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Indicator	Formal provisions	What actually happens
EXECUTIVE		
<p>Can citizens sue Government for infringement of their civil rights?</p>	<p>Yes. The Constitution, Art. 37, § 6. Officials are held responsible for all their acts.</p> <p>Citizens' (including resident foreigners') civil rights are thoroughly provided for in the Constitution (Art. 5).</p>	<p>Violations of civil rights (individual, collective and what is called "diffuse") occur systematically against the poor. The violators are usually private persons and enterprises, and more often than not there is official involvement, at least by omission. However, the poor cannot afford the access to the Judiciary, so suits are rare. Although existent, pro bono and state-designated legal assistance are insufficient.</p> <p>Recently, professional organisations and other civil society entities, as well as prosecutors and official consumer's rights agencies started to sue the Executive for violations of collective and diffuse rights.</p>
<p>Are there procedures for the monitoring of assets, including disclosure provisions, for the chief executive, Ministers and other high level officials?</p>	<p>Yes. Disclosure is regulated by Law 8730/93 and by the Commission for Public Ethics. Also provided for in the law which regulates the Federal Auditing Court (# 8443/92, Art. 104) and in that court's internal regiment.</p> <p>Bank disclosure can only be mandated by the Judiciary or by Parliamentarian Special Investigative Commissions.</p>	<p>Attention is only drawn to leaps in wealth when charges of corruption (either substantiated or otherwise) come from elsewhere.</p> <p>Since October 2000 the Federal Public Ethics Commission has been maintaining a register of declared assets of the 700 higher-placed federal officials. The Commission's task is to clarify doubts and to monitor. However, concerning the latter task, due to the little time it had till now, its efficacy remains to be proved.</p>
<p>Are there conflict of interest rules?</p>	<p>Ineffectually. There is provision for that in the law and in the Federal Code of Conduct recently issued by the Presidency.¹</p>	<p>The law's specifications are abstract and innocuous. The lack of a communication channel to clarify doubts contributes.</p> <p>The Federal Code of Conduct encompasses only ministers and first- and second-echelon officials. There is a communication channel.</p> <p>There's no provision for effective control by specific agencies.</p>
<p>Are there rules and registers concerning gifts and hospitality?</p>	<p>Ineffectually. There is federal legislation prohibiting officials from accepting gifts.</p> <p>Art. 9 of the 2000 Federal Code of Conduct prohibits officials from receiving gifts of any kind, excepting commemorative, marketing and other mementoes not exceeding about US\$ 50 in value.</p> <p>Art. 7 of the same code prohibits officials from accepting</p>	<p>The legislation is not applied.</p> <p>It is possible that the Code of Conduct is not being universally obeyed.</p>

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	<p>travel and hospitality, if this could be construed as casting doubts on the recipient's probity.</p> <p>There is a record, but not open to the public.</p>	
<p>If so, are these registers kept up to date? By whom?</p> <p>Have they legal powers to enforce disclosure?</p> <p>Have they staff to investigate allegations?</p> <p>What powers of sanction are in place?²</p> <p>Have they ever been invoked?</p>	<p>No.</p>	
<p>Are members of the executive obliged by law to give reasons for their decisions?</p>	<p>Yes. Although there's no explicit constitutional provision, Law # 9784/99, which regulates the federal administrative process, requires (Art. 50) that each and every act be motivated.</p> <p>This law was an important step towards accountability in the federal sphere. Prior to it, there weren't generic rules applicable to all administrative actions, only some laws addressing particular families of procedures. The new law defines norms and principles pertaining to all administrative phases.</p>	
<p>Do Ministers or equivalent high level officials have and exercise the power to make the final decision in ordinary contract award and licensing cases? Is this power limited to special circumstances?</p>	<p>No. There are exceptions, such as contracts signed to face emergencies. Upper-echelon officials make many administrative decisions, but they must be grounded on technical and/or juridical reports. All decisions can be challenged.</p>	<p>See the "Procurements" section.</p>
<p>Are there administrative checks and balances on decisions of individual members of the executive?</p>	<p>Not as enforceable management procedures.</p>	<p>Checks and balances are seldom put into effect by Executive heads (federal, state or municipal).</p> <p>Since about three years ago, some state governments centralised their finance controls. All expenditures are electronically registered and instantly visible by the controlling office. Expenditures must be centrally provisioned in order to be realised. Payment is also centralised. Non-authorized expenditures cannot be entered into the system, so payments cannot be made. Note that this mechanism is not obligatory. It was put in place by administrative decree, revocable at any time.</p>

