

**UNITED STATES (JANUARY 31, 2005) RESPONSE TO QUESTIONNAIRE OF  
COMMITTEE OF EXPERTS OF THE FOLLOW-UP MECHANISM FOR THE  
IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST  
CORRUPTION**

**(Originally Submitted August 31, 2002)**

**INTRODUCTION**

The Report of Buenos Aires and the Rules of Procedure and Other Provisions of the Committee of Experts on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption (hereinafter, as applicable, *Report of Buenos Aires, Rules, Committee, Mechanism, and Convention*) provide that the *Committee* shall adopt a questionnaire on the selected provisions to be reviewed in each round.

At its first meeting, held in Washington D.C. from January 14 to 18, 2002, the *Committee* decided that during the first round it would review implementation by States Parties of the following provisions of the *Convention*: Article III, paragraphs 1, 2, 4, 9 and 11; Article XIV; and Article XVIII.

In light of the above, this document contains the questions that comprise the questionnaire adopted by the *Committee*.

The focus of this document is almost entirely on the anti-corruption laws and measures of the U.S. federal government, and it includes little material about state and local governments. The 50 U.S. states, the District of Columbia, the Commonwealth of Puerto Rico, and U.S. territories, and localities within those entities, each has their own governments, with ethics rules and institutions. This document does not address them, except in a few places and in general terms.

This document constitutes the updated response of the U.S. Government to the questionnaire that was originally submitted on August 31, 2002.

**I. BRIEF DESCRIPTION OF THE LEGAL-INSTITUTIONAL SYSTEM**

**Please briefly describe the legal-institutional system in your country in accordance with the constitutional order.**

The governmental system in the United States is a federal one, consisting of a national (federal) government and various state and local governments. The legal system of the United States is developed from the common law tradition of England. The law of the land derives from the U.S. Constitution, legislative enactments, and judicial decisions that interpret custom and precedent (**Attachment 1**).

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

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

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

The federal judicial branch is composed of justices and judges, appointed by the President and confirmed by the Senate, and various employees hired to support judicial functions. With some exceptions, federal judges receive a lifetime appointment without diminution of pay and can only be removed by the Congress after impeachment. Federal judges, located at various U.S. district and appeals courts throughout the United States, can check the legislature's and executive's actions to ensure that they do not violate constitutional prerogatives and limits.

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

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

The principal types of U.S. Federal law cited in this document include, first, the U.S. Constitution; second, *statutes*, which are enacted by Congress and usually signed into law by the President, issued as numbered Public Laws and compiled by topic in the U.S. Code (U.S.C.); and, third, *regulations*, which are promulgated by agencies to implement or interpret statutes and are published in the Code of Federal Regulations (C.F.R.).

## 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.**

In each of the three branches of the U.S. Federal Government (executive, legislative, and judicial) there are standards of conduct or codes of conduct that are enforced administratively. In addition, there are civil ethics statutes that apply to the outside activities of senior officers and employees of all three branches and criminal conflict of interest statutes that apply in differing degrees to officers and employees of all three branches.

##### Administrative Standards of Conduct

Executive branch: Part 2635 of Title 5 of the Code of Federal Regulations (5 C.F.R. Part 2635) contains the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct; **Attachment 2**). Supplemental standards of conduct for certain executive branch agencies follow in 5 C.F.R. Parts 3101-8701, and statutes that provide additional authority for administrative gift regulations are in Sections 7351 and 7353 of Title 5 of the U.S. Code (5 U.S.C. Sections 7351 and 7353). The Standards of Conduct cover the following subjects: gifts from outside sources; gifts between employees; conflicting financial interests; impartiality in performing official duties; seeking other employment; misuse of position (i.e. use of public office for private gain, use of nonpublic information, use of Government property, use of official time); and outside activities. Executive Order 12674, as amended, which is entitled APrinciples of Ethical Conduct for Government Officers and Employees, sets forth the ethical principles upon which the Standards of Conduct are based. 5 C.F.R. Section 2635.101 contains a restatement of Executive Order 12674, as amended. The United States Office of

Government Ethics (OGE) is responsible for issuing the Standards of Conduct. However, each executive branch agency (including the departments of the military) is responsible for training, counseling, and disciplining its employees with regard to the Standards of Conduct.

Legislative branch: At the beginning of each Congress, the U.S. House of Representatives (House) adopts a code of conduct as a part of its rules. In the 108<sup>th</sup> Congress, that code and related conduct provisions are contained in Rules 23-26 (**Attachment 3**). These Rules cover, among other topics, the following: use of public office for private gain; gifts; campaign funds; certain employment practices; representational contact; limitations on the use of official and unofficial accounts; limitations on outside earned income; and financial disclosure. The House also publishes a House Ethics Manual and related booklets and memoranda containing these provisions as well as guidance on their interpretation.

In 1958, the House and the U.S. Senate (Senate) passed a concurrent resolution containing a Code of Ethics for Government Service (**Attachment 4**). This Code covers such topics as: loyalty to country and to moral principles; upholding the laws of the country; discriminatory conduct; acceptance of certain favors or benefits; honest effort and conscientious performance of duties; improper use of confidential information; use of public office for private profit; and exposure of corruption. The House continues to expect its Members and employees to adhere to this Code.

The Senate also has a Code of Official Conduct, which is a part of the Standing Rules of the Senate. The Code of Official Conduct is contained in Rules 34 through 43 (**Attachment 5**). These Rules cover, among other topics, the following: gifts; outside earned income; conflict of interest; prohibition of unofficial office accounts; foreign travel; franking privilege and radio and television studios; political fund activity; employment practices; and constituent service. The Senate publishes a Senate Ethics Manual containing these provisions as well as guidance on their interpretation.

Judicial branch: There are three codes of conduct within the judicial branch of the U.S. Federal Government: the Code of Conduct for United States Judges; the Code of Conduct for Judicial Employees; and the Code of Conduct for Federal Public Defender Employees (**Attachment 6**). The Code of Conduct for United States Judges covers, among other topics, the following: judicial integrity and independence; the avoidance of impropriety and the appearance of impropriety; impartiality; adjudicative and administrative responsibilities; disqualification; extrajudicial activities and compensation related to extrajudicial activities; conflicts of interest; gifts; and refraining from political activity. The Code of Conduct for Judicial Employees covers, among other topics, the following: judicial integrity and independence; the avoidance of impropriety and the appearance of impropriety; performance of duties; conduct toward the public; use of confidential and other types of information; conflicts of interest; personal prejudice; outside activities; gifts; practice of law; and inappropriate political activity. The Code of Conduct for Federal Public Defender Employees covers, among other topics, the following: the avoidance of impropriety and the appearance of impropriety; performance of duties; behavior toward persons with whom one deals; nondiscrimination; gifts; conflicts of interest; engagement in law-related activities; the regulation of and compensation for extra-official activities; and inappropriate political

activity. Published advisory opinions issued by a national committee of Federal judges provide further guidance concerning the subjects addressed in the Codes of Conduct.

### Civil Ethics Statutes

Limitations on the outside earned income and employment activities of the highest-level officials of all three branches are found in Sections 501 and 502 of the appendix of Title 5 of the United States Code (5 U.S.C. app. Section 501 et seq.; **Attachment 7**).

### Criminal Conflict of Interest Statutes

See the answer to Question 2.a of Chapter 1.

**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.**

Executive branch: The Government official responsible for an employee's appointment (or that official's delegate) may impose administrative sanctions for violation of the administrative Standards of Conduct. Appropriate corrective or disciplinary actions must follow applicable Government-wide regulations or agency procedures. Such actions may be in addition to any action or penalty prescribed by law. For an example of authority under which an agency may take adverse personnel action against certain employees, see 5 U.S.C. Section 7501 et seq. (**Attachment 8**). The President may remove Presidential appointees either at will or for cause, depending upon the type of appointment.

Legislative branch: Section 5 of Article I of the U.S. Constitution (**Attachment 9**) provides that each House of Congress (the Senate and the House of Representatives) is responsible for determining the qualifications of its Members; for determining its rules of proceedings; for punishing its Members; and, with the concurrence of two-thirds of the Members, for expelling a Member. Each House of Congress has a committee that addresses the conduct of Members and staff and that provides advisory services and education regarding the standards to which Members and staff are to adhere. The responsible committee in the Senate is the Senate Select Committee on Ethics. The responsible committee in the House is the House Committee on Standards of Official Conduct.

