they are declared the winners of their election, deputies and senators are forbidden to sign or to remain in a contract with any public legal entity, autonomous government agency, public enterprise, mixed-capital company or public utility company, unless the contract is done in accordance with uniform clauses; nor may they accept or exercise any remunerated office, function or employment. Once in office, deputies and senators may no longer own, control or direct any business that enjoys any advantage stemming from a contract with a public legal entity, nor may they accept or hold a paid office with any of the entities mentioned above and from which they can be dismissed *ad nutum.* Nor may they serve as the attorney in any case in which any of the entities referred to in paragraph I.a above has a stake or hold more than one post or elective office, as pointed out in paragraph II.a above.

Furthermore, to prevent conflicts of interests, the Codes of Ethics and Parliamentary Decorum of the Senate (Resolution No. 20 of 1993) and of the Chamber of Deputies (Resolution No. 25 of 2001) require parliamentarians to file the following mandatory declarations with the Court of Accounts:

a) upon taking office (and in order to be seated), and then again 90 days before the elections in the final legislative year, disclosure of assets and income, including all liabilities for which one is answerable and equal to or higher than the lawmaker's monthly salary as a Deputy;

b) by the thirtieth day following the deadline for natural persons to file income tax declarations, a copy of the income tax declaration filed with the National Treasury;

c) while in office, on assignment or in plenary, when undertaking examination of an issue that has a direct and specific bearing upon one's property interests, a statement declaring oneself ineligible to vote.

The declarations mentioned under letters "a" and "b" of this article shall be duly notarized and numbered sequentially. The individual filing the declaration shall be given a voucher to show that he has submitted his declaration, either in the form of a receipt that is a duplicate of the original, or a copy of the statement itself, indicating the place, date and time it was filed.

Executive branch

The following are among the principles that the Federal Constitution postulates for the business of government: legality, morality, impersonality, and transparency. All those who, by election, appointment, designation, contract or any other form of investiture or association, hold some office, position, job or function in the direct or indirect government or its foundations, even if temporarily or without pay, are required to abide by those principles.

Ordinary laws that make provision for conflict of interest in the performance of public service.

Law No. 9,986, of July 18, 2000, regulates personnel in regulatory agencies. It provides that employees and directors of those agencies may not engage in any other professional activity, including management of a business and political party leadership. It further stipulates that for four months following expiration of one's term in office or date of retirement, a former official is not to engage in any activity or perform any service in the sector regulated by the agency for which he or she once worked.

Furthermore, the laws that established many such agencies contain specific provisions regulating these prohibitions. The following are examples: articles 29 and 30 of Law No. 9,472, of

July 16, 1997, which created the National Telecommunications Agency, ANATEL; articles 6, 9 and 10 of Law No. 9,427, of December 26, 1996, which created the National Electric Energy Agency, ANEEL; Art. 14 of Law No. 9,478, of August 6, 1997, which created the National Petroleum Institute, ANP; Art. 9 of Law No. 9,961, of January 28, 2000, which created the National Health Agency, ANS; articles 13 and 14 of Law No. 9,782, of January 26, 1999, which instituted the National Health Control Agency, ANVISA; Art. 11 of Law No. 9,984, of July 17, 2000, which created the National Waters Agency, ANA; and articles 57, 58 and 59 of Law No. 10,233, of June 5, 2001, which established the National Overland Transportation Agency and the National Waterborne Transportation Agency, ANTT and ANTAQ.

Law No. 8,429, of 1992,[6] requires penalties for government misconduct involving:

a) unlawful enrichment; realizing any kind of improper asset gain by virtue of one's office, function, job or public service (Article 9);

b) causing losses to the Treasury: occasioning a loss of assets, diversion or misappropriation of funds, abuse or destruction of the property or resources of public entities (Art. 10);

c) violation of the principles of good government: acts that violate the duties of integrity, impartiality, legality and loyalty to public institutions (Art. 12).

The following are among the penalties established: the offending party loses the unlawfully acquired assets; the offending party must make full restitution to the Treasury for the damages and losses caused; the offending party loses his or her public office; his or her political rights are suspended; he or she is ordered to pay fines, is declared ineligible to receive any government contract or to receive tax or credit benefits or incentives.

[6] This law applies to all public servants in the three branches of government of the Union, the states, the Federal District and municipalities.

Law No. 8,027, of April 12, 1990, contains the standards of conduct that civil public servants of the Union, of the autonomous public entities and public foundations must observe and provides that public servants shall not:

a) engage in the purchase and sale of goods and services in one's place of work;

b) accept or promise to accept gratuities or gifts, and

c) reveal secrets to which one is privy by reason of one's position or job.

Law No. 8,112, of December 11, 1990, makes it unlawful for public servants to hold more than one public office or employment at the same time; to engage in any activity that is incompatible with one's office or function and during working hours; to be part of a private business' management; to serve as agent or intermediary for a government office; to have one's spouse, mate or next of kin under one's immediate supervision, in a position or post of trust.

The **Code of Conduct for Senior Federal Government Officials**[7] contains provisions to prevent conflicts of interest. These include the following requirements:

a) disclosure of any transaction made involving personal assets that could be affected by some government decision or policy;

b) disclosure of one's ownership of shares in companies doing business with the government;

c) prohibition against receiving a salary or any other remuneration from a private source, in violation of the law; prohibition against accepting transportation, hospitality or any other favors from private citizens;

d) after leaving government service, a temporary ban on engaging in any activity that is incompatible with the post one previously held.

Law No. 8,666, of June 21, 1993, regulates bidding on government contracts. To avoid any conflict of interest, this law provides that no employee or executive of a contracting entity or the

[7] Ministers and secretaries of state; persons hold special offices; executive secretaries, secretaries or officials with similar authority in the High-level Executive and Advisory Services Group (DAS), level six; presidents and directs of

entity conducting the bidding process may participate in that process, in the construction work or service, or in supplying the needed goods. It also bans preferential treatment vis-à-vis the parties tendering offers or submitting bids.

Decree No. 1,171, of June 22, 1994, approved the Code of Professional Ethics for Civil Public Servants in the Executive Branch. Under that code, public servants in that branch of government shall not:

a) use their position or function, facilities, friendships, time, position and influence to exact any advantage, either for themselves or others;

b) allow personal interests to interfere with their dealings with the public or colleagues;

c) request or receive any type of financial assistance, gratification or advantage of any kind to influence another public servant, and

d) use privileged information to their benefit or to benefit another.

Provisional Measure No. 2,225-45, from 2001, regulated by **Decree No. 4,187/2002**, provides that ministers of State and high-ranking officials of the federal government who have had access to information that could have economic repercussions, shall, for a period of four months, refrain from accepting any post in private enterprise; during that same period, they must also decline any post as an administrator or advisor; they must refrain from establishing any professional association or ties with natural persons or legal entities with which they have had a relevant and direct official relationship in the six months prior to retirement; nor may they make any representations, on behalf of any natural person or legal entity, to the federal agency with which they had a direct and relevant official association in the six months prior to retirement.

Decree No. 4,081, of January 11, 2002, introduced the Code of Ethics for Public Servants serving in the Office of the President and the Office of the Vice President of the Republic

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national agencies, autonomous entities, including the special agencies and foundations funded by the government, public enterprises and mixed capital companies.

to avert situations that could create conflicts between private interests and the authorities of the public servant. The latter shall not:

a) use one's office of position to gain advantages or preferential treatment for oneself or for another;

b) receive any gift, transportation, hospitality, compensation or any favors or accept invitations to luncheons or dinners;

c) provide services on an occasional or permanent basis, even outside one's office hours.

Decree (no number), dated May 26, 1999, regulating the Public Ethics Commission, and **Decree No. 4,923, dated December 18, 2003,** regulating the Transparency Council, both of which are intended to clear up any questions that a public agent or private citizen might have regarding potential conflicts of interests vis-à-vis the government.

Ordinary laws that make provision for conflicts of interest in public service

Law No. 5,869, of January 11, 1973, the Code of Civil Procedure, spells out the circumstances constituting impediment and grounds for recusal of judges. It specifically stipulates that a judge shall not preside over cases in which: he or she is a party; he or she served as agent for one of the parties or as an expert, represented the Public Prosecutor's office, or gave a deposition as testimony. Nor shall judges preside over cases in which his or her spouse or any other relative, either through consanguinity or affinity, lineal or collateral, up to the third degree of kinship, serves as attorney for one side, or cases in which he or she was a supervisor or administrator for a legal entity that is party to the case. The judge must also disqualify himself or herself when either of the parties is creditor or debtor to the judge, his or her spouse or a direct or collateral relative up to the third degree of kinship; when the judge is presumptive heir, donee or employer of either party; when the judge is the recipient of some gift or favor, given either before or after commencement of proceedings; when he or she has advised either party regarding the case or has provided a party with the means to pay the litigation expenses; or when he or she has an interest in an outcome favorable

to one side as opposed to the other. The grounds for impediment and recusal apply to judges in all courts and to the Public Prosecutor's Office, officers of the court, expert witnesses and interpreters.

Article 12 of **Decree-Law No. 3,689,** of October 3, 1941, spells out the grounds for incompatibility and impediment in Brazilian criminal proceedings. The grounds for impediment and recusal apply with equal force to judges in all courts, and to the Public Prosecutor's Office, officers of the court, expert witnesses and interpreters.

Notwithstanding the laws currently in force, the Federal Executive Branch is currently studying a preliminary bill that would constitute sweeping regulation of the question of conflicts of interest in government.

b. Are there mechanisms to enforce compliance with the above standards of conduct? If so, briefly describe them and list and attach a copy of the related provisions and documents.

The Brazilian legal system has a number of laws to regulate the conduct of public servants. Those laws stipulate the administrative, civil and criminal sanctions that are to be imposed when their provisions are violated. A number of bodies are responsible for oversight, but the organ with jurisdiction in any given case will depend upon the branch of government and level, as prescribed by the laws cited below:

Law No. 8,112, of December 11, 1990, establishes the legal regime for civil servants of the Union, the autonomous governing agencies and federal public foundations. This statute spells out the rights and duties of civil servants, the restrictions upon them, and the penalties that apply when the provisions of the law are violated, which are: admonition, suspension, dismissal and loss of retirement or leave, removal from commissioned office and removal from a commissioned function.

The penalties under **Law No. 8,027, from 1990,** range from admonition, suspension for up to 90 days, dismissal, loss of retirement or leave, all depending upon the seriousness of the infraction. The law provides the criteria for distinguishing between favors, honoraria or benefits that are acceptable and those whose solicitation or acceptance may constitute a corrupt act. The acceptance of gifts, for example, is permissible only under two circumstances: when the gift has no economic value, or when the value is not in excess of R$ 100.00 (one hundred reais).[8]

Law No. 8,666, of 1993, instituted regulations to govern public tendering and contracts with the government. It makes it an offense punishable by detention or payment of a fine, for a public servant to lobby the government on behalf of private interests with regard to bids and contracts. The courts will declare any such contracts null and void.

The **Code of Conduct for Senior Federal Officials** requires admonition and censure in the case of persons in high positions in the Federal Government and also allows a recommendation of dismissal. It also provides that for four months following separation from service, former high-ranking officials are prohibited from engaging in any activity incompatible with the posts they previously held. Under the terms of Provisional Measure No. 2,225-45, of 2001, and Decree No. 4,187, of 2002, as drafted in Decree 4,405 of 2002, the former public servant may be remunerated for that period of inactivity.

Law No. 9,784, of 1999, prescribes basic provisions regarding administrative procedure in the direct and indirect federal government, intended to protect the rights of the governed and to better serve the purposes of government. Under that law, public servants must maintain objectivity in their dealings with the public and observe standards of ethics in their deportment.