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LEGISLATIVE		
<p>Is the legislature required to approve the budget?</p>	<p>Yes. The Constitution, Art. 166. For the federal budget there are three different budgetary provisions. All three must be approved by the Chamber: (a) Five-year planning; (b) Annual Budgetary Directives Law, stating goals and priorities; and (c) The annual budget itself, encompassing fiscal budget, social security and investment on enterprises in which the state has stock majority.</p>	<p>The Executive unilaterally determines the bulk of the budget. Although entitled to intervene more decisively, the Legislative reacts topically. The relationship between the Executive and the Legislative on budgetary matters are governed by political favour swapping in negotiating such topical amendments.</p> <p>Until the recent past, Constitutional time frames used not to be always obeyed. When this happened, government started the fiscal year in the absence of an approved budget. However, this loophole has been severely curtailed by a new law of Fiscal Responsibility.</p> <p>To each government area corresponds a Congressional Commission. The Constitution guarantees that such Commissions can monitor the budget's execution. However, this never happens, because Congress alleges that the supreme audit institution performs the task. As the audit institution by definition simply audits accounts, a real monitoring does not obtain.</p>
<p>Are there significant categories of public expenditure that do not require legislative approval? Which?</p>	<p>No. The Constitution, Art. 167.</p> <p>In effect since October 2000, a new Fiscal Responsibility Law (# 10,028/2000) reinforces the old prohibitions and creates new penal characterisations. Especially, the law severely limits personnel expenditures and new debt acquisitions. It defines 104 situations in which non-compliance is to be followed by fiscal punishment to states and municipalities and punishments to administrators. The penalties range from loss of office to loss of political rights, monetary fines of up to 30% of earnings and penal detention of up to 4 years.</p> <p>The new legislation was generally viewed as innovative and as constituting an important step towards a responsible management of public resources. It will stand in the way of using public resources as a coin to buy political and private favours.³</p>	<p>Till the recent past a series of mechanisms allowed the administrator (federal, state and municipal) to extend expenditures beyond the budgetary prescriptions. Thus, relevant budgetary circumvention was finessed using an artifice called "remaining obligations". By this mechanism, expenditures made but not approved by the Legislative for a given year were inserted as obligations in the following year's budget.</p> <p>Yet another loophole allowing for budgetary disobedience is not to realise expenditures authorised by the Legislative. The Executive understands the budget as an authorisation, but not as an obligation to spend the money as stated (Art. 165). But, of course, not realising certain expenditures amounts to interfere with the annual budgetary law made up in accordance with the Legislative.</p> <p>Besides those semi-legal practices there were other irresponsible forms of dealing with public resources, some of them linked to corruption schemes. Thus, it used to be common that end-of-term state and municipal administrators indulged in decisions like hiring extra</p>

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personnel, rising wages, launching highly visible public works, favouring some contractors in detriment of others etc. These practices – which, mostly, relate to end-of-term electoral favour swapping – are prohibited by law (1940 Penal Code and Decree-Law 201/1967, dealing with Responsibility Crimes by Mayors and City Legislative Members), but even then they happened. The new Fiscal Responsibility Law addresses these and other situations.

Are there conflict of interest rules for parliamentarians?

Partially. The Constitution, Art. 54. Besides stating ineligibility rules, the Constitution prohibits Senators and House Representatives to: (a) directly contracting with the state, with public-owned enterprises or with public concessions; hold office, function or job in the same; hold interest, function or job in private firms contracting with state entities. Violations (Art. 55) entail loss of mandate.

The internal regiments of neither federal Chambers address conflict of interest during members' terms.

Are there rules [and registers] concerning gifts and hospitality?

No.

If so, are these registers kept up to date? By whom?

Have they legal powers to enforce disclosure?

Have they staff to investigate allegations?

What powers of sanction are in place against parliamentarians?

Have they ever been invoked?

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Is there an independent Electoral Commission (if not, are the arrangements for elections in the hands of agencies that are widely regarded as being non-partisan)?

Yes. There is a special Judiciary branch dedicated to electoral matters. Its traditions go as far back as 1932, when the introduction of an independent institution corrected the previous tradition of widespread election manipulation.⁵

Electoral Justice is organised in three levels: electoral boards, made up of ordinary judges; Regional Electoral Courts (in each state), made up of senior Judiciary members, federal judges and attorneys recognised from their judicial knowledge; Electoral Supreme Court (ESC), integrated by justices from the federal Superior Courts as

Fraud by corruption of the elector (selling votes) is still denounced, especially in the poorer parts of the country. This type of manipulation is punishable by law, but enforcement is rare, due both to the complicity between elector and candidate and the practice's social acceptance, again in some of the poorer regions. A new piece of legislation (# 9840/1999) intends to widen enforcement, but its applicability remains to be shown.

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well as attorneys. Justices serve for two years in the ESC; they cannot be removed during that time.

Electoral Justice is federal, with ample powers to define norms and supervise the electoral process. A significant step to eliminate the administrative part of the electoral process was the introduction, in 1996, of electronic voting. Since 2000 it encompasses all elections. The procedure eliminates manipulations during vote counting and aggregation.