Judicial branch: The President, pursuant to the U.S. Constitution, appoints justices and judges within the Federal courts system by and with the advice and consent of the Senate. U.S. Supreme Court Justices and judges on the Federal Courts of Appeal, District Courts, and Court of International Trade receive a lifetime appointment without diminution of pay and can only be removed by Congress through impeachment by the House and trial in the Senate. However, federal judges on certain specialized courts, such as the Court of Federal Claims, the U.S. Tax Court, the U.S. Court of Military Appeals, and the U.S. Court of Veterans Appeals, as well as administrative law judges, are appointed for limited terms. The Federal courts system governs itself at the national level through the Judicial

Conference of the United States. The Judicial Conference is a body of 27 Federal judges, composed of the following: the Chief Justice of the United States, who serves as the presiding officer; the chief judges of the 13 courts of appeals; the chief judge of the Court of International Trade; and 12 district judges from the regional circuits who are chosen by the judges of their circuits to serve terms of three years. The Judicial Conference has a Committee on Codes of Conduct that renders advisory opinions concerning the application and interpretation of the Codes of Conduct for United States Judges, for Judicial Employees, and for Federal Public Defender Employees. The procedures for filing and responding to complaints against judges are prescribed by statute, 28 U.S.C. Section 372(c) (**Attachment 10**). Actions the courts system may take against a judge include private or public reprimand or censure, request for voluntary retirement, suspension of case assignments, and certification of disability of a judge to hold office. If appropriate, the Judicial Conference may transmit to the House a determination that consideration of impeachment may be warranted. Employees of the judicial branch are subject to disciplinary action, including removal.

Federal Government-wide: See the answer to Question (a) in Chapter 3 for information regarding organizations responsible for investigations. The United States Department of Justice (DOJ) is responsible for prosecuting violations of civil and criminal statutes committed by officers and employees of all three branches. See the answers to Questions 1.a and 2.a of Chapter 1 for a list of statutes that are generally considered core ethics and conflict of interest statutes for the Federal Government. Reinforcement (as opposed to enforcement) of the standards and codes of conduct is a part of the ethics programs administered by all three branches. The three branches accomplish reinforcement through periodic training, the ready availability of counseling services for officers and employees who have questions on the application of the codes, and the review of financial disclosure reports.

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

None of the three branches of the U.S. Federal Government has in place a method by which to measure, through statistical information, the preventive role of the standards and codes of conduct to which officers and employees are expected to adhere. However, each of the three branches has used administrative standards of conduct to discipline successfully and appropriately employees including Presidential appointees, regular civil servants, judges, judicial branch employees, Members of Congress, and congressional employees. Though the United States Government could provide individual examples of all such disciplinary measures, generally complete data is not kept with regard to the measures. However, the House Committee on Standards of Official Conduct does at the end of each Congress (every two years) publish a Summary of Activities for that Congress that includes information with regard to individual cases. In the executive branch, agencies maintain evidence of administrative disciplinary actions in individual employee personnel files kept by the employing agency rather than in a more centralized system. Each year OGE surveys executive branch agencies with regard to disciplinary actions (including removals,

demotions, suspensions, and written reprimands) based wholly or in part upon violations of the Standards of Conduct. The agencies make good-faith efforts at supplying this information, but OGE considers the data to be approximate. With that caveat, agencies reported taking over 4,500 disciplinary actions during 2001 based on the Standards of Conduct.

In 2000, OGE conducted a survey of executive branch employees with a two-fold purpose. One purpose was to assess the effectiveness of the executive branch ethics program from an employee perspective and the other purpose was to assess executive branch ethical culture. (See **Attachment 11** for the survey results.) Approximately 2,700 employees from 22 different executive branch agencies responded to the survey. Since the ethics program involves not only the Standards of Conduct but also ethics training and counseling and the review of financial disclosure reports, it is important to note the survey showed that employees who file financial disclosure reports, and therefore receive annual training on the Standards of Conduct, are familiar with the Standards of Conduct and find them useful in guiding decisions and conduct in connection with their work. These employees are also willing to seek ethics-related advice in connection with their work.

More recently, in 2003, OGE began conducting a modified version of this survey at selected individual agencies. The survey is conducted as an initial part of the review of the agency's ethics program. While the program review is essential to measuring individual agency program compliance with the Standards of Conduct and other ethics rules and regulations, the employee ethics survey collects information from employees regarding their level of program awareness and perception of program effectiveness, and a reading as to the ethical climate at their agency.

Thus far, surveys have been administered to all employees at 10 executive branch agencies, with response rates ranging from 14% to 46%. OGE continues to find that, overall, employees who responded to its survey are favorable in their assessment of their agency's ethics program and ethical climate, with employees who file financial disclosure reports and therefore receive annual training on the Standards of Conduct generally providing the most favorable responses. Interestingly, while ethics advice and training are both reported to be useful, overall, respondents gave higher marks to advice than training.

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

See the answer to Question 3.c in Chapter 1 for general investigation information that would incorporate statistics concerning the investigation of violations of these standards.

**d. If no standards and mechanisms, above stated, 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 in view of answers above.

## **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 like to whom they apply and the concept on which they are based, and list and attach a copy of the related provisions and documents.**

The various standards and codes of conduct and the civil ethics statutes listed in the answer to Question 1.a of Chapter 1 contain provisions (such as prohibitions on using public office for private gain) aimed at preventing and addressing conflicts of interest. Additionally, Chapter 11 of Title 18 of the U.S. Code is entitled “Bribery, Graft, and Conflicts of Interest” (**Attachment 12**). A brief description of relevant provisions and an indication of to whom the provisions apply follows.

### Title 18 of the United States Code

- Section 201 - Bribery of public officials and witnesses
  - ⇒ prohibition against bribes and criminal gratuities applies to public officials; individuals who have been selected to be public officials; and to those who directly or indirectly give, offer, or promise the bribe or criminal gratuity;
  - ⇒ provisions governing witnesses apply to witnesses in trials, hearings, or other proceedings or with regard to a witness absenting himself from such proceedings and apply to those who directly or indirectly corruptly give, offer, or promise anything of value to a witness with the intent of influencing testimony under oath.
- Section 203 - Compensation to Members of Congress, officers, and others in matters affecting the Government
  - ⇒ applies to Members of Congress, Federal judges, and officers and employees of the Federal Government and to those who knowingly give, promise, or offer any compensation prohibited by this provision.
- Section 204 - Practice in United States Court of Federal Claims or the United States Court of Appeals for the Federal Circuit by Members of Congress
  - ⇒ applies to Members of Congress and Members of Congress Elect.
- Section 205 - Activities of officers and employees in claims against and other matters affecting the Government

- ⇒ applies to officers and employees of the Federal Government.
- Section 206 - Exemption of retired officers of the uniformed services
  - ⇒ available to retired officers of the uniformed services while not on active duty or to any person specially exempted by Act of Congress.
- Section 207 - Restrictions on former officers, employees, and elected officials of the executive and legislative branches
  - ⇒ applies to former officers and employees of the executive branch, to former senior officers and employees of the legislative branch, to former Members of Congress, and to former Vice Presidents.
- Section 208 - Acts affecting a personal financial interest
  - ⇒ applies to officers and employees of the executive branch and of independent agencies.
- Section 209 - Salary of Government officials and employees payable only by United States
  - ⇒ applies to compensated officers and employees of the executive branch and of independent agencies (other than special Government employees) and applies to those who provide the salary or supplementation of salary in violation of this provision.
- Section 210 - Offer to procure appointive public office
  - ⇒ applies to any person.
- Section 211- Acceptance of solicitation to obtain appointive public office
  - ⇒ applies to any person.
- Section 219 - Officers and employees acting as agents of foreign principals
  - ⇒ applies to a Member of Congress, Delegate, or Resident Commissioner, either before or after he or she has qualified; or an officer or employee or person acting for or on behalf of the United States, or any department, agency, or branch of Government thereof in any official function, under or by authority of any such department, agency, or branch of 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 provisions listed above are all part of the criminal code. DOJ is responsible for prosecuting violations of these statutes in the Federal courts system. DOJ may bring a civil or a criminal case charging a violation of Sections 203, 205, 207, 208 and 209 or may seek an injunction. Other cited sections may only be charged criminally. An officer or employee who has violated one or more of the above statutes is also subject to the disciplinary actions mentioned in the answer to Question 1.b of Chapter 1. See the answer

to Question (a) in Chapter 3 for general information regarding organizations responsible for investigations.

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

OGE has for a number of years surveyed DOJ and the 94 U.S. Attorney's Offices asking for information about the cases they have prosecuted citing Sections 203-209 of Title 18. Responses to the surveys are voluntary, so while OGE has compiled and published the results each year, those results may not reflect all such cases for that year. The compilations for 1990 onward are available on OGE's Web site (for the most recent, see **Attachment 13**). In addition, commercial reporting services such as the United States Code Annotated list significant published cases that interpret sections of the code important to each case. This is true for the above-referenced statutes as well as all other statutes of the United States Code.

See the answer to Question 3.c in Chapter 1 for general investigation information that would incorporate statistics concerning the investigation of violations of these standards.

**d. If no standards and mechanisms, above stated, 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 in view of answers above.

**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 like to whom they apply and whether there are exceptions, and list and attach a copy of the related provisions and documents.**

The provisions within the standards and codes of conduct applicable in the different branches of the Federal Government that address the conservation and proper use of resources are noted immediately below. However, these code of conduct provisions are not the primary source of authority controlling the conservation and proper use of resources, in part because the provisions are merely administrative and in part because the provisions were never intended to contain the specific details of a financial or property control system.