Apart from the legal mechanisms, the federal government is addressing the matter of ethics in government and the standards of conduct that public servants must observe. For example,

[8] Dollar value as of August 15, 2005: 42. 09 dollars.

the mission of the Treasury Administration School (ESAF), part of the Ministry of the Treasury, is to better train civil servants and thereby enhance management of public funds. The ESAF has partnered with the Public Ethics Commission to promote courses and events that focus on ethics and transparency in management of the public assets or *res publica.* For example, it was instrumental in organizing the seminar titled Ethics as a Management Tool, held in Brasilia on September 13 and 14, 2001. The purpose of the seminar was to help make efforts to promote ethics in government more effective and sustainable, in keeping with a Decree of May 18, 2001, which established the rules that must be observed in the Public Ethics Commission's relations with organs and entities in the executive branch of the federal government.

c. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.

Between August 2000 and June 2005, the Public Ethics Commission issued 1,234 notifications for failure to file information on earnings and assets, and 373 requests to provide additional information for the Confidential Disclosure Statement provided for in the Code of Conduct for Senior Federal Officials.

d) If no such standards and mechanisms exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen the standards of conduct intended to prevent conflicts of interests, and mechanisms to enforce compliance, in accordance with Article III (1) and (2) of the Convention.

Not applicable.

3) Conservation and proper use of resources entrusted to public officials in the performance of their functions

a. Are there standards of conduct in your country that govern the conservation and proper use of resources entrusted to public officials in the performance of their functions? If yes, briefly describe them, indicating aspects such as to whom they apply and whether there are exceptions, and list and attach a copy of the related provisions and documents.

Brazil's legal system has constitutional clauses and ordinary laws on preservation and proper use of public resources.

Constitutional clauses

The Federal Constitution provides two means of controlling public funds: one is external and operated by the National Congress, assisted by the Court of Accounts; the other is internal, and rests with each branch of government. Any natural person or legal entity –public or private- that somehow has access to public monies, property and securities, is subject to this control.[9]

In Article 74, the Federal Constitution also requires that persons responsible for internal control shall, upon learning of any irregularity or illegality, inform the Court of Accounts of the Union about it or be held jointly and severally liable. It further stipulates that any citizen, political party, association or labour union may denounce irregularities or illegalities in the manner that the law prescribes.

Ordinary laws

[9] Under Article 75 of the Federal Constitution, the states, the Federal District and the municipalities are to follow that same model of external control.

Under Article 116, subparagraph VI of **Law No. 8,112, of 1990,** public servants are required to report to their superiors any irregularities of which they have knowledge by virtue of their post or face punishment.

Law No. 8,666, of 1993, instituted rules to govern tendering and contracts with the government. It describes in detail the procedure to be followed to retain services and commission works when public funds are to be used for procurement. Public servants whose actions violate the principles of that law shall face the administrative sanctions and penalties therein prescribed, notwithstanding any civil and criminal responsibilities they may incur. The Court of Accounts shall oversee expenditures resulting from contracts and other instruments regulated under Law No. 8,666 of 1993.[10]

Under Law No. 8,666 of 1993, any citizen may ask the government to provide it with information on the cost of the works executed and on cases in which requirements have been waived or parties have been declared ineligible to participate in competitive tendering. Furthermore, any bidder or contractor, whether a natural person or legal entity, may file a report with the Court of Accounts or offices that are part of the internal control system, alleging irregularities in the application of Law No. 8,666 of 1993.

Law No. 8,443, of 1992, provides that the competent administrative authority shall be held jointly and severally liable if it fails to take immediate steps to conduct a special review of accounts in cases of dereliction in the duty to render accounts, embezzlement or diversion or skimming of public monies, property or securities, or any illegal, unlawful and anti-economic act detrimental to the Public Treasury..

[10] Law No. 8,443, of 1992, established the Organic Law of the Court of Accounts, which under the Constitution is the body responsible for enforcing compliance with inspection and auditing rules in the federal government and in those entities in which federal funds are handled.

Decree No. 1,171, of 1994 prescribes the duties of all public servants, among them integrity in government and rendering of accounts within the legal time period, as prerequisites for proper management of assets. Law No. 8,027, of 1990, also provides that integrity in government is the duty of every public servant.

Supplementary Law No. 101, of 2000, establishes rules to govern public finances, aimed at achieving sound fiscal management. It prescribes administrative sanctions and penalties for anyone who fails to comply with the duties of integrity in the handling of public funds. This law applies to all agencies of the Union, states, the Federal District and municipalities, their branches of government and their indirect government entities. The public's control over the use of public funds is a basic part of the Fiscal Accountability Act. This law establishes the following means to that end:

a) widespread disclosure -via electronic means as well- of the various budget plans, fiscal management reports, rendering of accounts and the statement of opinions regarding the government's books (Article 64, Fiscal Accountability Act);

b) public hearings held to discuss the preparation of the multi-year plan, budgetary guidelines and the annual budget (single paragraph, Article 48, Fiscal Accountability Act); and

c) public consultation to enable citizens to evaluate accounts (in the case of the municipalities, the accounts are always available at the local city or town hall, at any time in the fiscal period) (Article 31, subparagraph 3).

Law No. 8,429, of 1992, titled the **Government Impropriety Act,** imposes penalties on any public servant who, by willful or negligent action or omission, causes losses of public assets, diverts, abuses or destroys public property or monies (Article 10). The following are some examples of ways in which a civil servant might misuse public resources:

a) enabling or in any way assisting any natural person or legal entity to compound its own wealth by adding monies, property or securities that are public assets;

b) donating monies, articles or securities that are public assets without observing the proper legal formalities;
c) allowing any natural person or legal entity to use monies, property or securities that are public assets;
d) obstructing the lawfulness of the competitive bidding process or conducting it improperly;
e) negligence in the use of tax monies or other income, and in preserving public assets;
d) allowing, facilitating or assisting third parties to enrich themselves unlawfully;
e) allowing vehicles, machines, equipment or materials of any kind that is owned by or at the disposition of the government to be used in any private construction work or service.

b) Are there mechanisms to enforce compliance with the above standards of conduct? If so, briefly describe them and list and attach a copy of the related provisions and documents.

Brazil has a variety of mechanisms to enforce compliance with standards of conduct, namely the penalties that each of the above law requires. In general terms, a civil servant incurs responsibility for mismanagement of public assets when he or she fails to comply with the duty to make private interests subordinate to public interests. As was evident in the preceding section, public servants have an obligation to account for their management of public funds and to act transparently; failure to do so results in administrative, penal and civil accountability and liability, depending upon the seriousness of the public servant's misconduct.

Civil sanctions

Article 37, subparagraph 5 of the Federal Constitution provides that there shall be no statute of limitations on civil suits seeking reimbursement of losses, thereby precluding any

possibility that an offender may go unpunished for unlawful administrative and/or criminal acts involving public funds.

Administrative sanctions

Law No. 8,112, of December 11, 1990, provides that any public servant who commits crimes against the government and crimes constituting government impropriety, irregular use of public monies, misuse of public funds, waste of public assets, and corruption shall be dismissed. Dismissal shall also be called for when the public servant:

a) uses his position or post to gain advantages either for himself or for someone else, in a manner unbefitting the dignity of the office;

b) participates in the management or administration of a private enterprise, civil company, or engages in commerce, except as a shareholder, stockholder or silent partner;

c) acts as a broker or intermediary vis-à-vis government offices, except in the case of social security or welfare benefits for relatives up to the second degree or one's spouse or partner;

d) receives any gratuity, commission, gift or favor of any kind, by reason of one's authority and/or functions;

e) accepts an assignment, job or pension from a foreign state; and

f) uses personnel or material resources from one's office to perform private services or activities.

Law No. 8,112 of 1990 also provides that any public servant who has engaged in an activity punishable by dismissal shall also lose his or her retirement.

Law No. 8,666, of 1993, provides that civil servants who engage in acts that constitute infringements of the rules of ethics or thwart the purposes of competitive bidding shall be subject to the sanctions provided for in their own regulations, without prejudice to any civil and criminal liability they may incur by reason of their actions.

Law No. 8,443, of 1992, provides that in the case of public funds found to be in deficit, the court may order the civil servant responsible for managing those funds to pay a fine of up to one hundred percent of the amount owed to the public coffers, adjusted for currency changes. The court may order the responsible civil servant to pay a fine or an equivalent sum in another currency that is being adopted as the national currency, when:

a) irregularities are discovered in the accounts, even though no deficit of the kind described in the single paragraph of Article 19 of this law is present;

b) said civil servant has committed some serious violation of accounting, budgetary, financial, procedural and patrimonial law or regulation;

c) said civil servant has committed some act of illegitimate or anti-economical management that has caused unwarranted harm to the public coffers;

d) said civil servant has failed to heed the instruction given in the court order within the established time frame and without justified cause;

e) said civil servant has obstructed the performance of any inspections and audits ordered;

f) said civil servant conceals some procedure or withholds some document or information during court-ordered inspections or audits; and

g) said civil servant again fails to comply with the court's order.

Without prejudice to the sanctions and administrative penalties that the law provides for and which are enforced by the competent authorities in cases in which the Court of Accounts finds that irregularities are present and, by an absolute majority of its members, finds that the offense committed constitutes a serious infraction, the responsible party shall be disqualified from holding any commissioned office or position of trust in government for a period ranging from five to eight years.

The Court of Accounts may, through the Public Prosecutor's Office, ask the Attorney General of the Nation or, as the case may be, the heads of the agencies with jurisdiction in the

matter, to take the measures necessary to seize the property of those adjudged to be in debt to the Public Treasury. Said individuals should be given a hearing with regard to the release of the property seized and restitution thereof.

Law No. 8,429, of 1992, the Government Impropriety Act, provides that independently of any criminal, civil and administrative penalties and sanctions provided for in the specific law, any person guilty of government impropriety shall,

a) if the impropriety involves unlawful enrichment, lose any property or securities unlawfully acquired, make full reparation for damages where necessary, lose one's public office or employment, have one's political rights suspended for a period of eight to ten years, pay a civil fine amounting to three times the value of the assets unlawfully taken, and be prohibited from entering into any contract with the government or from receiving tax or credit benefits or incentives, either directly or indirectly, or through any business in which he or she is a majority shareholder, for a period of ten years;

b) if the impropriety was detrimental to the public treasury, make full restitution for the damages caused, forfeit the unlawfully acquired goods or securities; if this circumstance is present, then the person loses his or her position in government, has his or her political rights suspended for five to eight years, must pay a civil fine amounting to up to twice the value of the harm caused, and is barred from entering into any contract with the government and from receiving any tax or credit benefits or incentives, either directly or indirectly, even through a business in which he or she is a majority shareholder, for a period of five years;

c) if the impropriety violates principles of good government, make full restitution for the damages caused, lose his or her position in government, have his or her political rights suspended for a period of three to five years, pay a civil fine of up to one hundred times the value of the salary the civil servant received, and be banned from entering into any contract with the government and from receiving any tax or credit benefits or incentives directly, indirectly or through some business in which he or she is a majority shareholder, for a period of three years.

Criminal penalties

The **Penal Code** sets forth the penalties for crimes committed by civil servants who misuse the public funds entrusted to them. Those offenses and penalties are set out in articles 312 to 327. Particular mention should be made of embezzlement of public funds (Article 312); embezzlement caused by someone else's mistake (Article 313); and improper use of public property or revenues (Article 315).

Other ordinary laws also establish criminal penalties for misconduct on the part of civil servants through misuse of public property and monies. These other provisions include articles 89 to 99 of Law No. 8,666 of 1993. When the perpetrators of the offenses therein criminalized are civil servants, they not only face the penalties prescribed by law but also lose their position, job, function or elective office, even if the action in question was merely attempted but not fully realized.