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POLITICAL PARTY FUNDING		
<p>Are there rules on political party funding?</p>	<p>Yes.⁶ Party funding must be distinguished from electoral campaign financing.</p> <p>Political parties are funded by a Parties' Fund, which, in turn, gets its moneys from fines, donations and other resources, both budgetary and defined by law. Each party gets about US\$ 0,18 per Congress elector per year.</p> <p>Concerning electoral campaign, the law allows for both direct and indirect financing, as well as for public and private funding. Parties get financing from the Parties' Fund, and can forward these moneys to candidates' Committees. Parties and party Foundations are exempt from taxes.</p> <p>The most important form of indirect financing is free access to radio and TV for party campaigning on all three electoral levels (federal, state and municipal). The time allocated to each party is calculated from its performance in the previous election. Although there are dissent on the issue, free electoral radio and TV time is considered beneficial, helping to balance economic power disparities.</p> <p>Campaigns can also be financed by candidates' own resources, and by donations from private firms (up to 2% of annual revenues) and individual citizens (up to 10% of annual earnings).</p> <p>Therefore, the funding model has no maximum limits and its dependence on public financing is not strong. Brazilian legislation is fairly liberal concerning private political campaign financing.</p>	<p>Specialists agree that reported electoral campaign values do not, by far, reflect moneys actually received and spent. However, empirical studies are scarce (see next question).</p>
<p>Are substantial donations and their sources made public?</p>	<p>Yes. In non-electoral years, parties must report yearly; in electoral years, monthly, during four months prior and two months after the election. The reports must inform the origin and amount of donations. There is no minimum limit below which values could be omitted.</p>	<p>Political campaign financial reports are met with widespread scepticism. As a rule, declared expenditures remain well below independent estimates.</p> <p>In practice, the Electoral Justice does not broadly make political spending public. The data is published in the Diário Oficial, the daily vehicle that publishes all the state's acts. Information on individual accounts can be accessed.</p>

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<p>Are there rules on political party expenditures?</p>	<p>Yes. Use of Parties' Fund resources is limited to a number of ends, among them financing the parties' machinery, training personnel, and political education.</p> <p>Concerning elections, the only rules are: (a) There must be a financial party committee, responsible for reporting; (b) The party must hold a special bank account into which all donations must be made and from which all expenditures must be drawn; and (c) Previously to the election, the party must inform its maximum expenditures.</p>	
<p>Are political party accounts published?</p>	<p>In terms. Reports are delivered to the Electoral Justice and, once there, are open to the public.</p>	<p>Reports are presented in bulk form. As there are usually many candidates running, a complete image could only be drawn from a thorough account of each candidate's expenditures. However, the Electoral Justice, the academy, or the press does not pursue the disaggregation of data.</p> <p>Additionally, there's no social concern on the theme, reinforcing the predominantly formal, rather than practical, character of these reports.</p>
<p>Are accounts checked by an independent institution?</p>	<p>Yes. The Electoral Justice.</p>	<p>Regional Electoral Courts have only a cartorial role. They register accounts for documentation. Public prosecutors act timidly concerning possible electoral crimes.</p>
<p>Does that institution start investigations on its own initiative?</p>	<p>No. The Electoral Justice is charged with investigating and ruling, but only when stimulated from outside. Processes can be initiated by: (a) Candidates, parties and coalitions (Law 9504, Art. 96); (b) Public Prosecutors (Electoral Supreme Court Resolution # 69).</p>	<p>Reports are seldom contested.</p>

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SUPREME AUDIT INSTITUTION		
<p>Is the national auditor general independent? i.e.</p> <p>Is the appointment of the general auditor required to be based on professional criteria/merit?</p> <p>Is the appointee protected from removal without relevant justification?</p>	<p>Yes. There is a Federal Accounts Court (FAC) charged with financial and assets auditing. As the name indicates, it is structured as a court, with nine judges at the top.</p> <p>The FAC is formally independent, because it is an auxiliary Congress organism and, at the same time, its scope and privileges are guaranteed in the Constitution.</p> <p>FAC's independence is also based on its latitude in auditing using its own staff; on independently electing its President (FAC Organic Law, # 8443/93, Art. 93); and on the ministers' prerogatives and immunities.</p> <p>However, appointment to the FAC is not strictly based on merit. The stated relevant criteria are: being idoneous and having a good reputation, being notoriously knowledgeable in the area and having more than 10 years of professional experience (not necessarily, however, in auditing itself).</p> <p>Since 1988 there is a measure of real professional criteria in the fact that two among the nine ministers must originally be senior FAC staff members or prosecutors acting in the Court.</p> <p>Ministers are appointed by the President and the two Congressional Chambers. Three of them are appointed by the President, one freely and two alternately chosen among senior staff members, as informed above. Congress must sanction these. Congress appoints the other six members without Executive interference.</p> <p>Ministers are fully protected from removal, as the appointment is for life. They have the same prerogatives as the next-to-higher federal justices.</p>	<p>Account Court officials cannot independently initiate procedures against administrators.</p> <p>There is much discussion on the FAC's effective independence, as the great majority of ministers are not professional auditors, but ex- Executive and Congress members with strong ties with the political circles.</p> <p>On the other hand, the FAC's heterogeneous composition, including appointees from different governments, as well as the collective decision-making structure, tend to soften old political ties and loyalties.</p> <p>In some states, however, where a same group has been holding power for a long time, the respective Accounts Courts are much more prone to being less independent.</p>
<p>Are all public expenditures audited annually?</p>	<p>Yes.</p>	<p>As the FAC annually supervises about 3,000 different organs, its broad mandate has the disadvantage of being prone to losing focus. Even if all expenditures are being subjected to monitoring, the rate of corruption cases unveiled is low.</p>