The U.S. Federal Government has an extensive network of laws and regulations designed to minimize the potential for waste, fraud, and mismanagement and to ensure that government resources are used efficiently and effectively to achieve intended program results. A brief description of that network follows the references from the various codes of conduct.

Executive branch: 5 C.F.R. section 2635.704(a) states that an employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes. 5 C.F.R. Section 2635.705(a) states that an employee shall use official time in an honest effort to perform official duties.

Legislative branch: House Rule 24 addresses limitations on the use of official and unofficial accounts. Clause 8 of House Rule 23, the Code of Official Conduct, addresses the proper compensation of employees. Additionally, the House Administration Committee has issued sets of regulations applicable to Members and to House committees that set out the permissible and impermissible use of House funds. The 1958 Code of Ethics for Government Service has two related provisions. Principle 3 calls upon each employee to give a full day's labor for a full day's pay; to give to the performance of his duties his earnest effort and best thought. Principle 4 calls upon each employee to seek to find and employ more efficient and economical ways of getting tasks accomplished. The Senate Code of Official Conduct includes the following: Rule 38, which prohibits unofficial office accounts; Rule 39, which addresses foreign travel; and Rule 40, which addresses the use of prepaid postage and radio and television studios.

Judicial branch: Though the judicial branch's three Codes of Conduct contain no provisions as specific as those of the other two branches in this regard, the misuse of public resources would be a type of misconduct that could fall under more general provisions of the Codes.

General finance and property control network: Section 9 of Article I of the U.S. Constitution provides that "No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time". Every Federal agency has the responsibility of assuring that its use of public funds adheres to the terms of all pertinent authorization and appropriation acts, as well as to all other relevant statutory and regulatory provisions. Specific financial management laws, all of which stress the importance of appropriate accounting and internal controls such as an independent audit program, enhance this responsibility.

Title 31 of the U.S. Code, *Money and Finance*, establishes the basic framework for the control of funds. The various statutes contained in that title govern the budget process; the appropriations process; accounting; auditing of accounts; settlement of disputes; payment of claims; collection of debt; recovery of erroneous payments; and other miscellaneous financial activities involving public finances. Title 40, *Public Buildings, Property, and Works*, contains various statutes governing the management and disposal of public property. Title 41, *Public Contracts*, contains statutes applying to procurement procedures.

In addition, Federal regulations contain mechanisms for the prevention of waste, fraud, and abuse. The budget process is controlled by the Office of Management and Budget (OMB) Circulars, particularly OMB Circular A-11, *Preparation, Submission, and Execution of the Budget (Attachment 14)*. Title 31 of the Code of Federal Regulations, *Money and Finance: Treasury*, contains rules for the management of Federal receipts and disbursements. Title 4, *Accounts*, controls auditing and settlement of accounts, Title 41, *Public Contracts and Property Management*, contains information regarding the management of public property and similar topics, and Title 48, *The Federal Acquisition Regulation System*, contains the Federal Acquisition Regulations.

Generally, management accountability requirements mean that managers are responsible for ensuring the quality and timeliness of program performance; for increasing productivity; for controlling costs; for mitigating adverse aspects of agency operations; and for assuring that programs are managed with integrity and in compliance with applicable law. Management controls, organization, policies, and procedures are tools to help program and financial managers achieve results and safeguard the integrity of their programs. Many statutes and documents address, both explicitly and implicitly, the importance of management controls.

At the lowest level, that is the point at which actual disbursements of funds occur, all Federal entities are required to have in place checks and balances (consisting of systems and internal controls) that effectively limit and control the obligation and disbursement of public funds. Title 18 of the U.S. Code contains criminal sanctions that apply to the misuse of public funds (for example, Section 371, *Conspiracy to commit offense or to defraud United States*; Section 641 et seq., concerning embezzlement and theft; Section 872, *Extortion by officers or employees of the United States*; and Section 1001, concerning false statements; **Attachment 15**).

Particularly significant and fundamental statutory components of the mechanisms designed to prevent the unlawful use of public funds include: the Anti-Deficiency Act (Public Law 97-258); the Federal Managers Financial Integrity Act (P.L. 97-255); the Chief Financial Officers Act (P. L. 101-576); and the Inspector General Act (P.L. 95-452).

**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 answer to Question 1.b in Chapter 1 describes the enforcement mechanisms for each of the standards and codes of conduct. The U.S. Federal Government ensures the conservation and proper use of resources through a system of financial record crosschecks and through active management reviews and investigations, followed by prosecution if necessary. For example, each of the largest agencies of the executive branch has a statutorily mandated Inspector General (IG). (See the Inspector General Act of 1978, **Attachment 16**.) Many smaller agencies have IGs appointed by their agency heads. The mission of all IGs is to independently review the programs and operations of their agencies; to detect and prevent fraud, waste, and abuse; and to promote economy, efficiency, and effectiveness so that their

agencies can best serve the public. One goal of IG investigations is to narrow opportunities for misconduct and corruption in the Federal Government. IGs and agency managers attempt to use criminal and administrative investigations to effect procedural and systemic reforms that will make future misconduct less likely. While IG investigations may focus on individual mismanagement, OIG audits may identify systemic vulnerabilities or failures to adhere to regulations and standards. IGs may make recommendations to correct deficiencies based on such audits. Executive branch departments and agencies are required by the Inspector General Act to respond within six months to OIG recommendations, and an IG may report to Congress any instances in which an executive branch agency has not taken action in response to an IG recommendation.

In addition, the mission of the Government Accountability Office (GAO) includes ensuring the accountability of the federal government for the benefit of the American people. The GAO accomplishes this by engaging in a range of oversight, insight and foresight activities that span the full breadth and scope of federal programs, policies, operations and performance. The GAO has statutory responsibility to audit and review “all matters relating to the receipt, disbursement, and use of public money.”

Many of the investigatory organizations mentioned in the answer to Question (a) in Chapter 3 can also investigate such matters. When probable violations of law are found, DOJ is responsible for prosecuting statutory violations, including violations of the statutes mentioned in the answer to (a) of the present question.

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

Results from OGE’s 2003 survey of executive branch agencies (which, again, one should consider a compilation of good-faith estimates provided by agencies) indicated that agencies took over 4,306 disciplinary actions (including removal, demotion, suspension, and written reprimand) in response to employee misuse of position, Government resources, or information. However, one should view this number carefully since the survey would count lesser disciplinary actions, such as a written reprimand for misusing a Government telephone, no differently from more significant ones, such as an employee dismissal for theft of a Government automobile.

The following statistics (which also include cases beyond this scope of this questionnaire) are combined statistics from the Offices of Inspector General (IGs) that come from the Fiscal Year 2003 Progress Report to the President (**Attachment 17**) created by the IGs and they provide some context as to the activities of the IGs:

- IGs collectively issued more than 4,700 reports, closed more than 22,000 investigations, and processed almost 200,000 complaints;
- IGs recommended ways that approximately \$26.4 billion could be put to better use, and management agreed with recommendations regarding approximately \$11.3 billion of that total;

- IGs questioned approximately \$3.1 billion in costs, and management agreed with recommendations regarding approximately \$1.9 billion of that total;
  - IG investigations resulted in the recovery of approximately \$4.5 billion;
  - IGs contributed to investigations that led to over 6,600 successful criminal prosecutions and nearly 653 civil actions;
  - IG investigations contributed to nearly 7,607 suspensions and debarments of contractors, grantees, and other entities or individuals doing business with the Government; and
  - IG actions contributed to over nearly 2,000 personnel actions (reprimands, suspensions, demotions, or terminations) taken against Federal, state, and local (and Federal contractor/grantee) employees.
- d. **If no standards and mechanisms, above stated, 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 like to whom they apply and to what resources they refer, and list and attach a copy of the related provisions and documents.**

Executive branch: The Standards of Conduct state at 5 C.F.R. Section 2635.101(b)(11) that ~~A~~Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities. Appropriate authorities for employees can include supervisors or appropriate investigative authorities such as an agency's Inspector General. Additionally, all executive branch agency heads are required, pursuant to 28 U.S.C. Section 535 (**Attachment 18**), to report to the U.S. Attorney General or his delegates any information, allegation, or complaint received in their respective agency regarding a violation of the U.S. criminal code by an executive branch officer or employee.

Legislative branch: The Code of Official Conduct for the House (House Rule 23) says that a Member, officer, or employee of the House "shall conduct himself at all times in a manner that shall reflect creditably on the House." In addition, Members, officers, and employees are expected to adhere to the 1958 Code of Ethics for Government Service, which requires

them to “Expose corruption wherever discovered.” Senate Resolution 338 of the 2<sup>nd</sup> Session of the 88<sup>th</sup> Congress, as amended, says the Senate Select Committee on Ethics shall “receive complaints and investigate allegations of improper conduct which may reflect upon the Senate, violations of law, violations of the Senate Code of Official Conduct and violations of rules and regulations of the Senate...”(Section 2.a.1.; see the appendixes of Attachment 21). The expectation in the Senate of good-faith compliance with the Senate Code of Official Conduct could also encompass the expectation that a Member, officer, or employee would report acts of corruption of which he was aware.