The legal system also classifies mayors' misuse or abuse of government property and monies as punishable offenses. Penalties range from two to twelve years' imprisonment (Decree-Law No. 201, of February 27, 1967). Examples of such crimes include: theft of public property or revenues, or diversion of same for one's personal gain or that of someone else; improper use of public property, revenues or services for one's personal gain or that of someone else; diverting public revenues or property or using them improperly; and failing to provide the Council Assembly or other body that the state constitution prescribes, with an annual rendering of the municipality's accounts, within the time period and in the manner prescribed.

Law No. 1,079, of April 10, 1950, deals with misconduct on the part of the President of the Republic, ministers of State, justices on the Federal Supreme Court and the Attorney General of the Republic,[11] governors and secretaries of states: government impropriety and unlawful use of

[11] Head of the Federal Public Prosecutor's Office.

public funds, which are punishable by loss of office and disqualification from any position or function in government for a period of up to five years (articles 4, 11, 13, 39, 40 and 74).

c) Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.

Between early 2003 and July 2005, the Office of the Comptroller General of the Union inspected 801 municipalities (in 16 lots) and conducted inspections in 17 states. The CGU also conducted nearly 800 inspections/audits as a result of complaints and reports from the Public Prosecutor's Office and the Federal Police. The Transparencia Portal contains 211 million records on resources executed by the Federal Government and shared with the states and municipalities (revenue sharing).

In 2004, the Office of the Comptroller General of the Union conducted 17,273 control procedures. Of these, 13,907 were inspections; 2,981 were audits to assess performance; 385 were audits of books. These procedures were conducted in all states of the Union and involved a total of 756 municipalities. Geographic coverage was broad, and 13.5% of the country's 5,560 municipalities were evaluated. The following tables show the distribution of the CGU's procedures:

Increase in the Number of Audits and Inspections

TYPE OF CONTROL PROCEDURE	2000	2001	2002	2003	2004
Audit to evaluate performance*	1,304	2,045	2,351	2,833	2,981
Accounting audit/ external resources	164	257	409	332	385
Inspection, selected by drawing lots or other means	17,123	14,526	16,103	19,943	13,907
TOTAL	**18,591**	**16,828**	**18,863**	**23,108**	**17,273**

Source: ATIVA/SFC/MF system

*This includes audits conducted to check performance; audits of operations; special and extraordinary audits.

The number of inspections declined from 19,943 in 2003 to 13,907 in 2004, primarily because the service orders for certain government procedures in the social area were redesigned. Initially, one service order was planned for each agent responsible for a procedure: for example, one for a school, one for the family and one for the oversight council. The new system now has one service order containing specific questionnaires for each of the responsible agents. The points to be checked were not eliminated; instead, they are now part of the specific questionnaires.

The following table shows the evolution in the number of government procedures that the CGU audits or checks.

Number of government actions subjected to internal control procedures

2000	2001	2002	2003	2004
280	348	444	443	576

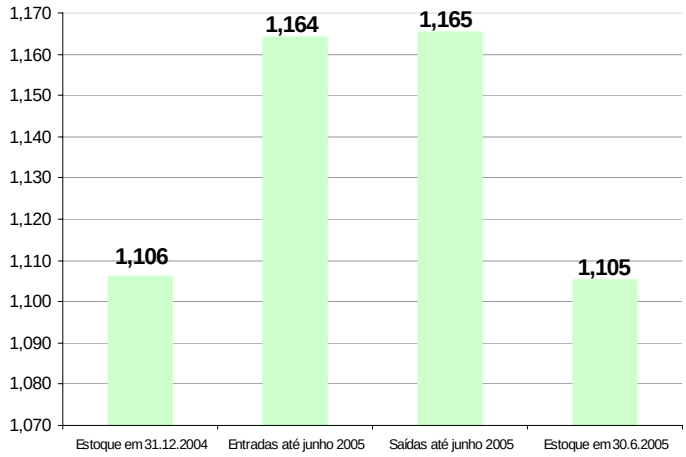
The CGU's presence in Brazil's municipalities during that same period was as follows:

Number of municipalities that underwent internal control procedures.

Based on:	2000	2001	2002	2003	2004
Drawing of lots	-	-	-	310	416
Complaints/Claims	48	116	322	280	151
Totals	**48**	**116**	**322**	**590**	**567**

In 2004, the CGU was present in another 321 municipalities, where other audit/inspection methods were practiced. These were generally sector-specific or localized, as opposed to the inspections and audits depicted in the preceding table, which were across-the-board inspections.

The CGU also audits the procedures involved in the special reviews of accounts. The following table shows the activity between December 2004 and June 2005:



Pending as of December 31, 2004
Received as of June 2005
Dispatched as of June 2005
Pending as of June 30, 2005

A total of 994 cases were sent to the TCU as of June 30, 2005, involving potential reimbursements to the public coffers of some R$ 198,042,609.56 (one hundred ninety-eight million forty-two thousand six hundred nine *reais* and six cents).

TCE Cases under Review at the SFC, by Federal Unit (FU)

FU	**Number**	**%**
AC	12	1,09
AL	36	3,26
AM	33	2,99
AP	34	3,08
BA	116	10,50
CE	58	5,25
DF	22	1,99
ES	8	0,72
GO	34	3,08
MA	131	11,86
MG	63	5,70
MS	6	0,54
MT	35	3,17
PA	61	5,52
PB	47	4,25

PE	53	4,80
PI	53	4,80
PR	34	3,08
RJ	33	2,99
RN	54	4,89
RO	20	1,81
RR	4	0,36
RS	23	2,08
SC	11	1,00
SE	12	1,09
SP	92	8,33
TO	20	1,81
Total	**1.105**	**100,00**

On December 31, 2004, 217 cases were underway, the sources being the Court of Accounts, the Federal Public Prosecutor's Office, the State Public Prosecution Offices and the Federal Police. In the period between January and June 2005, another 122 were received, for a total of 339 cases. Of these, 127 were conclusively decided, which meant that as of June 30, 2005, federal organs/entities were handling a total of 212 cases.

In the period between January and June 2005, the CGU continued to monitor the progress of TCE (state courts of account) cases referred to the Federal Court of Accounts, in order to check what decision the TCU had taken, considering the SFC's certification; the time that elapsed between the TCU's receipt of and decision on a TCE case; substantiation of decisions and collective judgments delivered; cases adjudicated involving potential reimbursements to the public coffers; and other issues related to the accounts.

d) If no such standards and mechanisms exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen

the standards of conduct intended to ensure the proper conservation and use of resources entrusted to public officials in the performance of their functions, and mechanisms to enforce compliance, in accordance with Article III (1) and (2) of the Convention.

Not applicable.

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

a) Are there standards of conduct in your country that establish measures and systems governing the requirement that public officials report to appropriate authorities acts of corruption in public office of which they are aware? If yes, briefly describe them, indicating aspects such as to whom they apply and if there are any exceptions, and list and attach a copy of the related provisions and documents.

Law No. 8,027, of 1990, contains provisions on the conduct of public servants in the employ of the federal government, the autonomous entities and public foundations. It prescribes the public servant's duties as follows: a) to be loyal to the institution he or she serves and b) to report any unlawful conduct, omission or abuse of power.

Decree No. 1,171, of 1994, approves the Code of Ethics of Public Servants in the Executive Branch of the Federal Government and provides that a public servant's duties include that of immediately informing his or her superiors of any deed or fact that is contrary to the public interests and requiring appropriate measures. Article 2, subparagraph XI of Law No. 8,027, from 1990, provides that it is the public servant's duty to report any unlawful conduct, omission or abuse of power.

Article 116, subparagraphs II, VI and XII of **Law No. 8,112/1990,** containing provisions on the legal system governing civil servants of the Union, provides that: public servants' duties shall include the following: a) to be loyal to the institutions they serve; b) to alert their superiors to any irregularities they become privy to by virtue of their posts; and c) to report any unlawful conduct, omission or abuse of power. That law applies to all public servants –career and contract- of the federal government, the federal autonomous entities and federal public foundations.

Law No. 8,112 of 1990 does not apply, however, to the so-called **political public servants,** namely the Head of the Executive Branch, Ministers of State, Senators, Deputies, members of the Judicial Branch and of the Public Prosecutor's Office. Separate laws spell out the obligations of these personages, such as **Law No. 1,079, of 1950,** which defines the crimes of misconduct and contains the procedural rules by which such crimes are to be adjudged; Federal Senate **Resolution No. 20, of 1993,** by which the Code of Ethics and Parliamentary Decorum was adopted; **Resolution No. 25, of 2001,** passed by the Chamber of Deputies and establishing the Code of Ethics and Parliamentary Decorum for that chamber; the Organic Law of the National Judiciary – **Supplementary Law No. 35, of 1979; Supplementary Law No. 75, of 1993,** containing provisions on the organization, authorities and statute of the Federal Public Prosecutor's Office; and **Decree Law No. 201, of 1967,** regulating the accountability of mayors and members of the city/town councils (the municipal legislative bodies).

These exclusions notwithstanding, **Law No. 8,112, of 1990,** provides that any authority privy to some irregularity in public service is required to request its immediate investigation, either through an inquiry or some disciplinary administrative procedure, wherein the accused is assured of his or her full right of self defense.

For its part, Article 4 of **Law No. 8,429, of 1992** –the so-called Government Impropriety Act- provides that civil servants –regardless of level or place in the government hierarchy- are

required to ensure strict observance of the principles of legality, impersonality, morality, and transparency in the handling of all matters of their concern.

Law No. 7,347, of 1985 regulates public civil actions for damages caused to the environment, to the consumer, to property and rights of the artistic, aesthetic, historical, tourist and landscape heritage, or any other diffuse or collective interest. Article 6 provides that any person and every civil servant must assist the Public Prosecutor's Office by providing it with information on facts being litigated in a civil suit and by pointing out evidentiary materials.

b) Are there mechanisms to enforce compliance with the above standards of conduct? If so, briefly describe them and list and attach a copy of the related provisions and documents.

Administrative sanctions

Law No. 8,429, of 1992, provides that any action or omission that violates the duties of integrity, impartiality, legality and loyalty to the institution shall constitute an act of government impropriety in breach of the principles of public administration and shall be punishable through enforcement of the penalties therein stipulated. Delay or failure to properly carry out an official act shall also constitute government impropriety.

Law No. 8,112, of 1990, makes provision for penalties -ranging from admonition to dismissal- for failure to observe the duties of office that the law, regulation or internal provision prescribes and in cases of government impropriety. Law No. 8,027/1990 contains similar provisions.

Criminal sanctions

In Article 320, the **Penal Code** defines the crime of **failing to hold subordinates accountable for offenses committed in the performance of their functions:**

> **Art. 320** – A civil servant shall be guilty of a crime if, out of sympathy or kindness, he or she fails to hold subordinates accountable for offenses committed in the performance of their functions; or if, lacking the authority to hold subordinates accountable, said civil servant fails to bring the matter to the attention of the competent authority:
> **Penalty** – detention for a period of 15(fifteen) days to 1 (one) month, or a fine.

Article 66 of **Decree Law No. 3,688, of 1941** (Law on Breaches or Infractions of Minor Ordinances or Rules) provides that civil servants shall be fined for failure to inform the competent authority of incidents of government misconduct of which they have knowledge by reason of their function in government.

Articles 3 to 8 of **Law No. 8,027, of 1990**, provides that civil servants who fail to observe the duties of their function shall face admonition, suspension, or dismissal, apart from any civil or criminal liability to which they may be subject.

c) Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.

The Federal Government has a variety of means through which offenses committed by public servants can be reported. Complaints, claims, requests and other information are received via electronic means. This system is widely accessible to private citizens and public servants alike. Because these systems compile data of all kinds –complaints, requests and information-, no specific data can be provided on any single category.