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Is reporting up to date?	Yes. Reporting as such follows the law timetable. The government must submit its accounts within 60 days after the end of the fiscal year, and the FAC must issue a preliminary report 60 days later. These deadlines are obeyed.	Rulings are a different matter. There is a huge delay in appreciating accounts, due both to the great number of organs and to the fact that the cases follow the juridical due process principle (defence, contradictory, etc.). Rulings take years to form and, furthermore, are subjected to further juridical appeals. Congress doesn't follow suit in discussing the Executive's accounts. Congress must formally approve accounts, but this never happens before a number of years have gone by. When finally brought to the floor, usually approvals come in bulk. In the state and municipal spheres, Legislative disapproval of accounts has been used as a political weapon against opponents.
Are reports submitted to a Public Accounts Committee and/or debated by the legislature?	Yes. There is a Congressional Special Committee charged with checking on federal governments' accounts.	The Committee doesn't hold relevant discussions on these accounts.
Are all public expenditures declared in the official budget?	Yes.	

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JUDICIARY		
<p>Have the courts the jurisdiction to review the actions of the executive (i.e. Presidency, the Prime Minister's or other Ministers and their officials)?</p>	<p>Yes. The Constitution, Art. 5, Item XXXV. Process must be initiated from outside the Judiciary.</p> <p>However, due to the Brazilian state's separation of powers, there are actions from both the Executive and the Legislative considered as "political", and as such not subjected to juridical appreciation. Examples of the latter are Executive appointments and dismissals, Legislative processes leading to loss of mandate and political rights.</p>	<p>In many instances, suits against the Executive are negotiated, especially when involving government policies.</p>
<p>Are judges/investigative magistrates⁷ independent? i.e.</p> <p>Are appointments required to be based on merit?</p> <p>Are the appointees protected from removal without relevant justification?</p>	<p>Yes.</p> <p>Judges follow a career in which the first step is a public contest based on examinations and titles. The Brazilian Bar Association jointly supervises those contests. Appointments must follow the contests ranking order. Promotion from level to level is alternately defined by merit and seniority and following an extensive list of criteria.</p> <p>One-fifth of Regional Federal Courts and state courts judges are not career judges, but ex-prosecutors and private attorneys chosen in a process that begins with an appointment list of six persons, drawn by the respective professional associations; this list is halved by the court and, finally, the Executive makes the final choice.</p> <p>At the pinnacle of the Judiciary structure is the Supreme Court, the nation's Constitutional custodian. Its members (that must fulfil semi-professional conditions) are appointed by the President and sanctioned by the Senate at a public session. This hearing is eminently political.</p> <p>After two years of office, judges become fully protected from removal, even by the court itself. Of course, a judge can be removed (by two-thirds of the court's vote) following an administrative process.</p>	<p>Being politically appointed, Supreme justices are forever subjected to misgivings about their impartiality vis a vis the government.</p> <p>According to the Bar Association, in a number of states judges are illegally passed over in promotions. It is alleged that a system of "old boys' fraternity" makes sure that only judges aligned with the senior structure are allowed to advance.</p> <p>"Kicking upstairs" judges is used to substitute more flexible magistrates for inconvenient judges.</p> <p>Nepotism is endemic. Worse, it is a kind of masked nepotism, because many relatives of judges are properly introduced in the service. Linked to it is the fact that high-placed Judiciary members have discretion in appointing a large number of persons to occupy "positions of trust". In certain cases, this leads to veritable invasions of the Judiciary administration by entire families.</p>

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Are recruitment and career development based on merit? See the above.

Have there been instances of successful prosecutions of corrupt senior officials in the past 3 years?

Yes.

However, the Brazilian Judiciary system intrinsic slowness favours impunity, thus reinforcing corruption. This means that final ruling can be indefinitely postponed, more so when the defendants have ample financial means. For instance, cases involving some persons implicated in the corruption scheme that led to the world-famous impeachment of Collor de Mello in 1992 are still bogmired in the courts system.

Even then, a growing number of public administrators have been brought to the courts on charges of corruption.

Does the education system pay attention to integrity issues and corruption/bribery? Is it expected to?