Judicial branch: Canon 3 of the Code of Conduct for Judicial Employees includes the following language: “A judicial employee should report to the appropriate supervising authority any attempt to induce the judicial employee to violate these canons.” Canon 3 of the Code of Conduct for Federal Public Defender Employees includes the following language: “A defender employee should report to the appropriate supervising authority any attempt to induce the defender employee to violate these canons.” Canon 3 of the Code of Conduct for United States Judges includes the following language: “A judge should initiate appropriate action when the judge becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by a judge or lawyer.” Canon 3 also says a judge should hold court officials, staff, and others subject to the judge’s direction and control to the same standards applicable to the judge.

**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.**

An executive branch employee who is fully aware of fraud, waste, abuse, or corruption and fails to report the misconduct is subject to administrative discipline. The answer to Question 1.b in Chapter 1 discusses administrative sanctions available for a violation of the standards and codes of conduct in each of the three branches. Generally, these administrative sanctions would be available for knowing violation of the code provisions discussed in part (a) of the present question. Offices of Inspector General have created telephone hotlines that allow employees and others to report fraud, waste, abuse, and corruption either anonymously or otherwise. These hotlines are tools that facilitate and improve enforcement.

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

See the answer to Question 3.c in Chapter 1 for general information on results, including statistics, regarding the reporting of acts of corruption.

**d. If no standards and mechanisms, above stated, 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 in view of response above.

## **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.**

The Ethics in Government Act of 1978, as amended, (5 U.S.C. app. Section 101 et seq.; **Attachment 19**) requires public financial disclosure on the part of the most senior elected and appointed officials of all three branches of the U.S. Federal Government. It is important to note at the outset that the purposes for collecting financial disclosure reports and for making reports public at the Federal Government level in the United States are to detect and prevent conflicts of interest and to support public confidence in government, not to detect illicit enrichment. The reports can be useful in the latter regard under certain circumstances, however. An outline of the system follows.

*Who must file:*

Executive branch: President; Vice President; officers and employees of the executive branch (including, but not limited to, those appointed by the President with confirmation of the Senate) whose basic rate of pay meets a certain threshold amount (including Generals and Admirals in the uniformed services); administrative law judges; certain employees in the executive branch occupying positions that are exempt from the competitive service by reason of being of a confidential or policymaking character, regardless of level of pay (generally political appointees paid under the General Schedule pay system); certain officers and employees of the Postal Service and the Postal Rate Commission; the Director of the U.S. Office of Government Ethics; each designated agency ethics official; and certain high-level appointees within the Executive Office of the President (civilian commissioned officers).

Legislative branch: Members of Congress and certain senior officers and employees within the legislative branch (generally determined by basic level of pay).

Judicial branch: Chief Justice of the United States; Associate Justices of the Supreme Court; judges of the United States courts of appeals, United States district courts, Court of Appeals for the Federal Circuit, Court of International Trade, Tax Court, Court of Federal Claims, Court of Appeals for Veterans Claims, United States Court of Appeals for the Armed Forces, and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior; and judicial officers and employees whose basic rate of pay is at or above a specified threshold amount.

Candidates for elected office and nominees for appointed office: Candidates for election to the House or Senate; candidates for election to the Offices of President and Vice President; and most nominees to positions in all three branches that require nomination by the President and confirmation by the Senate (though in some instances a public report is not required for part-time positions).

*When they must file:*

Candidates: Within 30 days of becoming a candidate, or by May 15 of that calendar year, whichever is later, but at least 30 days before the election, and on or before May 15 of each succeeding year that the individual continues to be a candidate.

Nominees to positions requiring Senate confirmation: At any time following a public statement by the President or President-elect of his intention to nominate the individual, but no later than 5 days after the President transmits the nomination to the Senate.

New entrants to other covered positions: Within 30 days after assuming the position.

Incumbents: No later than May 15 annually and within 30 days of terminating employment in a position that requires a report.

Extensions of up to 60 days are available for most filings.

*What must be reported (in general):*

- Description of each source, type, and amount of investment income reported (indicating the proper category of amount and whether the income is from interest, dividends, rent and royalties, and/or capital gains), where the amount exceeds a specified threshold value (currently \$200).
- Description of each source, type, and actual amount of any other type of income not described above, where the amount exceeds \$200.
- Identity of the source and brief description of gifts worth over \$122 received from that source, when the gifts have an aggregate value in excess of \$305.
- Identity of the source and brief description of travel reimbursements worth over \$122 received from that source, when the travel reimbursements have an aggregate value in excess of \$305.

- Identity and category of value of any interest held for the production of income, if the value is in excess of \$1,000 (or if the interest produced more than \$200 in income). The threshold-reporting amount for deposits in banks and other similar types of regulated financial institutions is \$5,000. Exceptions to reporting requirements include a personal residence and financial instruments of indebtedness from certain members of the family.
- Identity and category of value of total liabilities owed to any creditor, if the liabilities exceeded \$10,000 at any time during the reporting period. Exceptions include a mortgage on a personal residence; loans secured by personal motor vehicles; loans for household furniture or appliances, when the loan does not exceed the purchase price of the item that secures it; and liabilities to certain specified family members.
- Description of each purchase, sale, or exchange of real property or securities other than transactions between the filer and the spouse or dependent children and other than transactions involving the personal residence of the reporting individual, when the amount of the transaction exceeds \$1,000. Value is reported by category of amount.
- Identity of positions held (outside the U.S. Government) as an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any business enterprise, any nonprofit organization, any labor organization, or any educational institution. The report does not require the reporting of positions held in religious, social, fraternal, or political entities or positions solely of an honorary nature.
- Description of the date, parties to, and terms of any agreement or arrangement with respect to future employment; a leave of absence during the period of the reporting individual's Government service; continuation of payments by a former employer other than the U.S. Government; and continuing participation in an employee welfare or benefit plan maintained by a former employer.
- For first-time filers, the identity of each recent source of compensation in excess of \$5,000 paid for the personal services of the filer (i.e. clients) and a brief description of the nature of the services rendered.

Filers must include the information described above for spouses and dependent children for the following: investment income; gifts given and reimbursements received due to the relationship to the filer; and transactions. The report must also show the sources, but not amounts, of spousal earned income.

*Where the reports are filed:*

In general, reports are filed with the agency, court, or legislative entity that employs the individual or with the agency, court, or legislative entity with which the individual will serve (e.g. in the case of candidates for the House and Senate). Candidates for President and Vice President file with the Federal Election Commission. Copies of reports filed by executive branch personnel who hold positions requiring Presidential appointment and Senate confirmation are transmitted from the employing agency to the United States Office of Government Ethics (OGE).

*How the reports are made public:*

- Individuals who wish to receive a copy of the financial disclosure report of an individual employed by the executive branch must file a request with the agency that employs the individual or with OGE if the agency is required to transmit a copy of the report to OGE.
- Individuals who wish to receive a copy of the financial disclosure report of a candidate for President or Vice President must file a request with the Federal Election Commission or with OGE.
- Individuals who wish to receive a copy of the financial disclosure report of a candidate for, a Member of, or an officer or employee of the House must file a request with the Legislative Resource Center within the Office of the Clerk of the House.
- Individuals who wish to receive a copy of the financial disclosure report of a candidate for, a Member of, or an officer or employee of the Senate must file a request with the Office of Public Records of the Secretary of the Senate.
- Individuals who wish to receive a copy of the financial disclosure report of an officer or employee of a legislative branch agency must file a request with either the Legislative Resource Center or the Office of Public Records of the Secretary of the Senate, depending upon which House of Congress is responsible under the Ethics in Government Act.
- Individuals who wish to receive a copy of the financial disclosure report of a Justice, judge, or judicial branch employee must file a request with the Financial Disclosure Office of the Administrative Office of the United States Courts.

The Ethics in Government Act requires that a requester make a written request stating his or her name, occupation, and address; stating the name and address of any other person or organization on whose behalf the inspection or copy is requested; and stating that he or she is aware of certain prohibitions with regard to obtaining or using the report. The executive branch has developed a standard form that includes a notice of the prohibited uses.