Although the complaint mechanisms do not require that the public servant identify himself as such, between 2001 and 2005 the data processing system in the Office of the Comptroller

General of the Unit received 90 complaints from persons identifying themselves as federal public servants; 12 came from municipal public servants and 5 from state public servants.

d) If no such standards and mechanisms exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen the standards of conduct that establish measures and systems governing the requirement that public officials report to appropriate authorities acts of corruption in public office of which they are aware, and mechanisms to enforce compliance, in accordance with Article III (1) and (2) of the Convention.

Not applicable.

CHAPTER TWO

SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES (ARTICLE III, 4)

a) Are there regulations in your country establishing methods for registering the income, assets and liabilities of those who perform public functions in certain posts as specified by law and, where appropriate, for making such disclosures public? If yes, briefly describe them, indicating aspects like to whom they apply and when the declaration must be presented, the content of the declaration, and how the information given is verified, accessed, and used. List and attach a copy of the related provisions and documents.

Mandatory disclosure:

The general rule is that all public servants must submit a declaration in which they disclose their assets and earnings.

A special rule applies to candidates for elective office: at the time they register as candidates for office, they must submit to the Electoral Court a declaration in which they disclose the assets they hold (Law No. 9,504 of September 30, 1997). Any citizen shall have access to candidates' disclosure statements.

The disclosure's publication

No requirement as yet exists to disseminate (publicly) the disclosures in question, which are kept confidential by the authority to which they are addressed. The income statement is disseminated only to control bodies (the Secretariat of Federal Revenues, the Federal Court of Accounts and the Office of the Comptroller General of the Union).

Parties to which the statements are sent:

Article 1 of **Law No. 8,730, of 1993,** provides that the declaration disclosing one's assets and earnings shall be entered into each organ's own records and that the party making the disclosure shall send a copy of same to the Federal Court of Accounts.

Filing time:

Under **Law No. 8,730, of 1993,** civil servants are required to file the disclosure statement at the time they start out in their government positions, jobs or functions, again at the end of each financial period, and on the date they leave government service, whether that separation be in the form of resignation, retirement or final separation from service (Article 1).

Article 13, paragraph 5 of **Law No. 8,112, of 1990,** provides that upon taking office, a public servant shall present a declaration of his or her property and assets.

Law No. 8,429, of 1992, also contains provisions regarding public servants' declaration of assets. It makes disclosure mandatory every year and on the date the public servant leaves public service. (Art. 13).

Content:

The declaration must contain a detailed account of the real estate, movable assets, livestock, negotiable securities or instruments, titles to automobiles, boats and/or aircraft, monies and financial investments belonging to the person filing the declaration or to his or her dependents, whether those assets are held locally or abroad (Article 2 of Law No. 8730 of 1993).

Evaluation criteria:

The organs exercising control (the Office of the Comptroller General of the Union, the Federal Court of Accounts) shall examine the records of the public servant's holdings and compare them to the assets said public servant has disclosed.

How the disclosures are used:

The **Court of Accounts of the Union** may use the declarations of income and property to examine the financial history of the person filing the disclosure and determine whether that financial history comports with the assets and revenues declared; it may use those disclosures to report irregularities and abuses discovered to the competent authority, provide Congress with the information it requests, and monitor for the legality and legitimacy of income and assets.

In the executive branch of the federal government, the **Office of the Comptroller General of the Union** may examine a civil servant's financial history to determine whether it is

consistent with that civil servant's declared assets and holdings. If some discrepancy is discovered, an inquiry is instituted to investigate the facts; if the discrepancy is confirmed, it is reported to the Federal Public Prosecutor's Office, to the Court of Accounts of the Union, to the Secretariat of Federal Revenues and to the Financial Activity Control Board.

Consequences of nondisclosure

If by the time a civil servant takes office, he or she has not filed the disclosure, then he or she will not be considered to have taken office, or the employment, appointment or contract will be nullified for failure to meet the disclosure requirement. Failure to file the declaration, failure to send a copy of same to the Court of Accounts, tardiness in doing so, or filing a statement that is willfully incorrect, will imply the following, depending on the case:

a) misconduct, in the case of the President or Vice President of the Republic, the Ministers of State and other officials specified in a special law;
b) commission of a political-administrative infraction, a crime of office or serious misconduct meriting disciplinary action, possible loss of office, removal from post, discharge from one's job or removal from one's position, as well as disqualification from any new government office, position, job or function for up to five years, as determined by the specific law.

Punishment for nondisclosure

Those who fail to fulfill the duty to file a disclosure statement face penalties. Their prospective employment or contract is immediately cancelled; if they have already been contracted, the contract is declared null and void. Another penalty is dismissal in the interests of public service, notwithstanding any other sanctions that apply to a civil servant who either refuses to file a declaration of assets or files a false declaration (Law No. 8,429, of 1992, Art. 13, paragraph 3).

Assets incompatible with the pay of the civil servant or private contractor may warrant a criminal investigation, under Law 8,429, of 1992, which stipulates the sanctions that apply in the case of civil servants guilty of unlawful enrichment in the performance of their office, position, job or function in direct or indirect government or its foundations.

b) Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.

The Office of the Comptroller-General of the Union is currently investigating the assets of 95 public servants.

c) If no such regulations exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen the regulations that establish methods for registering the income, assets and liabilities of those who perform public functions in certain posts as specified by law and, where appropriate, for making such disclosures public, in accordance with Article III (4) of the Convention.

Not applicable.

CHAPTER THREE

OVERSIGHT BODIES

a. ***Are there oversight bodies charged with the responsibility of ensuring compliance with the provisions stated in Article III (1), (2) and (4)? If yes, list and briefly describe their functions and characteristics, and attach a copy of the related provisions and documents.***

Control of accounts, finances, budget, operations and property of the organs and entities of the federal government is exercised by the National Congress, through external control (exercised by the Court of Accounts of the Union) and internal control exercised by each branch of government (articles 70, 71 and 74 of the Constitution).

External control

The **Court of Accounts of the Union** is a collegiate body whose function is to review the accounts presented by the President of the Republic and other officials, pertaining to the public property, securities and monies of federal government agencies and entities.

Article 71 of the Federal Constitution sets forth the authorities of the Court of Accounts of the Union, which are as follows:

a) examine the accounts rendered annually by the President of the Republic, by means of a prior statement of opinion which shall be prepared within sixty days of receipt thereof;

b) evaluate the accounts of the administrators and other persons responsible for public monies, assets and securities of the direct and indirect government, including foundations and companies instituted and maintained by the federal government, and the accounts of any administrators or other persons who have lost, embezzled or committed some other irregularity resulting in losses to the public treasury;

c) verify, for purposes of the record, whether personnel in the direct and indirect government, including foundations instituted and maintained by the federal government, were hired in accordance with the law; the only exceptions are appointments to commissioned offices and the grant of civil and military retirement and pensions, except for subsequent improvements which do not alter the legal grounds for the grant;

d) either *ex officio* or at the initiative of the Chamber of Deputies, the Federal Senate, or a technical or investigative commission, inspect and audit accounts, finances, budgets, operations or property in the offices of the legislative, executive and judicial branches and other entities;
e) control the national accounts of supranational companies in whose capital stock the Union holds a direct or indirect stake, as set forth in the articles of incorporation;
f) inspect the use of any funds that the Union transfers to a state, the Federal District or a municipality, under the terms of an agreement, arrangement, adjustment or any other similar instrument;
g) provide any information requested by the National Congress, by either of its houses, or by any of their respective committees, with regard to accounting, financial, budgetary, operational and property control and the results of audits and inspections conducted;
h) in case of illegal expenditures or irregular accounts, apply to the responsible parties the penalties that the law prescribes, which shall include a fine proportional to the damages caused to the public treasury;
i) when an illegality is discovered, set a period of time for the agency or entity to take the necessary corrective measures to be in strict compliance with the law;
j) if not heeded, put a halt to execution of the impugned act, notifying the Chamber of Deputies and the Federal Senate of such decision;
k) report any irregularities or abuses found to the competent authority.

The states and even some municipalities have their own courts of account, patterned after the federal Court of Accounts (Article 75 of the Constitution).

Internal control

Decree No. 3,591, of 2000, regulates the federal executive branch's internal control system, which complements the external control system provided by the Court of Accounts of the Union and whose purpose is to ascertain whether the federal government's organs and agencies are managing their budgets, finances and assets lawfully and efficiently and whether private entities are using public funds lawfully and efficiently.

The federal executive branch's internal control system uses audits and inspections to achieve its ends. The audit evaluates the government's performance based on procedures and results and the use of public funds by private-law entities. The purpose of inspection, on the other hand, is to verify whether the specifications of government programs match their purpose, whether the programs are responsive to the needs they were intended to address, whether they are suitable for the targeted conditions and characteristics, and whether the control mechanisms are efficient.

The central organ of internal control in the executive branch is the Office of the Comptroller General of the Union, which operates through the following organizational units: Magistrate Offices [*Corregedorias*], the Federal Bureau of Internal Control, the Internal Control Coordination Commission and the Office of the Ombudsman General of the Union (Decree No. 4,188 of March 28, 2002). Apart from these offices, the Office of the Comptroller General of the Unit has regional units, located in each state of the Union and responsible for monitoring the corresponding decentralized offices of federal organs and entities and for audits and inspections to verify that federal revenues transferred to a state and its respective municipalities are being used properly.

The following are among the authorities of the Office of the Comptroller General of the Union:

a) to assist the President of the Republic, both directly and immediately, in the performance of his functions, specifically with regard to issues and measures within the executive branch that are

somehow related to protection of public assets, internal control, government auditing, the activities of the Office of the Ombudsman-General, and greater transparency in federal government;
b) to duly process the substantiated reports or complaints it receives regarding harm or threat to public assets, ensuring that such reports or complaints are fully cleared up;
c) in the event of some omission or oversight on the part of a competent authority, to request the institution of an inquiry and other government procedures and proceedings, or to intervene in those already in progress in some federal agency or organ to put them on the proper course, which may even mean advocating the use of appropriate administrative sanctions;
d) to refer to the Office of the Attorney General of the Union, those cases that involve government impropriety and those in which forfeiture of property, reimbursement to the public coffers or other measures that are the jurisdiction of that office may be called for; when necessary, the Comptroller-General's Office may also enlist the Court of Accounts, the Secretariat of Federal Revenues, and the organs of the executive branch's internal control system; when there is evidence of the commission of a crime, it may enlist the Federal Police Department and the Public Prosecutor's Office, even in the case of patently slanderous reports or complaints.

The federal executive branch also has a control mechanism for activities related to federal financial administration and accounting, called the Combined Federal Government Financial Administration System – SIAFI [12]-, available 24 hours a day, seven days a week, to keep all its budgetary, accounting and financial transactions running. Every organ in direct and indirect government is part of this system, which makes it possible for the Treasury Secretariat to obtain balance sheets with which to monitor the Union's finances and budget. This system is also helpful to the Court of Accounts, which can access all the data the system stores (http://www.tesouro.fazenda.gov.br/siafi).

[12] A system of the National Treasury Secretariat, which is part of the Ministry of the Treasury

Another internal control mechanism –this one used to monitor the conduct of civil servants in federal government- is the Public Ethics Commission. Its functions include that of assisting the President of the Republic and the Ministers of State in taking decisions regarding the conduct of some authority that could constitute a breach of the Code of Conduct for High-ranking Federal Officials; receiving complaints regarding actions taken by officials in violation of the provisions of the Code of Conduct for High-ranking Federal Officials, and investigating the veracity of those complaints, which must be properly investigated and substantiated, which also means identifying the party bringing the complaint and, when the process has been completed, reporting to the complainant the measures taken.