No and no

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CIVIL SERVICE		
Are there laws establishing criminal and administrative sanctions for bribery?	Yes. Penal Code and Federal Law. The Procurements Law states additional punishments of both kinds.	However, the Brazilian Judiciary system allows for up to 80 appeals along processes. This means that final ruling is usually indefinitely postponed. This amounts to practical impunity, reinforcing corruption.
Are there rules requiring political independence of the civil service?	Yes. Although political independence is not referred to as such, the professional public administrator is basically stable.	Administrators need not be only career officials. The Executive (federal, state and municipal) – as well as the Legislative and, to some extent, the Judiciary – has the latitude of defining a great number of “positions of trust”. Thus, all first- and second-echelon positions in any administration are taken over by politically appointed persons. There is a wide margin for the appointment of cronies. Bargaining these positions in exchange for political support is also usual.
Are recruitment/career development rules based on merit?	Yes.	Excepting some islands (such as finance-related offices and a few others), there's no real merit evaluation after the first entry contest. Promotions are overwhelmingly dictated by simple seniority.
Are there specific rules to prevent nepotism? Cronyism? (note: rules discriminating positively in favour of marginalised or minority groups are <u>not</u> included in this description)	Yes. According to Law 8112/90, Art. 117, “The civil servant is prohibited to have under his immediate supervision, occupying positions of trust, his[her] spouse, common-law spouse or relatives up to the second civil degree”, as this would entail nepotism. Violations are punishable by warning (Art.129).	See, above, the observation on “positions of trust”.
Are there rules (including registries) concerning acceptance of gifts and hospitality?	Only concerning the federal government’s upper echelons (see the Executive section).	
If so, are these registers kept up to date? By whom? Have they legal powers to enforce disclosure? Have they staff to investigate allegations? What powers of sanction are in place? ⁸ Have they ever been invoked?	No.	
Are there restrictions on post public service employment?	In actual practice, no. The recently issued federal Code of Conduct broaches the subject. Restrictions are in place and enforced in the financial areas.	A former head of the Central Bank is being prosecuted for maintaining ties, while in office, with an investment consultant firm in which he was previously a senior partner. [Of course, this is a conflict of interest situation.] ⁹

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Are procedures and criteria for administrative decisions published (e.g. for granting permits, licences, bank loans, building plots, tax assessments, etc)?	Yes.	
Are there complaint mechanisms for public servants and whistleblower protection measures?	Yes. Law 8112/1990, Art. 104.	There are no data on frequency or follow-up.
Are there means for complaints by members of the public?	Yes. The Constitution, Art. 37, with alteration by amendment # 19 (1998). São Paulo state's Public Service Consumers Protection Bill (unique in the country) establishes means of protection against harmful administrative actions. Federal law # 9807/1999 establishes norms for witness protection.	

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POLICE AND PROSECUTORS		
<p>Is the commissioner of police independent? i.e.</p> <p>Are appointments required to be based on merit?</p> <p>Is the appointee protected from removal without relevant justification?</p>	<p>No. On the police structure, see the text.</p> <p>Appointments and promotions must be based on merit and seniority, but commissioners are not protected from removal.</p>	<p>The criminal police seldom investigate corruption.</p> <p>Merit is not objectively assessed; automatic seniority advancement is the rule.</p> <p>Casts of high commissioners (nicknamed “cardinals”) heavily dominate the police structure, especially criminal.</p>
<p>Are public prosecutors independent?</p>	<p>Yes. The Constitution Arts. 127-130. Prosecutors cannot (a) be paid under any pretext [excepting their official salaries, of course], (b) have commercial activity or work as private attorneys, (c) hold public office excepting teaching positions and (d) have political or party activities.</p>	<p>There is a growing concern that the prosecutors’ institutional independence could be harmed by some politically-minded prosecutors, even if they are not formally associated with a party.</p>
<p>Are there special units for investigating and prosecuting corruption crimes?</p>	<p>Partially. There are special groups of prosecutors focused, among other fields, on drug traffic, organised crime and municipal administrations.</p>	
<p>Is there an independent mechanism to handle complaints of corruption against the police?</p>	<p>Partially.</p> <p>The state of São Paulo innovated creating a police ombudsman in 1995.</p>	<p>Police corruption is perceived as pervasive, reaching from the lower to the upper echelons. Every public opinion survey puts the police high in the list of most corrupt institutions. The media constantly reports complicity between groups of policemen and crime, organised or otherwise, as well as violations of rights (as in illegal land occupation in far-away regions, accompanied by murders and even, in some world-famous cases, massacres), etc.</p>
<p>Does civil society have a role in such a mechanism?</p>	<p>No.</p> <p>However, in the state of São Paulo, the police ouvidor is appointed with the participation of civil society.</p>	
<p>In the last five years, have police officers suspected of corruption been prosecuted (or seriously disciplined or dismissed)?</p>	<p>Yes.</p>	<p>The overwhelming majority of accused policemen belong to the lower ranks. Very rarely officers are prosecuted.</p>
<p>Are there any cases of corruption within the prosecuting agencies?</p>	<p>Yes. In a small scale.</p>	<p>A couple of years ago, in the state of Minas Gerais, the entire upper-echelon body of the prosecuting apparatus was dismissed on charges of corruption.</p> <p>In 2001, one of the under-Attorneys General of the Republic was fired for aiding a private firm and feed it with information.</p>

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Which legislative instruments can be used by the police and public prosecutors for the investigation and prosecution of cases of corruption/bribery?	The Penal Code, the Procurements law, the Improbability law and others. Formally, there's a whole array of legal instruments to curb corruption.	
Is private-to private corruption punishable by law? ¹⁰	Not as such. ¹¹ Of course, ordinary criminal charges can be brought against culprits. The Law for Competition Protection establishes punishment for selling of privileged information and co-optation of competitors' employees.	Fraud seldom gets to the public eye. There's a tendency to curb fraud in the private sector by means of private arbitration. A law was recently sanctioned regulating it. As the state (therefore society at large) is kept out, there's much controversy on the issue.
Is the law applied?	N/A.	
How many cases of prosecution have been undertaken in the past years? How many have been successful? If the number is low, are there other effective measures or other good reasons why the number is low?	The Judiciary doesn't have systematic statistics on that.	