In the executive branch, the respective employing agency reviews the financial disclosure report of an officer or employee, though OGE also conducts a second review of the public financial disclosure reports filed by Presidential appointees requiring Senate confirmation. The House Committee on Standards of Official Conduct reviews reports filed in the House, and the Senate Select Committee on Ethics reviews reports filed in the Senate. The Judicial Conference's Committee on Financial Disclosure reviews reports filed in the judicial branch. Reports are reviewed for internal consistency and for facial completeness, but they are not audited. In addition to the review of the report (which can include Internet searches and other research geared at cross-checking information with public sources), a number of other means exist to verify the information on a report. A reviewer can ask a filer questions to ensure all relevant information appears on the report and is correct. Also, the scrutiny of the media and of persons familiar with a filer can lead to allegations that a filer has omitted or misrepresented certain information on a publicly available financial disclosure report. In the United States, public and media cultures reward investigative reporters who uncover government scandal; that reward system gives incentive to investigative reporters to examine and investigate public financial disclosure reports closely. When reviewing the public financial disclosure report of a Presidential nominee for a position requiring

Senate confirmation, the potential employing agency may review certain documents completed by the filer for other Government entities (e.g. the confirming committee of the Senate) to ensure no inconsistencies exist between those documents and the financial disclosure report.

The administrative regulations for the executive branch's financial disclosure systems are in 5 C.F.R. Part 2634 (**Attachment 20**), and the financial disclosure forms contain detailed instructions. Chapter 5 of the current Senate Ethics Manual (**Attachment 21**) and Chapter 4 of the current House Ethics Manual (**Attachment 22**) contain further explanation of the financial disclosure systems for the two Houses of Congress. The House Committee on Standards of Official Conduct and the Senate Select Committee on Ethics both also issue detailed instruction booklets for the completion of the financial disclosure forms. The Judicial Conference's Committee on Financial Disclosure and the Financial Disclosure Office of the Administrative Office of the United States Courts create the administrative financial disclosure guidelines for the judicial branch.

In addition to this public financial disclosure system, the executive branch also has a system that provides for the confidential filing of financial disclosure reports. In 2003, approximately 250,000 individuals filed confidential reports. Those employees who must disclose their finances confidentially are executive branch employees who do not meet the pay thresholds for filing public reports but participate personally and substantially in taking the following types of Government actions: contracting and procurement; administering and monitoring grants, subsidies, licenses, or other Federally conferred benefits; regulating or auditing of non-Federal entities; other activities that have a direct and substantial economic effect on the interests of non-Federal entities; or other activities that the employing agency concludes require the employee to file such a report to avoid involvement in a real or apparent conflict of interest and/or to carry out the purposes behind any other statute, executive order, rule, or regulation applicable to or administered by that employee.

The confidential financial disclosure report requires information regarding the following: interests and affiliations: assets; sources of earned income; sources of investment income; liabilities; outside positions; agreements or arrangements (for current or future employment, for a leave of absence from private or other non-Federal employment, for continuation of payment by a former employer other than the Federal Government, or for continuing participation in an employee pension or benefit plan maintained by a former employer other than the Federal Government); and gifts and travel reimbursements. The confidential report requires less-detailed information and fewer types of information than the public report. As with the public report, each type of information requested by the confidential report has a direct link to a statutory or regulatory requirement. The confidential report also seeks certain information related to financial interests of a spouse and any dependent children. The administration of the confidential financial disclosure report system is similar to that of the public system, though the annual collection of the reports occurs during a different portion of the year to ease the burden on agency ethics officials who collect and review the reports. The regulations regarding the administration of the confidential financial disclosure system are in Subpart I of 5 C.F.R. Part 2634.

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

Since its inception, public financial disclosure has been an accepted part of holding federal public elected office, though only grudgingly accepted by some. Furthermore, only in extremely rare cases have individuals received appointments to full-time positions requiring Senate confirmation without a thorough review of their financial disclosure reports prior to the confirmation. In addition to the acceptance that financial disclosure is a requirement for certain service at the Federal Government level, civil and administrative penalties in the Ethics in Government Act and a criminal statute regarding false statements, 18 U.S.C. Section 1001, have provided strong incentive for filers to submit information completely, accurately, and on time. In terms of enforcement results, filers can be criminally liable for false statements on the financial disclosure reports. The United States Department of Justice (DOJ) can use the reports to help prove corruption cases or can prosecute criminal falsification. Such prosecutions may be useful if a corrupt act is suspected but would be difficult to prove.

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

- c. If no regulations, above stated, 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.**

Executive branch: The United States Office of Government Ethics (OGE), a separate agency within the executive branch, has responsibility for the overall direction of executive branch policies related to preventing conflicts of interest (5 U.S.C. app. Section 401 et seq.; **Attachment 23**). OGE carries out its role, in part, by developing the standards of conduct for officers and employees of the branch; working with the United States Department of Justice (DOJ) in seeking any statutory changes to conflict of interest statutes; designing the requirements of agency ethics programs; and reviewing agencies to ensure they are complying with all relevant statutes and regulations that govern the executive branch ethics program. In addition to the standards of conduct, other elements of the executive branch ethics program are ethics counseling, ethics training, and public and confidential financial disclosure systems. A designated agency ethics official (DAEO) in each department and agency of the executive branch (including those of the military) is responsible for carrying out the day-to-day activities of the ethics program within his or her agency. Each DAEO is selected by the agency head, who is, as a management and political issue, ultimately responsible for the ethics program in that agency. As noted in the answer to Question 1.b of Chapter 1, employees of each agency are subject to disciplinary sanctions imposed by the agency for violations of statutes and regulations; possible sanctions include reprimand, suspension, and removal. The employees are also subject to civil or criminal penalties for violations of ethics and conflicts of interest statutes outlined in the answers to Questions 1.a and 2.a in Chapter 1. DOJ prosecutes these cases. Courts following standard judicial and sentencing procedures impose these penalties.

Employees are also subject to penalties for failure to follow financial disclosure laws and regulations. The President, Vice President, the Director of OGE, and the head of each executive branch agency may take appropriate administrative action against an individual for failing to file a public or confidential financial disclosure report. The agency that employs the filer of a public report can levy a \$200 late filing fee. In addition, the U.S. Attorney General may bring a civil action against a filer of a public report for knowing and willful falsification or knowing and willful failure to file (see Section 104 of Attachment 19 mentioned in the answer to Question (a) in Chapter 2). DOJ may also bring a criminal action against a filer of a public or confidential financial disclosure report for knowingly and willfully making a materially false, fictitious, or fraudulent statement or representation on a financial disclosure report (see 18 U.S.C. Section 1001, cited in the answer to Question 3.a in Chapter 1; Attachment 15).

Legislative branch: The U.S. Constitution provides that each House of Congress (the Senate and the House) is responsible for determining the qualifications of its Members; for determining its rules of proceedings; for punishing its Members; and, with the concurrence of two-thirds of the Members, for expelling a Member. Each House of Congress has a committee responsible for administration of the code of conduct for Members and staff, for administering the public financial disclosure system for that House of Congress, and for providing advisory services and education to Members and staff regarding the statutory standards and codes of conduct to which they are expected to adhere. The responsible committee in the Senate is the Senate Select Committee on Ethics. The responsible

committee in the House is the House Committee on Standards of Official Conduct. DOJ is responsible for prosecuting cases of potential violations of civil ethics and criminal conflict of interest statutes committed by Members and staff.

Judicial branch: The Federal court system governs itself at the national level through the Judicial Conference of the United States, described in the answer to Question 1.b of Chapter 1. The Judicial Conference's Committee on Codes of Conduct renders advisory opinions concerning the application and interpretation of the Codes of Conduct for United States Judges, for Judicial Employees, and for Federal Public Defender Employees. The Committee also renders advisory opinions concerning the application and interpretation of the civil ethics statutes that apply to Justices, judges, and employees of the judicial branch. The procedures for filing and responding to complaints against judges are prescribed by statute, 28 U.S.C. Section 372(c). Actions that may be taken by the courts system against a judge can include private or public reprimand or censure, request for voluntary retirement, suspension of case assignments, and certification of disability of a judge to hold office. If appropriate, the Judicial Conference may transmit to the House a determination that consideration of impeachment may be warranted. Employees of the judicial branch are subject to disciplinary action, including removal. Justices and judges are not immune from prosecution by DOJ for violations of civil and criminal statutes.

At the Federal level of government, a number of entities have or can have investigative responsibilities with regard to violations of standards of conduct, violations of financial disclosure requirements, or other ethical misconduct. A list of major entities with such investigative responsibilities would include:

- The approximately 60 Offices of Inspector General within departments and agencies of the executive branch, which are in part charged with preventing and investigating fraud, waste, and abuse within the programs of that department or agency;
- The Federal Bureau of Investigation, an agency within DOJ charged with gathering and reporting facts and compiling evidence in cases involving Federal jurisdiction;
- Investigative commands within the Military Departments of the Department of Defense (in the executive branch), which can engage in internal criminal investigations of activities that include acts of corruption;
- The General Accounting Office, an arm of Congress that can independently audit and evaluate Government programs and activities;
- The House Committee on Standards of Official Conduct and the Senate Select Committee on Ethics, each of which oversees the ethics program for its respective House of Congress;
- Congressional oversight committees, or investigative committees appointed by either House of Congress;
- Internal control/affairs offices in a number of law enforcement agencies, which are responsible for maintaining integrity and for detecting corruption within their respective ranks;
- A special committee, composed of a chief judge of a Federal circuit and equal numbers of circuit and district judges of the circuit, created pursuant to 28 U.S.C. Section 372(c)

to investigate a complaint of misconduct against a circuit, district, bankruptcy, or magistrate judge;

- The judicial council of a Federal circuit, generally after receiving a report from a special committee as mentioned immediately above;
- The Judicial Conference of the United States or a standing committee appointed by the Chief Justice, generally following referral from a judicial council of a Federal circuit as mentioned immediately above; and
- The Office of Audit of the Administrative Office of the United States Courts, in certain cases involving judicial branch personnel.