A **Decree of May 18, 2001** provided that the sectoral ethics commissions in the executive branch of the federal government –referred to in Decree No. 1,171 of June 22, 1994- are to serve as liaison with the Public Ethics Commission. Within the respective organs and entities, their function is to: monitor for the observance of the Code of Conduct for High-ranking Federal Officials and inform the Public Ethics Commission of any situations that might constitute a case of noncompliance with the provisions of that Code; promote the adoption of standards of ethical conduct specific to their servants and employees.

Control in the legislative branch of government

Under the **Internal Rules of the Chamber of Deputies and Federal Senate,** each chamber's administrative services structure is to include units to coordinate and execute management of accounts, budget, finances, operations, and assets and the internal control system. The analytical balance sheets and balance sheets demonstrating execution of the budget, finances and assets are to be sent to the Board. The Speaker of the Chamber of Deputies is to forward the rendering of accounts for the preceding fiscal period to the Court of Accounts by June 30 of each year. Lastly, public assets and budgets are to be managed in accordance with the provisions of

Financial Law and the provisions on tendering and contracting in force for the three branches of government.

External control in the judicial branch of government and the Public Prosecutor's Office

The **National Council of Justice** oversees the administrative and financial affairs of the judicial branch and compliance with the duties of judges. Its functions include that of protecting the autonomy of the judicial branch, ensuring compliance with the Statute of the Judiciary and the lawfulness of the administrative actions taken by members of the judicial branch, and receiving claims filed against members or organs of the judicial branch. The National Council of Justice is composed of magistrates in the lower courts, members of the Public Prosecutor's Office, attorneys and civil society.

The **National Board of the Public Prosecutor's Office** oversees the administrative and financial affairs of the Public Prosecutor's Office and ensures that its members perform the duties of their office. It is made up of members of the Public Prosecutor's Office, judges, attorneys and civil society.

b) Briefly state the results that said oversight bodies have obtained in complying with the previous functions, attaching the pertinent statistical information, if available

Office of the Comptroller-General of the Union

Where complaints are concerned, in 2004 the Office of the Comptroller-General of the Union received nearly 10,000 documents reporting misappropriation of public funds, irregular conduct, additions to the files of cases already in progress or responses to them. **In 2004, 2,136 complaints and reports were received and duly processed.** This figure does not include the

complaints regarding municipal governments' use of federal public funds. Because of the volume and the very nature of the investigations such complaints require, they are treated differently. An audit or inspection is usually involved.

Because of the number of complaints it was receiving, in 2004 the CGU began to prioritize those that involved, for example, large sums of money or high-level officials. A simplified procedure is now being used for the other complaints: they are sent to the Federal Office of Internal Control so that the appropriate measures may be requested of the agencies or offices where the irregularities are alleged to have occurred. The Federal Office of Internal Control will then monitor the corrective measures taken.

In 2004, the CGU **completed its examination of 2,234 complaints.** A total of **141 investigations and administrative disciplinary proceedings were requested.** The CGU oversaw **207 disciplinary proceedings and their findings.**

In the period from January 1, 2002 to July 30, 2005, 1020 sanctions were applied to federal civil servants (admonition, loss of retirement, dismissal, removal from office, suspension, nullification of appointment), all as a result of disciplinary proceedings instituted to investigate the irregularities committed and the identity of those responsible (government impropriety).

In 2004, the Court of Accounts of the Union adjudicated 5,904 external control procedures; final decisions were delivered in 6,837 cases; 8,556 collective judgments were delivered; 1,325 cases were heard; irregularities were found in the accounts of 1,044 defendants; 18 of those found guilty of irregularities were disqualified from performing any commissioned office or position of trust in the Federal Government; 21 businesses were declared ineligible to bid on contracts with the federal government. Some 1029 audits were conducted, 414 in public works. The following table summarizes the increase in the number of external control procedures between 2002 and 2004:

Procedures conducted (not including personnel-related procedures)	2002	2003	2004
Follow-up	85	49	41
Audit, inspection and investigation	842	807	699
Inquiry	25	27	32
Disclosure of property and income	201	199	213
Complaint	148	187	190
Monitoring	-	16	27
Rendering of accounts	1,425	646	590
Reporting	896	953	1.089
Request	531	606	395
Request from Congress	32	69	38
Review of accounts	1,397	1,429	1,080
Special review of accounts	911	1,530	1,424
Other procedures *	38	33	86

(*) Other procedures: notification; request for certification, etc.

In 2004, the upward trend in the number of complaints and reports filed with the Court of Accounts continued. The activity in 2004 was up 22% over 2002, and 12% over 2003.

In the first quarter of 2005, the Court of Accounts had 1,204 cases involving external-control issues; 1.028 cases were concluded. During that same period, the Court of Accounts received 15,060 personnel actions, 13,195 of which were evaluated. The following table shows the

actions and decisions, classified by issue, and the number of personnel actions received and evaluated during the quarter.

Procedures and Personnel Actions	Number of procedures conducted	Number of cases decided
Follow-up	2	8
Audit, inspection and investigation	145	113
Inquiry	7	7
Complaint	45	41
Monitoring	4	10
Rendering of accounts	10	58
Reporting	239	223
Request	124	69
Request from the National Congress	7	4
Review of accounts	7	99
Special review of accounts	598	383
Other procedures (*)	16	13
Total cases	1,204	1,028
Personnel actions	15,060	13,195

(*) Follow-up of certification requests, etc.

Of the 540 cases conclusively decided during the quarter, irregularities were found in 204 (37.8%), with the result that 268 of those found guilty were ordered to pay fines and/or reimburse amounts owed for a total of R$ 65,036,408.69, adjusted for currency changes and default interest, where owed, as of March 31, 2005. In another 17 cases involving audits, complaints or reports, fines totaling R$ 129,005.92 were levied against 29 persons responsible for the irregularities committed.

Public Ethics Commission

From August 2000 to June 2005, the Public Ethics Commission issued 410 specific guidelines, 9,125 general guidelines and 1,607 notifications of noncompliance with the provisions of the Code of Conduct for High-ranking Federal Officials. The Commission received 302 inquiries and 142 complaints. It suggested dismissal in the case of three officials. Between 2001 and 2004, some 1,600 persons received training in courses and seminars on the subject of ethics in government. The training was especially geared toward the Public Ethics Commission's representatives in the offices and agencies of the executive branch of the federal government.

c) If no such oversight bodies exist, briefly indicate how your State has considered the applicability of Article III (9) of the Convention.

Not applicable

CHAPTER FOUR

PARTICIPATION BY CIVIL SOCIETY (ARTICLE III, NUMBER 11)

1. General questions on the mechanisms for participation

a) Are there in your country a legal framework and mechanisms to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption? If so, briefly describe them and list and attach a copy of the related provisions and documents.

Constitutional mechanisms

Under the Constitution, any citizen has standing to file suit [***ação popular***] seeking invalidation of any government deed or contract that is illegal or detrimental to public assets or to an entity of which the State is either full or part owner, for the sake of defending collective interests, government morality and the natural or cultural environment. *Ação popular* is provided for under Article 5, paragraph LXXIII, of the Federal Constitution, and in Law No. 4,717, of June 29, 1965.

Similarly, a **public civil suit** is filed to protect public social and environmental assets or other homogenous diffuse, collective and individual interests. The Public Prosecutor's Office, state legal entities, independent and para-state legal entities, associations dedicated to environmental protection and to consumer protection all have active legal standing to bring such suits. This matters is regulated under Law No. 7,347, of July 24, 1985 (Public Civil Suit Act - LACP), and Law No. 8,078 of October 11, 1990 (Consumer Protection Code - CDC).

The Federal Constitution also makes provision for an aggrieved party or his or her representative to file a criminal suit when the organ responsible for prosecuting crimes fails to do so within the legally prescribed period (Article 5, paragraph LIX). It also requires that proceedings shall be made public (Article 5, paragraph LX). The Constitution also makes provision for popular initiative in proposing laws (Article 14, paragraph III, Article 61, paragraph 2) and provides that for a period of 60 days each year, the accounts of every municipality shall be available for any taxpayer to examine and evaluate (Article 31, paragraph 3). Furthermore, any citizen, political party, professional association or union has standing to report irregularities or violations of the law to the Court of Accounts of the Union (Article 74, paragraph 2 of the Federal Constitution).

Ordinary laws

Article 14 of **Law No. 8,429, of 1992** –Government Impropriety Act – encourages citizen involvement in policing the actions of government authorities. It provides that any person may request investigation of an impropriety by reporting same to the government authorities.

Law No. 10,683, of 2003, authorizes the public's participation in the investigation of damages or threats to public property, by filing complaints and reports with the Office of the Comptroller General of the Union, which can be done at the following Website: www.planalto.gov.br/cgu/ouvidoria-geral/relação de ouvidorias.

Through the Federal Control Secretariat, the Office of the Comptroller General has made available the following site: http://www.cgu.gov.br/sfc/convenio/convenios.asp. There the public can see all the agreements the Federal Government has concluded with municipal entities, thereby giving the public greater access to and control of government affairs.

The Office of the President of the Republic also has a portal on the Internet where citizens can quickly and easily get information about the public services available to them, as well as information on tendering. They are also able to follow or be part of the federal government procurement process done on the worldwide web by means of electronic tendering, allowing greater scrutiny of government transactions. http://www.redegoverno.gov.br

Every agency in the three branches of the federal government has an ombudsman's office. The ombudsman's office serves as a link between the citizenry and government, making the citizenry a partner in the process of shaping and implementing public policies. The following are among the functions and duties of the ombudsman's offices: monitoring for the lawfulness, impersonality, morality and efficiency of the government's actions; suggesting ways to correct mistakes, oversights, or abuses on the part of government agencies; ensuring that the principles of legality, impersonality, transparency, morality and efficiency are observed, with a view to protecting public assets; receiving and investigating claims, complaints and suggestions addressed to them; proposing investigations and inquiries, where appropriate.

Most ombudsman's offices have toll-free numbers (0800), but they also accept reports by mail, fax, e-mail and personal visits.[13] In the case of those organs or entities that do not yet have an in-house ombudsman, citizens are to file the complaint or report with the Office of the Ombudsman General of the Union, which shall receive it and take steps to resolve the case exercising the authorities given to the Office of the Ombudsman-General.

Article 53 of the **Organic Law of the Court of Accounts of the Union** (Law No. 8,433, of July 16, 1992) provides that any citizen, political party, association, union or professional association may file a complaint alleging irregularities and violations of the law. www.tcu.gov.br

In Brazil, the municipal councils also inspect expenditures of public funds. According to the data supplied by the Brazilian Institute of Geography and Statistics – IBGE, in 1999 Brazil already had 27 thousand municipal councils, an average of almost five councils per municipality. Only 20 municipalities did not have a council of any kind. Some councils span the entire country, such as the Health Council, which has a presence in 5,425 municipalities, and the Education Council, present in 4,960 municipalities. For more information, the reader is referred to the website http://www.controlesocial.pr.gov.br, which deals with this issue.

Brazil boasts many civil society organizations. A number of NGOs stand ready to help fight corruption. Salient among these are *Transparência Brasil*, http://www.transparencia.org.br; and the Civil Society Institute to Control Government – FISCCAL, http://www.fisccal.org.br, whose primary purpose is improve efficiency and transparency in government contracting.

Likewise, there are public interest groups that perform social services that are not the exclusive purview of the State. They operate through incentives, by means of partnerships and under government oversight.

[13] Segue anexa listagem das inúmeras ouvidorias existentes hoje no País e que tem colaborado para maior transparência do serviço público.