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PUBLIC PROCUREMENTS		
Do rules for public procurement require competitive bidding for all major procurements with limited exceptions?	<p>Yes. Competitive bidding is required for all procurements, irrespective of the amounts involved and the good or service purchased. There is a lower limit of about US\$ 4,000 (US\$ 7,500 for public works), below which direct purchases can be made, if not repeatedly. There are special provisions for public works and other services, intended to avoid artificial subdivision of tasks to be performed.</p> <p>The exceptions include: state of war, widespread civil conflict and other grave disturbances; national security reasons; emergencies (see the observations); other assorted particularities, involving low-price purchases.</p>	<p>This is obeyed by all state organisms. Many violations (according to some, affecting 60% of procurements) are due to formal mistakes, due to imperfect/lack of training.</p> <p>It is not clear whether or not national security reasons are being consistently used as pretexts to justify purchases from preferential providers. The military (smallish, considering the country's size and population) are not subjected to close public or press scrutiny.</p> <p>In some cases, the "emergency" exception is used to artificially avoid the bidding process. Such cases tend to involve cartelised sectors (such as the city of São Paulo trash-collecting service, till at least December 2000).</p> <p>Communications contracts (including those for advertising) must be subjected to procurement. But the corresponding rules are next to useless as, without exception, ad agencies responsible for a candidate's political campaign capture the official accounts if the candidate is elected. These contracts can be huge.</p>
Are the rules laid down in documents publicly accessible?	Yes.	
Are there strict formal requirements that limit the extent of sole sourcing? ¹²	No.	If a provider consistently offers the lower price, there is nothing to prevent it to be the sole provider of a good or service.
Are all major public procurements widely advertised to the private sector?	Yes. The law is very thorough on that account. All procurements must be publicised, not only major ones. Limited advertising, but advertising nonetheless, is required for lesser types of procurements.	
Are procurement decisions made public?	Yes.	This does not mean that each and every decision along the procurement process is published. Law subjects major procurements to public hearings. Final results are published.
Is there a procedure to request review of procurement decisions?	Yes.	<p>There is a sequence of pre-defined steps to be accomplished in any procurement, following also pre-defined timetables. All administration decisions can be administratively and legally contested.</p> <p>It must be borne in mind that as Brazilian law states that</p>

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		<p>the lowest price wins the bidding (in the majority of cases; there are also a large minority of mixed “technical and price” contests), the last decision is not strictly a decision, consisting only in a number comparison, so that there’s no logical room for contest.</p> <p>Among other things, decisions proper involve technical and financial requirements, where the greater part of corruption occur. These requirements are open to both administrative and legal contest, something that happens all the time.</p>
Can an unfavourable decision be reviewed in a court of law?	Yes.	See above.
Are there provisions for blacklisting of companies proved to have bribed in a procurement process?	Yes. Not only proven corruptors are barred from participating in further bids for certain periods, but there are also financial penalties and the perpetrators can be subjected to criminal charges.	<p>Very rarely corruptors are punished, because there’s no paper trail and no testimonials. At the most, procurements are court-ordered to be interrupted and, in some cases, contracts are cancelled.</p> <p>One of the law’s vulnerabilities is the fact that, although blacklisted firms are prohibited to bid during certain periods of time, their owners’ names are not entered into a register. Thus, “blacklisting” doesn’t work, as it suffices to open a new firm.</p> <p>Audit organisms examine accounts from all offices. Sentences forcing money restitution are common. However, they are appealed in the courts, and as the Brazilian juridical system is Byzantine (see the corresponding section), impunity tends to prevail.</p>
Are there rules and procedures to prevent nepotism/conflict of interest in public procurement?	Partially and ineffectually. Relatives of public officials directly involved with procurements cannot participate. But there’s nothing to prevent the participation of other officials’ relatives.	Recently, it was discovered that the head of the federal data-processing facility was buying overpriced computer systems from a firm owned by his ex-wife, whom he had divorced just months earlier... The person was fired following an internal investigation. This shows that enforcement is weak.
Are assets, incomes and life styles of public procurement officers monitored?	No.	<p>In Brazil there are many thousands of public officials directly involved with procurements at all levels (federal, state and municipal). Elected officials and other high-placed personnel are required to make public their personal assets upon taking and leaving office. So, in principle, sudden unexplained wealth is subjected to public scrutiny. However, as further investigation is usually not forthcoming, this tends to be innocuous.</p> <p>On the other hand, big fish seldom act directly, using</p>

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instead accomplices. It is known that in some cases innocent citizens are unknowingly used to open bank accounts and phantom firms subsequently used in money-laundering schemes.