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

The answers to Questions 1.c, 2.c, 3.c, and 4.c in Chapter 1 and Question (b) in Chapter 2 all address the results obtained by these oversight bodies.

**c. If no standards and mechanisms, above stated, exist, briefly indicate how your State has considered the applicability of measures, in accordance with 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.**

Yes. There are a broad legal framework and appropriate implementing mechanisms to support and encourage active participation by civil society and non-governmental organizations in the workings of government in the United States in general, and in the efforts to prevent corruption in particular. An active civil society in the United States developed under and is sustained by certain Constitutional rights, such as freedom of speech, and related laws that facilitate public discourse and interaction with government, and the creation and operation of NGO's, media organizations, and other elements of civil society.

Civil society participation in government is facilitated by the public's access to certain information and documents under the control of the government. Such access is at the very heart of the democratic process in the United States. Also extremely important are the numerous laws and mechanisms that provide for citizen consultation, participation in, and oversight of, public administration. Such mechanisms include, among many others, requirements for open hearings in legislative bodies, public review and comment in government rulemaking, public release of judicial decisions, public release of campaign finance information, public release of national budget information, public release of all procurement opportunities and awards, public access to and participation in certain Federal advisory committees, and the "qui tam" ability of private citizens to sue the government for redress of the corrupt and fraudulent acts of public officials. (See Answer 4.a in this Chapter for more discussion of "qui tam" actions).

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

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

**c. If no mechanisms, above stated, 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 in view of answers above.

## **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 in 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.**

Yes. The Freedom of Information Act (5 U.S.C. Section 552)("FOIA") generally provides that any person has a right, enforceable in court, to obtain access to federal agency records. While there are a number of exemptions to disclosure, they are generally discretionary and not mandatory, dissatisfied record requesters are given relatively speedy remedy in the United States district courts. Judges determine de novo the propriety of agency withholdings and agencies bear the burden of proof that the withholding is justified. FOIA is administered through a decentralized system, so that each federal agency is responsible for implementing the Act's requirements. Requests for records under the Act may consist of a simple letter from the requestor, who is not required to state his or her reasons for making the request.

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

In addition, federal agencies make extensive use of websites on the Internet to provide substantive information, to inform the public about official activities and how to obtain additional documents. As an example, there were over a million visits to the Department of State website within the United States per month as of January 2005. Many government institutions are also required to publicly release numerous government reports and announcements regarding the inner workings of government. A few examples include the daily Congressional Record transcripts of all Congressional proceedings and introduced bills, the Commerce Business Daily announcements of government procurement opportunities, and semi-annual reports describing the work of each Inspector General.

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

The results from the foregoing statutes and mechanisms have been continuous streams of requests for documents and information to agencies throughout the federal government. The Department of Justice, Office of Information and Privacy annually publishes a report on FOIA activity. The total number of requests received in fiscal year 2003 under FOIA and the Privacy Act, which covers requests from the subject of the record, was 3,267,394.

**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.**

Yes. One of the principal mechanisms for seeking consultation in the executive branch is the Administrative Procedures Act (5 U.S.C. Section 551), which requires with limited exceptions that all rules and regulations proposed by federal agencies must be announced in the Federal Register with opportunity for public comment. The agency must issue its responses to the comments.

Other statutes that encourage public consultation and input into agency actions include the Federal Advisory Committee Act (5 U.S.C. App. 801, as amended by the Government in the Sunshine Act - 5 USC Section 552b) which requires that all Federally-sponsored public advisory committees, some of which are created by law and others by agency decision, must hold their meetings in public and provide an opportunity for the public to attend, and under certain circumstances, to be heard. These public meetings provide civil society and non-governmental organizations an important mechanism to consult with both the agency personnel and the members of the public advisory committees on matters within their sphere of competence, including, of course, matters dealing with corruption prevention. Another mechanism that encourages direct input by civil society is the "hot line" procedure established by the Inspectors General under the Inspector General Act of 1978. This allows citizens to report confidentially allegations of fraud, abuse, waste or mismanagement by Federal employees, contractors or grantees.

- 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 for consultation have resulted in well-established practices through which civil society as individuals and non-governmental organizations have made their views known. For example, when the Standards of Ethical Conduct for Employees of the Executive Branch were proposed in 1991, over 1,000 comments were received and responded to. In 2003, there were 976 public advisory committees functioning under the Federal Advisory Committee Act (FACA), with over 62,000 public members, most of who served without compensation. Non-governmental organizations make particular use of the FACA process to make their views known.

#### **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.**

Yes. In addition to providing access to information, and opportunities for consultation, the mechanisms mentioned above serve to encourage active participation by civil society and non-governmental organizations in the process of public policy making and decision-making. This occurs not just in the executive branch, where information about proposed policies and matters on which agencies are contemplating decisions alerts the public to where it should make its positions known, but also in the legislative branch where lobbying and access to the legislative process allow civil society to participate in policy making and decision making, both generally and in particular on anti-corruption legislation. Another mechanism that provides for direct civil society participation in anticorruption matters is the “qui tam” action (31 USC Section 3730), which permits a private citizen to file a complaint under the False Claims Act, alleging corruption to obtain a public contract. If successful, the citizen may recover a percentage of the proceeds of the settlement or judgment. The filing of amicus briefs in judicial proceedings is another mechanism for public participation, as are public appearances before Congress in connection with hearings and markups. Another anticorruption mechanism that provides for public participation is the procedures for disappointed bidders to challenge Federal contract awards (Part 33 of the Federal Acquisition Regulations, 48 Code of Federal Regulations 1)

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

In the ways described above, the standard open-government practices of the executive and legislative branches have resulted in countless instances of the influence of civil society and non-governmental organizations upon the making of policy and decisions generally, and in the anti-corruption area in particular.

## **5. Participation mechanisms for the follow-up of the 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 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.**

Yes. Access to information under the Freedom of Information Act and the other mechanisms cited above provides civil society and non-governmental organizations with data and documents about the manner in which executive agencies are implementing the laws and regulations designed to prevent, detect, punish and eradicate acts of public corruption. With that information, they perform “watchdog” functions, expressing satisfaction or dissatisfaction with the conduct of public agencies. They may provide

views in testimony before legislative bodies and public comment meetings of executive branch agencies. Their views may also be expressed in litigation that can bring injunctive relief and require the agency to cease and desist from activities found to be improper or illegal. Follow-up also occurs in the "hotline" process of the Inspectors General referred to above, since individuals who have referred an allegation can inquire about the progress of the case. Another mechanism is the Whistleblower Protection Act. This legislation not only protects federal employees who have alleged wrongdoing in their agencies, but also brings the allegations to the attention of civil society and non-governmental organizations with a particular interest in the subject matter of the allegations. Thus, there is a long history in the United States of the ability of the American public to question the effectiveness of public administration, individually, through the press, and through the legislative and electoral process.

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

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

## **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.**

United States domestic law provides for the execution of foreign requests for mutual legal assistance in criminal matters, and the United States is also able to request assistance from other countries. 28 U.S.C. Section 1782 gives a U.S. district judge the authority, pursuant to a letter rogatory or letter of request from a foreign country, to order a person in his district "to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation." The provision is broadly

drafted, and the United States would be able to offer assistance in response to an appropriate request, in most instances, provided that such assistance would not be contrary to fundamental legal principles or "any legally applicable privilege."

In addition, the United States also has bilateral Mutual Legal Assistance Treaties (MLATs) with 50 countries that are in force worldwide. These include MLATs in force with the following OAS countries: Belize, Canada, Bahamas, Mexico, Argentina, Uruguay, Jamaica, Panama, Antigua and Barbuda, St. Vincent and the Grenadines, Grenada, Trinidad and Tobago, St. Lucia, St. Christopher and Nevis, Barbados, Dominica, and Brazil. The United States has negotiated bilateral MLATs that have not yet entered into force with the following OAS countries: Colombia, and Venezuela. The United States also has ratified the Interamerican Convention on Mutual Assistance in Criminal Matters, which provides for mutual legal assistance in the absence of a bilateral mutual legal assistance treaty. In addition, the United States has signed and ratified both the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Council of Europe Criminal Law Convention Against Corruption, both of which contain provisions on mutual legal assistance that may apply to some OAS States Parties.

Over the last thirty years, the United States has concluded over 60 case-specific agreements that provide for legal assistance with respect to corruption cases. Many of these have been superseded by the bilateral MLATs and other treaties described above. Nevertheless, some such agreements remain in force.