Law No. 9,790, of March 23, 1999, defines civil society public interest groups [*Organizações da Sociedade Civil de Interesse Público* – OSCIPs] as nonprofit legal entities whose objectives include that of promoting an ethic of peace, citizenship, human rights, democracy and other universal values. These organizations can enter into partnerships with government, with a view to establishing cooperative ties to further execution of public interest activities.

The following are some of the civil society public interest groups that also help fight corruption in Brazil: the *Instituto de Estudos do Trabalho e Sociedade*, www.iets.org.br; and the *Instituto Brasileiro de Ética Concorrencial***,** www.etco.org.br.

b*) *Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available

These mechanisms make for more transparent and efficient government, in which the citizenry plays an effective role.

In the case of the ombudsmen, for example, in 2003/2004 the number of ombudsman's offices within the federal government increased significantly. In December 2004, there were 114 ombudsman's offices in operation, an increase of 185% over December 2002 and 34% over December 2003.

In 2004, the Office of the Ombudsman-General of the Union received 2,045 statements and 1,409 documents of other types such as the following: requests to reopen cases already filed; forwarding of additional information relating to cases under study. In all, some 3,454 documents were processed. As for the type of documents, some 87% involved claims, 5% were suggestions, 2% were laudatory remarks, and the remaining 6% were documents of other kinds.

The internet was the citizenry's preferred method of filing their document, which they did by completing the form at the CGU's web site or by sending an e-mail (89%). The second method of choice was a letter (9%). The remaining 2% were mainly in the form of personal visits made to the Ombudsman's Office.

By the end of the fiscal period, the Office of the Ombudsman General of the Union had completed 90% of the cases received, had another 4% under study and had stopped work on the remaining 6%.

Four regional meetings of government ombudsmen were held in 2004, one each in the Northeastern, Central-Eastern, Northern, and South-Southeastern regions. Also held was the Second National Forum of Government Ombudsmen. These were important events, created to provide opportunities to strengthen involvement and probe issues relevant to government ombudsmen's offices, including strengthening the sense of civic duty, protecting the quality of the public service rendered and relentlessly combating corruption.

The Office of the Ombudsman General of the Union has and is preparing communications intended to guide and enlighten the public about what the Ombudsman's Offices in the executive branch of the federal government are, how to use the services those offices offer and about the public's right to monitor and be the watchdog of public service.

c) If no such mechanisms exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen the mechanisms to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption, in accordance with Article III (11) of the Convention.

Not applicable.

2. Mechanisms for access to information

a) Are there mechanisms in your country that regulate and facilitate the access of civil society and non-governmental organizations to information under the control of public institutions? Is so, describe them briefly, and indicating, for example, before which entity or agency said mechanisms may be presented and under what criteria the petitions are evaluated. List and attach a copy of the related provisions and documents.

The Federal Constitution ensures the **principle whereby government actions and contracts shall be a matter of public record** (Article 37), so that society may be aware of and monitor them. The rule, therefore, is that any government act must be made public, which is why the Constitution guarantees various means by which a citizen may obtain from government offices, agencies and entities, information of interest to that particular individual or of general interest.

Freedom of information

In Article 5, subparagraph XXXIII, the Federal Constitution guarantees every citizen's right to obtain from government agencies information of private interest to that citizen or information of collective or general interest. The information is to be provided within the time period that the law prescribes; if not, the party that fails to do so will be held accountable. The only exception is information that must be kept confidential for the sake of the safety of society and the security of the State. **Freedom of information** is regulated by Decree 5,301, of December 9, 2004.

The information is to be requested directly from the agency that is its repository. If personal information is withheld, the individual in question may file a petition of *habeas data*. In matters of public interest, the proper filing is the petition seeking a writ of *amparo,* or a writ of protection.

Habeas data

The petition seeking a writ of ***habeas data*** is provided for in Article 5, paragraph LXXII of the Federal Constitution, and is an appropriate means by which an interested party can seek access to personal information. With the petition for a writ of *habeas data*, any natural person or legal entity can be the active subject, whereas the passive subjects are organs of direct and indirect government, as well as private persons who provide public services or some public utility. **Law No. 9,507 of November 12, 1997,** sets forth the rules that govern the right to freedom of information as well as the procedure of *habeas data*.

A writ of *habeas data* is granted to ensure that the interested party has knowledge of information in the records or databanks of government agencies or public entities with regard to his or her person; to enable one to correct data, when one opts not to correct the information through some confidential judicial or administrative process; and to enable the interested party to comment on his or her records, to answer or explain a true fact that has a justification and that is the subject of a legal dispute or amicable difference of opinion.

Right of petition

Article 5, subparagraph XXXIV, of the Constitution ensures the **right to petition** public authorities to defend one's rights or one's person against unlawful acts or abuses of power, and to obtain records in government offices in order to protect one's rights and to clarify personal situations, all free of charge.

The right of petition is the right to submit written statements to any public authority, in defense of one's rights, the Constitution, the law or the general interest. Both natural persons and legal entities may avail themselves of this right, and no one rigid procedure is prescribed when

exercising right. Law No. 9,051, of May 18, 1995, contains provisions on the issuance of records that enable an interested party to protect his or her rights and clarify situations. Those certifications must be issued within 15 (fifteen) days. In filings, interested parties must explain the reasons for the request.

The **Budgetary Guidelines Act [Lei de Diretrizes Orçamentárias** – LDO] concerns the 2005 Budget and is Law No. 10,934 of 2004. It begins by pointing out that passage and execution of the 2005 budgetary law are essential to demonstrate transparency in fiscal management, in keeping with the principle that all government acts shall be public. It gives the public ample access to all information pertaining to every phase in the budgetary process.

b) Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.

Brazil has a variety of mechanisms that give the public access to information under government control. These mechanisms can be used in both administrative and judicial proceedings. As stated previously, the rule is that all information must be a matter of public record. Because Brazil has no central clearinghouse for receiving requests for information, statistics are hard to come by. Even so, a number of the replies received did provide hard figures.

3. Mechanisms for consultation

a) Are there mechanisms in your country for those who perform public functions to consult civil society and non-governmental organizations on matters within their sphere of competence, which can be used for the purpose of preventing, detecting, punishing, and eradicating public corruption? If so, briefly describe them and list and attach a copy of the related provisions and documents.

Article 39 of **Law No. 8,666, of 1993**, provides that competitive bidding shall be mandatory in the case of large-scale projects and shall begin with a public hearing, convened by the responsible authority at least 15 days prior to the competition.

Supplementary Law No. 95, of 1998, and **Decree No. 4,176, of 2002,** provide for widespread dissemination of the text of any bill of particular political or social significance. Dissemination is to be effected by means of a public hearing, where suggestions can be taken from agencies, entities or persons for whom the law is written or that have an interest in it.

Under the **Fiscal Accountability Act**, public hearings must be held to discuss preparation of the multi-year plan, the budgetary guidelines and the annual budget (Article 48, sole paragraph) and to confer with the public so that it may know what the budget is. In the case of municipalities, the accounts are available for the public to view in the city/town council hall, for the duration of the exercise (Article 31, paragraph 3).

Article 31 of the **Law No. 9,784, of 1999**, governing the administrative process in the federal government, provides that widely publicized public consultations are to be held when issues of public interest are at stake.

b) Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.

As noted previously, a number of mechanisms exist in Brazil to consult the public. Several of those that serve some public function are cited. For example, public consultation is mandatory in the case of large-scale government procurements and is handled by the respective sectoral agency. Then, too, when laws are to be enforced that will heavily impact society, public

consultation is a means of stimulating citizen involvement. Through it, citizens are given an opportunity to make their own suggestions and criticisms regarding the proposed laws.

4. Mechanisms to encourage active participation in public administration

a) Are there mechanisms in your country to facilitate, promote, and obtain the active participation of civil society and non-governmental organizations in the process of public policy making and decision making, in order to meet the purposes of preventing, detecting, punishing and eradicating acts of public corruption? If so, briefly describe them and list and attach the related provisions and documents

A number of mechanisms are made available to enable the Brazilian public to directly participate in and stay abreast of government business.

Under **Decree No. 1,171, of 1994,** which approved the Code of Professional Ethics for Civil Public Servants in the Executive Branch of the Federal Government, an ethics commission is to be created in every organ of direct and indirect administration of the federal government, autonomous entities and foundations. These commissions are to provide public servants with guidance and counsel on professional ethics, how to deal with persons, and how to handle government property. These commissions examine any charges of misconduct and conduct proceedings that may result in censure.

The Ethics Commission may, *ex officio,* institute proceedings into any act, fact or conduct that, in its view, may constitute a breach of some principle or rule of professional ethics. It may also look into any inquiries, complaints or reports filed against a public servant or the office or sector in which the misconduct is said to have occurred. Those complaints should be examined carefully in order to ensure and protect exercise of the public office or performance of the public function,

whenever the report or complaint was brought by some official, public servant, administrative office with jurisdiction, any citizen who identifies himself or herself, or any lawfully constituted corporate entity.

The Public Ethics Commission posts the minutes of its meetings and other information pertaining to the Commission's activities at the following web address: www.presidencia.gov.br/etica

Decree No. 4,923, of December 18, 2003, concerns the **Anti-Corruption and Government Transparency Council** and is intended to make the business of government more transparent. The purpose of this Council is to suggest and study measures to improve control methods and systems and enhance the transparency of government affairs. It also suggests procedures that help strengthen and put together measures to improve transparency and fight corruption and impunity in the federal government. It coordinates with civil society organizations to combat corruption and impunity.

In direct federal government, transparency programs have been introduced in each ministry. In the Ministry of Justice, for example, Government Directive No. 3,746 of December 17, 2004 established the Ministry of Justice's transparency program and instituted internal measures to strengthen preventive instruments. This government directive states that the Ministry of Justice's internet portal will carry summaries of agreements, travel by public officials, as well as other business involving a transfer of public funds. To access this information, one need only turn to the Ministry of Justice's web site at www.mj.gov.br/transparência/serviços/legislação.htm

Other sites, too, make information on government spending available to the public, thereby making those expenditures more transparent. Citizens can use those sites to file complaints, check the progress of cases, and obtain other information: www.presidencia.gov.br/cgu; www.pgr.mpf.gov.br; www.tcu.gov.br (link: ouvidora); www.stf.gov.br (link: fale conosco);

www.stj.gov.br/webstj/institucional/ouvidoria; www.mj.gov.br/defensoria/default.htm; www.dpf.gov.br.

Every organ of government has an **Ombudsman's Office,** which provides another channel of direct communication between the citizen and his or her government. It is a liaison with the public, and is responsible for receiving claims, complaints, suggestions and laudatory remarks, thus encouraging citizens' participation in overseeing and evaluating the delivery of public services. The Ombudsman's Office is, therefore, a powerful force for permanent institutional change and is instrumental in bringing about adjustments and corrections to make activities and procedures more responsive to public demands. Attached is a list of ombudsman's offices, also available at the following Web address: www.planalto.gov.br/cgu/ouvidoria-geral/relação de ouvidorias

Decree No. 4,785, of July 21, 2003, created the Office of the Ombudsman-General of the Union, making it an integral part of the basic structure of the Office of the Magistrate General of the Union, with jurisdiction to provide technical coordination services to the ombudsman's offices in the executive branch of government; to publicize ways in which the public can participate in evaluating the delivery of public services; and to propose measures to correct and prevent failings and omissions in the delivery of a public service.

The legislative branch has a Parliamentary Ombudsman's Office that enables the public to more closely scrutinize the conduct of their representatives. Its main function is to serve as the intermediary between the public and government. Accordingly, it receives and examines any claims or reports received from natural persons or legal entities alleging some violation or any form of discrimination that violates their fundamental rights and freedoms, illegalities or abuses of power, mishandling of Congress' administrative and legislative services, and then forwards those claims and reports to the appropriate office. Once the facts are investigated, the Parliamentary Ombudsman's Office can propose measures to correct any irregularities.