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Indicator	Formal provisions	What actually happens
OMBUDSMAN		
Is there an ombudsman or its equivalent (i.e. an independent body to which citizens can make complaints about maladministration)?	<p>Yes.</p> <p>Since the middle 80's ouvidorias, an institution similar to the ombudsman, began to be introduced in municipalities, states and some federal organisms. The basic difference is that the ombudsman is linked to the Legislative, while ouvidorias respond to the Executive.</p> <p>There are different models. In certain cases (i.e. municipalities), there is a single general ouvidor. In the federal sphere, where in place ouvidores belong to specific organs.</p> <p>There's no Constitutional provision for ouvidores. Wherever in place, its existence is footed in Executive decree and, in two cases (São Paulo, Ceará), in state law.</p>	<p>In states, the tendency is to form networks of ouvidores. In the Southern state of Paraná, in 2000 there were 112 ouvidores, integrated to 67 others belonging to municipalities. In São Paulo, a law promulgated in 1999 created ouvidor offices in all organs with direct public interface, as well as in private firms serving citizens on behalf of the state.</p>
<p>Is the ombudsman independent? i.e.</p> <p>Are appointments required to be based on merit?</p> <p>Is the appointee protected from removal without relevant justification?</p> <p>Has an ombudsman been removed without relevant justification in the last five years?</p>	<p>No.</p> <p>Ouvidores can be dismissed ad nutum. Their protection does not arise from the law, but from political considerations, as dismissing an ouvidor would reflect unfavourably on the Executive.</p> <p>One of the first ouvidores (in the Santos municipality – São Paulo state) was dismissed following disagreements with the Executive.</p>	<p>Public ouvidores answer to the Executive, and not to the Legislative. However, consolidation and public confidence tend to impart a measure of independence to these ouvidores, similar to ombudsman.¹³</p>
Can petitioners complain anonymously if they fear possible reprisals?	No.	Guarantee of anonymity by trust is commonplace.
Are reports of the ombudsman published?	Yes, in many instances.	Publicity hardly leads to pressure on government. The ouvidor main interchange of information is with government officials and, ultimately, with the chief of Executive. Publicity's main effect is to strengthen the ombudsman institution legitimacy.
Does the government act on the ombudsman's recommendations?	Yes.	Governments interested in administrative reforms have created existing ouvidorias. Due to the close link with the executive, confrontation between government and ouvidorias are rare. Ouvidorias tend to be an important instrument to suggest and help implementing these reforms.

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Indicator	Formal provisions	What actually happens
INVESTIGATIVE/WATCHDOG AGENCIES		
Are there special investigative or watchdog agencies?	No.	

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Indicator	Formal provisions	What actually happens
MEDIA		
Is there a law guaranteeing freedom of speech and of the press?	Yes. The Constitution, Article 5, respectively items IV and IX.	
Is there censorship of the media?	No. Article 5, item IX explicitly prohibits censorship.	Of course, the lack of official censorship does not prevent auto-censorship stimulated by a variety of reasons.
Is there a spread of media ownership?	In terms. There are many small media organisations, but big players are few, numbering less than one hand's fingers. Penetration is obviously concentrated. There is an important difference to be made between printed and electronic media, for which re the introductory text.	<p>In the poorer parts of the country, the economic elite controls everything, including the media. As this elite tends also to be strongly politically involved, such media cannot be classified as independent.</p> <p>An example is the state of Alagoas, in the northeastern region, home of impeached ex-President Collor de Mello. Collor's family owns the state's biggest media organisation. Among the group's holdings: a TV station that is a repeater of Globo's, the biggest Brazilian network; the biggest daily newspaper; five radio stations (two in the state's capital and three in other towns). Currently, Collor is using all this in a political barrage against the state's governor, obviously aiming at the coming 2002 state elections.</p> <p>This pattern repeats itself in many states, either pro- or against the current Executive occupants.</p>
Does any publicly-owned media regularly cover the views of government critics?	Yes.	<p>The foremost example is São Paulo state's Public Television (TV Cultura), whose journalism is independent. TV Cultura is widely networked throughout Brazil.</p> <p>Excepting public radio and television, there are no public-owned news media in Brazil.</p>
Have journalists investigating cases of corruption been physically harmed in the last five years?	Yes. Many journalists were assassinated in Brazil in this period, although aggregated numbers are not available. Some of them were covering corruption-related stories. Drug-related crimes, almost always involving the police and elected officials, occur in the most sensitive states (in the Northern region). Blatant threats are common in the poorer areas.	See the text.
Does the media carry articles on corruption?	Constantly.	
Do media licensing authorities use transparent, independent and competitive criteria and procedures?	There is no media licensing. Again, the Constitution, Article 5, item IX. Anybody can publish anything.	Once the concession is granted, it is subjected to certain rules. Those rules don't address journalistic content and are seldom applied, if ever, even as indirect pressure.

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	Radios and TVs are federal public concessions, issued by Congress. This is overwhelmingly dominated by local political manoeuvring. About 50% of Congress members are owners of radio and TV stations.	
Are libel laws or other sanctions (e.g. withdrawing of state advertising) used to restrict reporting of corruption?	Not against national media.	It happens in the poorer states and towns. Economic pressures are more often implicit. So, a newspaper that overly depends on official publicity (a common situation in small towns) will not publish critical stories in the first place, so that reasons for possible sanctions do not obtain. See "A case in point", in the text.