Finally, law enforcement and other agencies of the United States have entered into a number of general agreements that would, in most instances, cover cases involving corruption. The U.S. Customs Service has entered into Customs Mutual Assistance Agreements (CMAAs) with 51 customs administrations that allow the Customs Service to assist another party in a wide variety of cases. Other law enforcement agencies with similarly broad agreements include the Federal Bureau of Investigation (FBI) and, with respect to narcotics and associated offenses, the Drug Enforcement Administration (DEA). The Securities and Exchange Commission (SEC) has also entered into a number of general Memoranda of Understanding with other countries on mutual assistance and exchange of information.

**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.**

Since the United States ratified the Convention in September 2000, the United States has received only one request (and a supplemental request in the same case) for mutual assistance under the Convention. In that case, it was determined that the particular evidence sought in the first instance could not be disclosed.

The United States has not made any requests for mutual assistance under the Convention.

Although the United States has received few requests under the Convention, it should be noted that the United States is very actively engaged in requesting and providing mutual assistance in corruption investigations under bilateral mutual assistance treaties and via letters rogatory.

- c. **If no mechanisms, above stated, 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.**

The United States Government has several mechanisms for technical cooperation.

Since FY 2000, the Department of Justice (DOJ) Criminal Division's Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) has been funded by the State Department's Bureau for International Narcotics and Law Enforcement Affairs (INL) to provide technical assistance and training programs to further the implementation of the Inter-American Convention Against Corruption. Below are the anti-corruption programs that OPDAT has conducted in Latin America and the Caribbean since FY 2002 through December 2004.

- Since FY 2000, OPDAT has been assisting the Colombian Prosecutor General enhance the national Anti-Corruption Task Force that specializes in the investigation and prosecution of public corruption and related criminal offenses. Modeled after the highly successful US organized crime task forces, the Colombian
- In February and March 2002, OPDAT conducted anti-corruption assessments in Trinidad and Tobago, and Guyana, both of which are part of an INL-funded

Caribbean region anti-corruption project aimed at implementing the Inter-American Convention Against Corruption.

- Since FY 2002, OPDAT has conducted two anti-corruption programs for approximately 30 law enforcement personnel each in the Dominican Republic, including prosecutors from throughout the country as well as members of the Department of the Prevention of Corruption, which investigates corruption. This program is part of a larger technical assistance and training project funded by INL and designed by OPDAT both to address public corruption and to develop the skills and abilities of Dominican prosecutors and investigators to operate under a pending new Criminal Procedure Code, which introduces accusatory elements into the criminal justice system. Covered were such topics as investigation and prosecution strategies in corruption cases, use of documentary evidence, financial investigations and electronic surveillance issues in corruption prosecutions, and task force development. An actual corruption case involving an immigration official was used as a case study. Three more iterations of the program will be offered. Based on assessments it conducted in May and June 2002, and in coordination with the Narcotics Affairs Section (NAS) in the U.S. Embassy in Mexico City and the Mexican Attorney General's Office (PGR), OPDAT developed a program for the PGR regarding investigative and prosecutorial techniques to combat public corruption, which was presented in Mexico. This program is part of a larger anti-corruption technical assistance project that OPDAT has proposed to NAS-Mexico. In FY 2003, OPDAT conducted a series of six anti-corruption programs, training more than 130 Mexican judges and prosecutors that it developed in coordination with the NAS and the PGR.
- In January 2003, OPDAT conducted a regional anti-corruption program in Panama for four representatives each from seven Central American countries, including Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama. In June 2003, OPDAT conducted an anti-corruption program in Ecuador. Both programs focused on the techniques and tools need to investigate and prosecute public corruption.
- In March 2004, OPDAT conducted a technical assistance program for Uruguayan prosecutors and investigators to improve their investigative and prosecutorial ability to combat public corruption.
- In FY 2004, OPDAT conducted an Anti-corruption Assessment in Costa Rica.
- In October 2004, OPDAT conducted a Caribbean-regional workshop on investigating and prosecuting corruption. It provided substantive technical assistance and promoted collaboration among prosecutors and investigators in the Caribbean. It was attended by prosecutors and investigators from Antigua, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts, Trinidad, St. Lucia, St. Vincent, and Suriname.
- OPDAT placed the first Resident Legal Advisor dedicated to anti-corruption issues in Managua, Nicaragua, in May 2004. In September 2004, he provided assistance to the Nicaraguan Attorney General's Office on corruption cases. In January 2005, he will conduct a program for 50 Nicaraguan prosecutors and police on the techniques and tools involved in preparing and bringing corruption cases to trial in an accusatory criminal justice system. Although Nicaragua

switched over from an inquisitorial criminal justice system in 2002, it is still in the process training prosecutors, investigators, and judges in the trial advocacy skills needed to implement the new criminal procedure code.

During this same period, DOJ's International Criminal Investigative Training Assistance Program (ICITAP) has been funded by the State Department and the U.S. Agency for International Development (USAID) to provide law enforcement development support as part of the larger United States Government program to improve the administration of justice in recipient countries. While ICITAP assistance has not been directed specifically to implementation of the Inter-American Convention Against Corruption, it does effectively support the development of capabilities and mechanisms to combat corruption in the government and in law enforcement. Here are some examples of assistance that improves the recipient countries' capabilities to prevent, investigate and prosecute corruption:

- In Bolivia, ICITAP has supported police reform efforts by assisting in the rewriting of the Police Organic Law to incorporate improvements such as: a merit-based promotion system; increased transparency and accountability in the management of resources; a more effective and professional disciplinary code; and a stronger, more expeditious internal affairs function to enforce it.
- Technical assistance in managerial and administrative issues in El Salvador is has supported the establishment of policy and mechanisms for recruitment, selection, training and promotion of personnel. A code of conduct is to be developed also. Assistance is being offered to help develop automated records systems and a decentralized budget process that will increase transparency and accountability.
- ICITAP has helped Nicaragua and Guatemala to develop anti-corruption task forces to investigate major cases of public corruption and organized crime. Assistance has included training, development of policies and procedures, equipment support, and organizational development. Technical assistance and equipment support have also been offered to develop automated case and information management systems.
- In Honduras, ICITAP has provided assistance to help develop, organize and implement an Internal Affairs Unit. The unit will investigate allegations of misconduct on the part of police officers and will work closely with human rights organizations and the government prosecutor's office. Similar offices have been developed in Guatemala, Nicaragua, Bolivia and other countries in the hemisphere.

These are just a few examples of support being offered by ICITAP that is directly geared to fighting corruption. ICITAP's efforts to help professionalize government police forces and improve the administration of justice also serve to promote the rule of law and therefore more effectively detect, investigate, prosecute and prevent corruption.

USAID supports a variety of agreements to assist national and local governments and legislatures to improve the rule of law and justice systems, increase citizen participation, and strengthen public sector capacity. Through bilateral agreements, USAID continues providing technical assistance to implement new criminal procedural codes in other States Parties that will improve the overall effectiveness and transparency of their justice

systems and reduce impunity. USAID also assists the audit agencies to strengthen their capacities to better detect fraud and misuse of public resources. USAID is also assisting civil society organizations in these countries to educate citizens, to advocate for more accountable governments and greater access to information and to monitor government activity and expenditures. More recently USAID has begun working with political parties and elections tribunals to address political corruption.

The U.S. Office of Government Ethics (OGE) has signed arrangements with organizations from certain States Parties to share experiences, information, and best practices regarding certain corruption prevention measures. While not specifically tied to the provisions of the Convention, these activities do support its aims. OGE has a memorandum of understanding (MOU) with the Anti-corruption Office (AO) of Argentina's Ministry of Justice and Human Rights. Pursuant to this memorandum, OGE and AO have conducted videoconferences to discuss such topics as specific measures for preventing conflicts of interest; consequences for refusal to comply with requirements for preventing conflicts of interests; the regulation of a government employee's outside employment and activities; and ways to determine whether outside employment and activities pose a potential conflict of interest. The series of videoconferences will continue throughout the coming months.

OGE has also signed an MOU with a number of government institutions that have ethics responsibilities and that are located in other States Parties. The MOU created the Network of Government Institutions of Public Ethics in the Americas (Network), which currently has member institutions from Argentina, Brazil, Canada, Chile, Mexico, the United States (and Puerto Rico), and Uruguay. The Network is currently small and informal to allow for building the fundamental structures that will facilitate its positive and efficient growth. The Network participants are considering means for allowing wider participation. The primary purpose of the Network is to provide a forum (through electronic means and in-person meetings) for the sharing of experiences, information, and best practices with regard to areas of ethics and anti-corruption that are more expansive than, but include many of, those covered by the Convention.

**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.**

The programs described above are part of a United States development strategy initiated at the requests of the aforementioned "other States Parties."