Supplementary Law No. 95, of 1998, and **Decree No. 4,176, of 2002,** make provision for public hearings in order to widely disseminate the basic text of a draft law or rule of particular political or social relevance. The idea behind these public hearings is to take suggestions from the organs, entities or persons to whom the proposed measure is addressed or that have an interest in it.

Article 48 of **Supplementary Law No. 101, of 2000**, provides for transparency in fiscal management and requires broad disclosure, even in electronic media accessible to the public, of the plans, budgets, budgetary guideline laws, rendering of accounts, and the respective prior statements of opinion. Transparency will also be assured by encouraging public participation and holding public hearings.

Law No. 8,142, of 1990, introduced the Single Health System and provides that society must participate in setting guidelines in the health area.

Law No. 10,257, of 2001, known as the Citizenship Statute, provides that the citizenry must be consulted regarding implementation of urban public policies in the municipalities.

b*) *Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available

As noted in the preceding item, a number of vehicles exist in Brazil to enable civil society to participate in the adoption of public policies. Nevertheless, the nature of each law and regulation and the framework in which it is applied make it difficult to quantify the impact that public consultation has had in combating corruption.

However, the media have quoted from government websites, for example the site of the Public Ethics Commission, when reporting on corruption-related issues.

5 - Participation mechanisms for the follow-up of public administration

Are there mechanisms in your country to facilitate, promote, and obtain the active participation of civil society and non- governmental organizations in the follow-up of public administration, in order to meet the purposes of preventing, detecting, punishing and eradicating acts of public corruption? If so, briefly describe them, and list and attach a copy of the related provisions and documents.

Constitutional provisions

Article 1 of the Federal Constitution states that all power emanates from the people, which exercise that power either directly or through their elected representatives. The Constitution reinforces the principle of participatory democracy in Article 204, which states that government social assistance must be decentralized, and that the public must be involved in cultivating policy and overseeing affairs at all levels, through representative organizations.

Ordinary laws and regulations

Supplementary Law No. 101, of 2000, called the Fiscal Accountability Act, requires that public hearings be held for preparation of the budget and to render an accounting of investments at the municipal level.

Under the Fiscal Accountability Act, the executive branch must consult the public when drafting the Budgetary Guidelines Bill, the Annual Budget and the Multi-year Plan Bill. In practice this means that before any bill is sent to the legislative branch, public hearings must be held so that the public can express its views. This is because transparency and public oversight of fiscal management are mandatory.

Law No. 10,257, of 2001, called the Citizenship Statute, requires that citizens be given a voice in the discussion of urban policies at the national, state and municipal levels.

Law No. 9,784, of 1999, regulates administrative procedure in the Federal Government. Articles 31 and 32 provide that the public shall be allowed to participate in government, either through public consultations or public hearings, whenever the matter involves issues of general interest. The competent authority must seek the public's participation.

Law No. 8,666, of 1993, which sets forth general principles to govern tendering procedures, and the laws that create regulatory agencies (for example, Laws Nos. 9427/1996, 9472/1997, 9656/1998, 9985/200 and 10233/2001) and establish the discipline by which concessions for providing public services are awarded, stipulate that a public hearing must be held before the tendering process gets underway.

Decree No. 5,481, of 2005, provides that the organs and agencies in the executive branch of the federal government whose accounts must be presented, justified and reviewed, shall disclose the performance report, the audit report and the audit certification, even by electronic means accessible to the public. They are also include the opinion of the organ of internal control and the decision of the Minister of State who supervises the area in question or official of similar rank, within thirty days following transmittal thereof to the Court of Accounts of the Union.

Decree No. 5,482, of 2005, contains provisions on internet dissemination of federal government data and information. It also regulates the federal executive branch's Transparency Portal.

Agreements and technical cooperation

In 2004, the Office of the Comptroller-General of the Union concluded an agreement with the institution ***Transparência Brasil***, to plan the thematic program for the IV Global Forum on Fighting Corruption, held in June 2005. The Office of the Comptroller General and ***Transparência Brasil*** agreed upon terms of cooperation with a view to establishing general bases of mutual cooperation for preparation and dissemination of the diagnostic study on irregularities found in reviewing federal appropriations in the Fund to Maintain and Develop Basic Education and Enhance the Teaching Profession – FUNDEF for the Brazilian municipalities, under *Transparência Brasil*'s program on Preventing Corruption in the Education System.

The Office of the Comptroller General of the Union established technical and financial cooperation arrangements with the nongovernmental organization **AVANTE Qualidade, Educação e Vida**, to create public oversight instruments and target the municipal councils made up of members of the communities, to provide instruction to municipal government officials and to improve the Fund to Maintain and Develop Education and to Enhance the Teaching Profession - FUNDEF. The Office of the Comptroller General also partnered with AVANTE on measures to continue public oversight projects, so as to explore, expand upon and disseminate principles of responsible management and public oversight of the use of public funds, and formed partnerships with the Court of Accounts of the Union, the Public Prosecutor's Office, other ministries, international organizations and universities.

The Office of the Comptroller-General of the Union also prepares and distributes brochures, written in simple language, to explain to the public the basic principles of management of public resources.

b) Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.

Transparência Portal- Statistics for the period from November 26, 2004 to August 13, 2005

	Number of Pages Requested	Number of Visits	Number of Users	Average Number of Pages Requested Per Visit
TOTALS	5,347,597	256,789	215,363	24.83

Glossary

- Pages requested: number of pages (HTML, ASP, JSP etc.) that the server supplied in response to client requests.
- Number of visits: A set of consecutive pages requested by the same user. If the user lingers a certain period of time without making a new request, the prior set of pages requested is considered a complete visit.
- Number of users: number of different hosts that visited the Portal. This figure may be skewed because hosts are identified by their Web addresses, and many organizations use internet gateways (proxies) that use one Web address for all the hosts using that service.
- Average Number of Pages per Visit: average number of pages a user requested during one visit.

CHAPTER FIVE

ASSISTANCE AND COOPERATION (ARTICLE XIV)

1. Mutual Assistance

a) Briefly describe your country's legal framework, if any, that establishes mechanisms for mutual assistance in processing requests from foreign States that seek assistance in the investigation and prosecution of acts of corruption. Attach a copy of the provisions that contain such mechanisms.

Brazil does not have a specific law on international cooperation in criminal matters. The executive branch is still in the process of drafting a bill to govern fulfillment of requests for international cooperation in both criminal and civil legal matters.

At the present time, mutual assistance is provided on the basis of international treaties to which Brazil is party, among them the following:

Bilateral treaties (cooperation agreements on matters of criminal law):

a) agreements currently in force with: Colombia, France, Italy, Peru, Portugal, and the United States;
b) agreements pending Congressional approval: Canada, Chine, Cuba, Lebanon, South Korea, Sweden and Ukraine;
c) agreements signed: Angola, Suriname, the United Kingdom, and
d) agreements negotiated: the Bahamas, the Community of Portuguese-speaking Countries.

Multilateral agreements on corruption:

a) United Nations Convention against Corruption (2003);
b) United Nations Convention against Transnational Organized Crime (2000);
c) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997);
d) MERCOSUR Protocol on Mutual Legal Assistance in Criminal Matters: Argentina, Uruguay and

Paraguay (1996).

Nevertheless, based on principles of international law, specifically the principle of reciprocity, Brazil may respond to requests for international legal cooperation, even in the absence of a treaty with the requesting country.

b) Has your government presented or received requests for mutual assistance under the Convention? If so, indicate the number of requests that it has presented, explaining how many of them have not been answered and how many have been denied and for what reason; indicate the number of requests that it has received, explaining how many of them have not been answered and how many have been denied and for what reason; mention the average time it has taken your country to answer said requests and the average time in which other countries have responded, and indicate whether you consider these intervals reasonable.

Requests made by Brazil

There are currently 40 cases of active legal assistance that involve requests for mutual assistance on corruption-related matters. They are being processed by the Ministry of Justice's Department for Recovery of Assets and International Legal Cooperation. In 2002, as previously reported, Brazil filed 12 requests for legal assistance having to do with the crime of corruption. Not one was denied

Requests received

Brazil has not yet received any requests for international legal cooperation under the Inter-American Convention against Corruption.

Response time

The amount of time Brazil takes to answer requests for cooperation varies according to the measures to be taken. As a rule, the response time to mutual assistance requests is from two to eight months.

c) If no such mechanisms exist, briefly indicate how your State has implemented the obligation, in accordance with Article XIV (1) of the Convention.

Not applicable

2. Mutual technical cooperation

a. Does your country have mechanisms to permit the widest measure of mutual technical cooperation with other States Parties regarding the most effective ways and means of preventing, detecting, investigating, and punishing acts of public corruption, including the exchange of experiences by way of agreements and meetings between competent bodies and institutions, and the sharing of knowledge on methods and procedures for citizen participation in the fight against corruption? If so, describe them briefly.

To effectively combat the crime of corruption, specifically to facilitate investigations, Brazil is publicizing and promoting negotiation of judicial cooperation agreements, as well as discussions, meetings and national and international seminars with judges, members of the Public Prosecutor's Office and government officials.

Seminars:

a) Conference on the Inter-American Convention against Corruption, in Brasilia on May 8, 2003, organized by the Ministry of Justice and the Organization of American States.

b) Conference of the Organisation for Economic Co-operation and Development (OECD) on combating bribery of public officials in international business transactions, held on September 27 and 28 in Justice Pereira Lima Hall of the Court of Accounts of the Union. In attendance were 32 participants, among them four representatives from the OECD, Mexico, Argentina and Chile.

c) IV Global Forum on Fighting Corruption, an event organized by the Office of the Comptroller-General of the Union and held on June 7 through 10, 2005. In attendance were representatives of 180 countries. The following topics were discussed: international conventions, money laundering, competitive tendering or calls for proposals, e-government, measuring corruption, conflict of interests, civil society, corruption at the local level, Brazilian experiences in fighting corruption, strengthening the integrity of border and tax agencies, campaign financing, and enforcement of the ombudsman law.

b) Has your government made requests to other States Parties or received requests from them for mutual technical cooperation under the Convention? If so, briefly describe the results.

On June 14, 2002, a memorandum of understanding was signed to create a network of government institutions for public ethics in the Americas, composed of eight countries. Its purpose is to foster assistance and a sharing of technical information and experiences to enrich the programs that the respective States are conducting in the areas of transparency, combating corruption, and strengthening public ethics and honest government. In the case of Brazil, the Public Ethics Commission and the Office of the Comptroller General of the Union are both part of the network, which has its own website, a documents archive, a forum in which to share experiences and a chat room to make meetings over the internet possible.

c) If no such mechanisms exist, briefly indicate how your State has implemented the obligation, in accordance with Article XIV (2) of the Convention.

Not applicable.

d) Has your county developed technical cooperation programs or projects on aspects that are referred to in the Convention, in conjunction with international agencies or organizations? If so, briefly describe, including, for example, the subject matter of the program or project and the results obtained.

CHAPTER SIX
CENTRAL AUTHORITIES (ARTICLE XVIII)

1. Designation of Central Authorities

a)Has your country designated a central authority for the purposes of channeling requests for mutual assistance as provided under the Convention?

The central authority is the Ministry of Justice.

b) Has your country designated a central authority for the purposes of channeling requests for mutual technical cooperation as provided under the Convention?

The central authority is the Ministry of Justice.

c) If your country has designated a central authority or central authorities please provide the necessary contact data, including the name of the agency(ies) and the responsible official(s), the position that he or she occupies, telephone and fax numbers, and e-mail address(es).