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Indicator	Formal provisions	What actually happens
CIVIL SOCIETY		
Does the public have access to information and documents from public authorities?	Yes. The Constitution, Arts. 5 and 37. Laws # 8159/1991 and # 9505/1997.	Public administration is noted by its opacity. A clear indication is the existence of an accredited profession of go-betweens (despachantes, literally “paperwork pushers”). The right to information is affected by the same limitations affecting all other civil rights. Only those that can afford it and have the necessary citizenship conscience do try to exercise the right.
Do the public authorities generally co-operate with civil society groups?	It varies a lot. But governments increasingly recognise the importance of civil society organisations to draw and implement public policies.	
Are there citizen’s groups or business groups campaigning against corruption?	Yes. The first initiatives developed during the investigations that led to ex-President Collor de Mello impeachment in 1992. Several civil society organisations of disparate political orientation (the Bar Association, the National Bishops Conference, political parties, unions, business associations) united under the “Ethics in Politics” flag in order to enhance the pressure on investigators and Congress. After Collor’s impeachment, the movement abated. One of the most consistent organisations is the Justice and Peace Commission, created by the Bishops’ Conference (see below more about it). Among other initiatives: the academic organisation Transparency, Conscience and Citizenry; the Association of Judges for Democracy and a few others.	Excepting the Church’s Justice and Peace Commission, these initiatives tend to be isolated, lacking solid social basis, having no national impact and being not goal-oriented. The foundation of Transparência Brasil in 2000 aims to overcome these limitations.
Are there citizen’s groups monitoring the government’s performance in areas of service delivery, etc?	Not relevantly. More often than not, initiatives to enhance public services come from the Executive.	Consumer services and goods are being more subjected to scrutiny and criticism. At first sight, this could prompt speculations about possible spreading to public services. However, Brazilian consumer protection didn’t arise from Ralph Nader-like movements, but from Executive decisions quite unrelated to external pressure. This happened 15 years ago, in São Paulo, under the first post-military regime freely elected governor (Franco Montoro). A state-sponsored Consumer’s Protection Office has existed in São Paulo since then. Later, Congress passed a

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		Consumer Protection Law. There is also in Brazil a private consumer's protection institute, IDEC.
Do citizen's groups regularly make submissions to the legislature on proposed legislation?	No. Under the Constitution (Art. 61), laws can be proposed by members of the Legislative, the President, the Supreme Court, the other higher courts, the attorney-general and, lastly, by citizens numbering 1% (one percent) of registered voters. But this last possibility has been used only in a single case since 1988.	In 1996, the Justice and Peace Conference's annual Fraternity Campaign was dedicated to the theme of politics, especially denouncing vote buying as a form of electoral corruption. During the 1996 election, they promoted a political awareness campaign; in 1997, conducted a survey on vote buying which led to a proposal for changes in the electoral law. The following year, a public subscription campaign aimed at getting popular support for the proposed changes; in 1999, the changes were adopted by Congress (law # 9840/1999), becoming effective at the 2000 municipal elections.

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Indicator	Formal provisions	What actually happens
LOCAL GOVERNMENT	The questionnaire is not applicable, due to the structure of the Brazilian federation. Local conditions are referred to systematically along the other sections.	

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Indicator	Formal provisions	What actually happens
PROGRESS WITH GOVERNMENT STRATEGY		
Has the government announced an anti-corruption strategy and a timetable for implementation?	No.	At the time of this writing, Transparencia Brasil was talking to a number of just-elected mayors aiming at launching anti-corruption programs in their municipalities.

REFERENCES (QUESTIONNAIRE)

- ¹ See Public Official Statute, 1990; Ethics Code, 1994; Code of Conduct, 2000.
- ² The original questionnaire added here “against parliamentarians”, an obvious mistake.
- ³ Khair, E.: *Lei de responsabilidade fiscal: As transgressões à Lei de Responsabilidade Fiscal e correspondentes punições fiscais e penais*. Brasília: BNDES, 2000.
- ⁴ The original questionnaire had here the question “*If so, are there public registers for gifts and hospitality?*” Following the “Executive” section pattern, the “registers” part was included in a previous question.
- ⁵ Sadek, Maria Teresa Aina: *A Justiça Eleitoral e a Consolidação da Democracia no Brasil*, São Paulo, Fundação Konrad Adenauer, 1995.
- ⁶ Electoral Code (Law # 4737/1965), Parties’ Organic Law (# 9096/1995), and Electoral Law (# 9504/1997) and the latter amendment by the Law Against Electoral Corruption (# 9840/1999).
- ⁷ There are no investigative magistrates. See the “Police and Prosecutors” section.
- ⁸ The questionnaire added here “against parliamentarians”, a mistake.
- ⁹ The questionnaire omits the matter in this section.
- ¹⁰ This question was originally included in the previous one.
- ¹¹ Here we are using the term “corruption” as defined in the study’s TOR. For private relationships we use the term “fraud”.
- ¹² The formulation of this question caused doubts. If somebody is the sole provider of something in a given market, how could a formal stipulation prevent that? By definition, the available sources would be just one. We interpreted as implied in the answer.
- ¹³ Vismona, Edson: “A ouvidoria no Brasil e seus princípios”. *A ouvidoria no Brasil*. São Paulo: Imprensa Oficial do Estado, 2000, pp. 1-20.