**c. If no mechanisms, above stated, 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.**

The United States has sponsored a number of initiatives led by international agencies and organizations to foster implementation of the Convention. The United States, along with the Inter-American Development Bank, has funded an initiative by the OAS Office of Legal Cooperation to develop reports and national seminars for various countries in the Hemisphere on implementing the criminal law-related provisions of the Convention. Reports and national seminars have been completed for over a dozen countries, and are now being instituted for ten Caribbean nations and Brazil.

The United States is also active in developing technical assistance programs with international organizations that are not specifically aimed at implementing the Convention, but which relate to aspects referred to in the Convention. To this effect, USAID funds a number of regional initiatives designed to help governments in the hemisphere improve their policies and practices to reduce corruption. Through this mix of activities and in cooperation with the Inter-American Development Bank, the World Bank, the International Monetary Fund and the OAS, USAID assistance advances the ongoing implementation of Integrated Financial Management Systems (IFMS) improving financial management practices throughout the region, strengthening government auditing capabilities, establishing common standards in financial management fields and helping raise overall public awareness about the debilitating effects of fraud and corruption caused by the lack of adequate financial management. Every country in the region, except for Cuba, has begun to implement IFMS. The tying together of strengthened financial accountability and audit practices has enhanced and strengthened the countries' capacities to combat corruption. USAID also supports judicial anticorruption efforts, Offices of the Ombudsman and civil society oversight efforts through a number of Latin American international organizations. USAID's sponsored Donor Consultative Group (DCG) coordinates the provision of assistance in these areas, thus enhancing the availability of support to the countries in the region

The United States also works with the World Bank, OECD, Council of Europe, United Nations, and others on specific programs relating to anti-corruption diagnostics, mutual multilateral evaluation of anti-corruption efforts, developing judicial integrity, developing best practices in various anti-corruption areas, and implementing multilateral anti-corruption commitments similar to those found in the Convention.

## **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?**

Yes.

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

Yes.

- 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).**

The United States has designated as the Central Authority for mutual assistance matters:

Office of International Affairs  
U.S. Department of Justice  
Criminal Division (OIA/JCK Bldg.)  
Washington D.C. 20530  
United States of America  
Telephone: (202) 514-0000  
Fax: (202) 514-0080

The United States has not designated a Central Authority for technical cooperation matters:

The U.S. Permanent Mission to the Organization of American States  
United States Department of State  
2201 C. Street, NW  
Room 5914  
Washington, DC 20520  
Telephone: (202) 647-  
Fax: (202) 647-0911

- 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 in view of answer provided above.

## **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.**

Yes. The Office of International Affairs (OIA) is the Central Authority for mutual assistance under the Convention, and coordinates the Justice Department's international criminal law enforcement activity in the areas of extradition, legal assistance, and treaty negotiation. OIA has nearly forty attorneys with expertise in various geographical and substantive areas. It provides advice and assistance on mutual legal assistance to federal, state, and local prosecutors in the United States, and works closely with foreign authorities to help them obtain evidence in the United States for use in criminal proceedings abroad.

- 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.**

See response to Question 1.b., Chapter 5 with regard to requests received by the U.S. Central Authority for mutual legal assistance.

## **Appendix of Attachments**

### **Attachment 1** – Generally useful references:

U.S. Code of Federal Regulations: <http://www.access.gpo.gov/nara/cfr/>  
U.S. Federal Inspectors General: <http://www.ignet.gov/>  
Judicial Branch of the U.S. Federal Government: <http://www.uscourts.gov/>  
U.S. Office of Management and Budget: <http://www.whitehouse.gov/omb/>  
U.S. Agency for International Development: <http://www.usaid.gov/>  
United States Code: <http://www4.law.cornell.edu/uscode/>  
U. S. Constitution: <http://www.law.cornell.edu/constitution/constitution.table.html>  
U.S. Department of Justice: <http://www.usdoj.gov/>  
U.S. Department of State: <http://www.state.gov/>  
U.S. Federal Government: <http://www.firstgov.gov/>  
U.S. House of Representatives: <http://www.house.gov/ethics/>  
U.S. Office of Government Ethics: <http://www.usoge.gov/>  
U.S. Senate: <http://ethics.senate.gov/>

### **Attachment 2** - Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. Part 2635)

[http://www.usoge.gov/pages/laws\\_regs\\_fedreg\\_stats/oge\\_regs/5cfr2635.html](http://www.usoge.gov/pages/laws_regs_fedreg_stats/oge_regs/5cfr2635.html)

### **Attachment 3** - United States House of Representatives Rules 23-26

[http://www.house.gov/rules/house\\_rules\\_text.htm](http://www.house.gov/rules/house_rules_text.htm)

### **Attachment 4** - Code of Ethics for Government Service

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

### **Attachment 5** - United States Senate Code of Official Conduct (Standing Rules 34-43)

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

### **Attachment 6** - Code of Conduct for United States Judges; Code of Conduct for Judicial Employees; Code of Conduct for Federal Public Defender Employees

<http://www.uscourts.gov/library/manuals.htm>

### **Attachment 7** - 5 U.S.C. app. Section 501 et seq.

<http://www4.law.cornell.edu/uscode/5/appendix-TITLEV.html>

### **Attachment 8** - 5 U.S.C. Section 7501 et seq.

<http://www4.law.cornell.edu/uscode/5/pIIspFch75schI.html>

### **Attachment 9** - United States Constitution, Article I, Section 5

<http://www.law.cornell.edu/constitution/constitution.articlei.html#section5>

### **Attachment 10** - 28 U.S.C. Section 372(c)

<http://www4.law.cornell.edu/uscode/28/372.html>

**Attachment 11** - Results of OGE's Executive Branch Employee Ethics Survey 2000  
[http://www.usoge.gov/pages/daeograms/dgr\\_files/2001/do01007.html](http://www.usoge.gov/pages/daeograms/dgr_files/2001/do01007.html)

**Attachment 12** - Chapter 11 of Title 18 of the United States Code  
<http://www4.law.cornell.edu/uscode/18/p1ch11.html>

**Attachment 13** - OGE 2000 Conflict of Interest Prosecution Survey  
[http://www.usoge.gov/pages/daeograms/dgr\\_files/2002/do02003.txt](http://www.usoge.gov/pages/daeograms/dgr_files/2002/do02003.txt)

**Attachment 14** - OMB Circular A-11: Preparation, Submission, and Execution of the Budget  
<http://www.whitehouse.gov/omb/circulars/a11/02toc.html>

**Attachment 15** - 18 U.S.C. Sections 371; 641 et seq.; 872; 1001  
<http://www4.law.cornell.edu/uscode/18/371.html>  
<http://www4.law.cornell.edu/uscode/18/p1ch31.html>  
<http://www4.law.cornell.edu/uscode/18/872.html>  
<http://www4.law.cornell.edu/uscode/18/1001.html>

**Attachment 16** - Inspector General Act  
[http://www.access.gpo.gov/uscode/title5a/5a\\_2\\_.html](http://www.access.gpo.gov/uscode/title5a/5a_2_.html)

**Attachment 17** - Offices of Inspector General Fiscal Year 2003 Progress Report to the President  
<http://www.ignet.gov/randp/fy03apr.pdf>

**Attachment 18** - 28 U.S.C. Section 535  
<http://www4.law.cornell.edu/uscode/28/535.html>

**Attachment 19** - 5 U.S.C. app. Section 101 et seq.  
<http://www4.law.cornell.edu/uscode/5/appendix-TITLEI.html>

**Attachment 20** - 5 C.F.R. Part 2634  
[http://www.usoge.gov/pages/laws\\_regs\\_fedreg\\_stats/oge\\_regs/5cfr2634.html](http://www.usoge.gov/pages/laws_regs_fedreg_stats/oge_regs/5cfr2634.html)

**Attachment 21** - Senate Ethics Manual  
<http://ethics.senate.gov/downloads/pdf/manual.pdf>

**Attachment 22** - House Ethics Manual  
<http://www.house.gov/ethics/Ethicforward.html>

**Attachment 23** - 5 U.S.C. app. Section 401 et seq.  
<http://www4.law.cornell.edu/uscode/5/appendix-TITLEIV.html>

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

- a. State Party \_\_\_\_\_United States of America\_\_\_\_\_
- b. The official to be consulted regarding the responses to the questionnaire is:

Mr. \_\_\_John F. Maisto \_\_\_\_\_  
Title/position: \_\_\_\_\_Permanent Representative to the OAS\_\_\_\_\_  
Agency/office: \_\_\_\_\_U.S. Department of State\_\_\_\_\_  
Mailing address: \_\_\_\_\_U.S. Mission to the OAS\_\_\_\_\_  
\_\_\_\_\_Department of State, Rm. 5914\_\_\_\_\_  
\_\_\_\_\_Washington, DC 20520\_\_\_\_\_  
Telephone number: \_\_\_\_\_202-647-9376\_\_\_\_\_  
Fax number: \_\_\_\_\_202-647-0911\_\_\_\_\_  
E-mail address: \_\_\_\_\_USA@OAS.org\_\_\_\_\_