MINISTRY OF JUSTICE – OFFICE OF THE NATIONAL SECRETARY FOR JUSTICE
Dr. Cláudia Maria de Freitas Chagas – National Secretary for Justice
Address: Esplanada dos Ministérios, Bloco T, Ministério da Justiça, 4º andar, sala 430, Brasília-DF, CEP: 70064-900
Telephones: 55-61-3429.3145/3429.3394
Fax: 55-61-3226.5023
Internet: www.mj.gov.br/snj

d) If no central authority or authorities have been designated, briefly indicate how your State will implement the obligation, in accordance with Article XIV (2) of the Convention.

Not applicable.

2. Operation of Central Authorities

a) Does the central authority have the necessary human, financial and technical resources to enable it to properly make and receive requests for assistance and cooperation under the Convention? If yes, please describe them briefly.

The Ministry of Justice has a special section in charge of requests for assistance and cooperation: the Department for Recovery of Assets and International Legal Cooperation of the Office of the National Secretary for Justice of the Ministry of Justice, located at SCN, Qd. 1, Bl. A,

Sala 101, Ed. Number One – Brasília.DF – 70.711-900, Tel: 55 61 3429-8905 Fax: 55 61 3328-1347

Other organs also cooperate, such as the Office of the Attorney General of the Union, the Public Prosecutor's Office, the Investigative Police (federal and state), the Financial Transactions Oversight Board [*Conselho de Controle de Atividades Financeiras* – COAF], the Federal Revenue Office and Interpol.

b) Has the central authority, since its designation, made or received requests for assistance and cooperation under the Convention? If so, indicate the results obtained, whether there were obstacles or difficulties in handling the requests, and how this problem could be solved.

This is no record of any request for assistance made under this Convention.

III. INFORMATION ON THE OFFICIAL RESPONSIBLE FOR COMPLETION OF THIS QUESTIONNAIRE

Please complete the following information:

State Party: Brazil

The official to be consulted regarding the responses to the questionnaire is:

Ms.: Ivete Lund Viegas

Title/position: Office of the Secretary for Legislative Affairs

E-mail address: ivete.viegas@mj.gov.br **Agency/office:** Ministry of Justice

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REFERENCES

Constitution of the Federative Republic of Brazil, of October 5, 1988.
Articles: 1, 5, 14, 18, 31, 37, 54, 55, 61, 70, 71, 74, 75, 84, 62, 92, 93, 182, 183, 204, 225.

Decree-Law No. 2,848 of December 7, 1940 – Penal Code.

Decree-Law No. 3,688, of October 3, 1941 – Criminal Offenses Act.

Decree Law No. 3,689, of October 3, 1941 – Code of Penal Procedure.

Law No. 1,079, of April 10, 1950 – Defines crimes of misconduct and sets forth the rules to govern the corresponding proceeding for adjudging the misconduct.

Law No. 4,717, of June 29, 1965 – regulating the action bringing public civil suit.

Decree-Law No. 201, of February 27, 1967 – Containing provisions on the accountability of mayors and members of city/town councils.

Law No. 5,869, of January 11, 1973, which established the Code of Civil Procedure.

Supplementary Law No. 35, of March 14, 1979 - which is the Organic Law of the National Judiciary.

Law No. 6,880, of December 9, 1980, containing provisions on the Statute of the Military.

Law No. 7,347, of July 24, 1985 - regulating public civil actions for damages caused to the environment, to the consumer, to property and rights of the artistic, aesthetic, historical, tourist and landscape heritage, or any other diffuse or collective interest.

Law No. 8,027, of April 12, 1990, - containing standards of conduct of civil public servants of the Union, autonomous government entities and public foundations.

Law No. 8,078, of October 11, 1990, a consumer protection law.

Law No. 8,112, of December 11, 1990, setting up the juridical regime of the civil servants of the Union, of the autonomous governing agencies and federal public foundations.

Law No. 8,137, of December 27, 1990 – defining tax crimes, economic crimes and crimes against consumer relations.

Law No. 8,142, of December 28, 1990, containing provisions governing the community's participation in managing the Single Health System [*Sistema Único de Saúde* (SUS)] and on government revenue sharing in the area of health.

Law No. 8,429, of June 3, 1992, Government Impropriety Act, spelling out the penalties to be applied in the case of public servants found guilty of unlawful enrichment in the exercise of one's office, post, job or function in the direct or indirect public administration or public foundation.

Law No. 8,443, of July 16, 1992, containing provisions on the Organic Law of the Court of Account of the Union.

Law No. 8,666, of June 21, 1993, introducing regulations to govern government tendering and contracts.

Resolution No. 20 of November 7, 1993, passed by the Federal Senate, concerns the Code of Ethics and Parliamentary Decorum.

Law No. 8,730, November 10, 1993, which stipulates that disclosure of assets and income shall be required to hold any position, job or function in the executive, legislative and judicial branches of government.

Decree No. 1,171, of June 22, 1994, approving the Code of Professional Ethics for Civil Public Servants in the executive branch of the federal government.

Law No. 9,034, of May 3, 1995, prescribing the operating methods that can be used to prevent and repress the activities of criminal organizations.

Law No. 9,051, of May 18, 1995, containing provisions on the issuance of records that enable an interested party to protect his or her rights and clarify situations.

Law No. 9,427, of December 26, 1996, creating the National Electric Energy Agency – ANEEL, and establishing the rules to govern concessions to provide electric power services.

Law No. 9,472, of July 16, 1997, containing provisions on the organization of the telecommunications services, creation and operation of a regulatory agency, and other institutional matters.

Law No. 9,478, of August 6, 1997, regulating national energy policy and activities associated with the State petroleum monopoly; it also created the national Energy Policy Board and the National Petroleum Agency.

Law No. 9,504, of September 30, 1997, setting forth election-related rules.

Law No.9,507, of November 12, 1997, governing freedom of information and establishing the procedural rules for *habeas data.*

Supplementary Law No. 95, of February 26, 1998, containing provisions on the preparation, drafting, amendment and consolidation of laws and for combining the regulatory laws enumerated therein.

Law No. 9,613 of March 3, 1998, criminalizing the "laundering" or concealment of assets, titles and securities; it also contains provisions to prevent the financial system from being used to acquire the ill-gotten gains referred to in this law, and creates the Financial Transaction Oversight Board [*Conselho de Controle de Atividades Financeiras* – COAF].

Law No. 9,656, of June 3, 1998, containing provisions regulating private health care plans and insurance.

Law No. 9,782, January 26, 1999, defining the National Health Surveillance System and creating the National Health Surveillance Agency.

Law No. 9,784, of January 29, 1999, regulating administrative procedure in the federal government.

Law No. 9,790, of March 23, 1999, containing provisions on the qualification of private, nonprofit legal entities, and civil society public interest organizations. It also institutes and regulates the partnering method.

Decree of May 26, 1999 (no number) creating the rules governing the Public Ethics Commission

Law No. 9,961, of January 28, 2000, creating the National Supplemental Health Care Agency.

Supplementary Law No. 101 of May 4, 2000, the Fiscal Accountability Act, establishing the rules of government finance with a view to instilling a sense of responsibility in fiscal management.

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Law No. 9,984, of July 17, 2000, containing provisions on the creation of the National Water Agency [*Agência Nacional de Águas* – ANA].

Law No. 9,985, of July 18, 2000, governing Article 225, paragraph 1, subparagraphs I, II, III and VII of the Federal Constitution; it creates the National Network of Nature Conservation Offices.

Law No. 9,986, of July 18, 2000, containing provisions on personnel management in regulatory agencies.

Decree of August 21, 2000 (no number) embodying the Code of Conduct for High-ranking Federal Government Officials; it establishes the rules that appointees are to follow in discharging the duties of high office in the federal government.

Decree No. 3,591 of September 6, 2000, containing provisions on the Internal Control System in the Executive Branch of the Federal Government and other measures.

Resolution No. 25, passed by the Chamber of Deputies in 2001, introducing its Code of Ethics and Parliamentary Decorum.

Decree of May 18, 2001 (no number), containing provisions governing the relationship between the ethics commissions of federal organs and agencies and the Public Ethics Commission, and amending the Decree of May 26, 1999.

Law No. 10,233, of June 5, 2001, concerning the reorganization of waterborne and overland transportation; it creates the National Board for Integration of Transport Policies, the National Overland Transportation Agency, the National Waterborne Transportation Agency, and the National Department of Transportation Infrastructure.

Law No. 10,257, of July 10, 2001, Citizenship Statute, the implementing legislation for articles 182 and 183 of the Federal Constitution; it also spells out general guidelines for urban policy.

Provisional Measure No. 2,216-37 of August 31, 2001, amending the provisions of Law No. 9,649, of May 27, 1998, which contains provisions on the organization of the Office of the President of the Republic and the Ministries.

Provisional Measure No. 2,225-45, of September 4, 2001, creating the National Anti-drug System.

Law No. 10,409, of January 11, 2002, containing provisions on the prevention, treatment, inspection, control and suppression of the production and use of products, substances or illegal drugs that are physically or mentally addictive, and traffic therein.

Decree No. 4,081 of January 11, 2002, setting out the Code of Ethical Conduct for Public Servants in positions in the Office of the President and the Vice President of the Republic.

Decree No. 4,176 of March 28, 2002, providing the rules and guidelines for preparation, drafting, amendment and merger of regulations that are the jurisdiction of agencies in the executive branch of the federal government and their transmittal to the President of the Republic.

Decree No. 4,177, of March 28, 2002, whereby the authorities and administrative units named therein are transferred from the Office of Civil Affairs of the Presidency and from the Ministry of Justice, to the Office of the Magistrate-General of the Union; it also orders other measures.

Decree No. 4,187/2002, of April 8, 2002, governing articles 6 and 7 of Provisional Measure No. 2,225-45, of September 4, 2001, which provide that authorities shall not engage in activities or provide services upon separation from office, and on the remuneration the Union must pay them by reason of this prohibition.

Decree No. 4,405, of October 31, 2002, amending Decree No. 4,187, of April 8, 2002, which regulates articles 6 and 7 of Provisional Measure No. 2,225-45, of September 4, 2001, which concerns the restriction against engaging in business or providing services following one's separation from public service; it also concerns the remuneration ex-officials are to receive from the federal government by reason of the restriction.

Decree No. 4,490, of November 28, 2002 – approves the Structure and Table Showing the number of Commissioned Offices and Remunerated Positions in the Office of the Magistrate-General of the Union.

Law No. 10,683, of May 28, 2003, regarding the structure of the Office of the President of the Republic and the Ministries.

Decree No. 4,923, of December 18, 2003, regarding the Council for Transparency in Government and to Combat Corruption.

Law No. 10,934, of August 11, 2004, containing guidelines for preparation of the 2005 budget law, [Law orçamentária de 2005 – LDO].

Decree No. 5,301, of December 9, 2004, regulating the terms of Provisional Measure No. 228, of December9, 2004, which provides for the exception provided for in the final part of subparagraph XXXIII of Article 5 of the Constitution.

Government directive No. 3,746, of December 17, 2004 – establishing the Ministry of Justice's Transparency Program and internal measures to enhance government preventive measures.

Decree No. 5,480, of June 30, 2005, contains provisions on the executive branch's corrective system.

Decree No. 5,481, of June 30, 2005, containing additions to Article 20-B of Decree No. 3,591 of September 6, 2000, which contains provisions on the Internal Control System in the executive branch of the federal government.

Decree No. 5,482, of June 30, 2005, containing provisions regulating disclosure by federal government organs and agencies via the Global Computerized Networks – Internet.

Decree No. 5,483, of June 30, 2005, setting forth regulations, applicable in the executive branch of the federal government, for enforcement of Article 13 of Law No. 8,429, of June 2, 1992, it makes provision for inquiries into assets.