

## Annex I

### **Guidance note for the provision of information by States parties for the twelfth session of the Working Group on the Prevention of Corruption, to be held from 14 to 18 June 2021**

1. The secretariat has produced this Guidance Note to assist States parties in providing information on initiatives and practices that they have implemented regarding the topics under consideration at the twelfth meeting of the Working Group on the Prevention of Corruption taking place from 14 to 18 June 2021.
2. The secretariat wishes to recall paragraph 12 of the report of the Group at its second session, in which the Group recommended that States parties should be invited to share their experiences of implementing the provisions of the Convention under consideration in advance of each meeting, preferably by using the self-assessment checklist.
3. In furtherance of that report, the secretariat outlines below some guidance on the type of information sought, that States parties may wish to consider when providing information. It should be emphasized that any information believed to be relevant to the topic under consideration would be appreciated. Moreover, it should be noted that some of the information may have already been provided by States parties in the context of their reviews under the second cycle of the Implementation Review Mechanism. and the below is only providing guidance to States parties.

### **Information requested from States parties in relation to strengthening the role of supreme audit institutions in the prevention of and fight against corruption (Resolution 8/13 of the Conference of the States Parties to the United Nations Convention against Corruption)**

Article 9, paragraph 2:

“Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

...

- (c) A system of accounting and auditing standards and related oversight;
- (d) Effective and efficient systems of risk management and internal control; and
- (e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph”.

**1. Please describe (cite and summarize) the measures/steps that your country has taken, if any, (or is planning to take, together with the related time frame) to implement the relevant provision of the Convention and to promote the implementation of resolution 8/13.**

In relation to article 9, paragraph 2 and measures/steps that have been taken, States parties may wish to consider including the following:

Measures taken to promote, in accordance with the fundamental principles of the legal systems, the independence of the supreme audit institution;

The independence of both the **Brazilian Federal Court of Accounts** (*Tribunal de Contas da União - TCU*) and the **Office of the Controller General** (*Controladoria-Geral da União*) was established and is guaranteed by Brazil’s Federal Constitution. The former is responsible for the external control of public funds whereas the latter exercises the internal control.

The Federal Court of Accounts (TCU) audits the accounts of public bodies, public administrators and other persons responsible for federal public funds, assets, and other funds, as well as the accounts of any person that causes loss, misapplication, or other irregularities that may result in losses to the public treasury, in accordance with [article 71](#) of the Brazilian Constitution.

As for the Office of the Controller General (CGU), it is the Office's responsibility to evaluate the execution of governmental programs; verify the legality and evaluate the results, concerning the effectiveness and efficiency of the management of federal public administrators and public funds; exercise control of credit operations, as well as exercise activities in support of external control, in compliance with the provisions of the Federal Constitution, [article 74](#).

Besides the federal entities mentioned above, each Brazilian State has an independent **State Court of Accounts** (Tribunais de Contas estaduais), whose independence is guaranteed by state constitutions.

Measures taken to implement policies for the effective operation of the supreme audit institutions in accordance with the principles and standards formulated by the International Organization of Supreme Audit Institutions, with regard to ensuring the proper management of public finances and public property, and in areas such as public procurement;

Measures taken to promote transparency and accountability in the management of public finances, including through a system of accounting and auditing standards and related oversight:

The CGU works to strengthen public institutions and through the Secretariat for Transparency and Prevention of Corruption (STPC), seeks to create a participatory space for governmental bodies, civil society organizations, private sector actors and international organizations, with a view to cooperate in the establishment of a more complete, responsible and efficient public management. The STPC acts in the formulation, coordination and promotion of programs, actions and norms aimed at improving the transparency of governmental acts and the prevention of corruption in public administration, as well as in its relationship with the private sector.

Among its main attributions are the promotion of access to information, social control, open government, ethical conduct and integrity in public and private institutions. It also promotes cooperation with national and international bodies, entities and agencies that work in related areas. The CGU is responsible for the Transparency website of the Federal Government ("Portal da Transparência"), which gathers various information on expenses, revenues, data and salaries of public servants, penalties to companies, among others. Reformulated in 2018, the Portal has become a world reference for the quantity and quality of information.

Another highlight is the **Electronic System of the Citizen Information Service** (e-SIC), responsible for receiving and handling requests for public information made by society to about 350 federal agencies and entities. The CGU also coordinates Brazil's activities in the **Open Government Partnership** (OGP), helping to produce the action plans and monitoring the Brazilian commitments.

In addition to promoting transparency in the Federal Executive Branch, the CGU also promotes actions by other entities (states and municipalities), either through supporting local governments, through the "**Brasil Transparente**" Program or by encouraging social control, training of local managers and advisers. Regarding the issue of citizen education, the "**One for All and All for One!**" Program disseminates among public school students - more than 48 million students - ethics and citizenship issues, spreading values related to democracy, social participation and respect for diversity.

The TCU, for its part, besides carrying out audits that are directed by Congress or originated by denunciations or petitions, also establishes twice a year a schedule of audits to verify the correct use of public funds by the organizations and entities under its jurisdiction. Such inspections are called [compliance audits](#). Worthy of note are, as an example, audits carried out to scrutinize public works that have received federal funds in order to report their status to Congress. This allows members of Congress to form an opinion as to the convenience or not, of disbursing budgetary

funds for the maintenance or for resuming the works.

When the Court finds serious irregularities in such public works, Congress suspends the disbursement of funds until such faults are remedied. As a result, an appendix is added to the **Annual Budgetary Law** listing the works in serious violation so that the transfer of funds is blocked until they are brought into compliance. Whenever necessary, compliance audits are conducted to aid in the evaluation of personnel activity that is subject to the Court's scrutiny, such as the admission or retirement of civilian and military retirements or federal public service pensions.

Besides compliance audits, the court also carries out performance audits: independent, objective and reliable examination of whether government undertakings, systems, operations, programs, activities or organizations are operating in accordance with the principles of economy, efficiency and effectiveness and whether there is room for improvement.

Performance audits deliver new information, knowledge or value by: providing new analytical insights (broader or deeper analysis or new perspectives); making existing information more accessible to various stakeholders; providing an independent and authoritative view or conclusion based on audit evidence; providing recommendations based on an analysis of audit findings.

TCU is also responsible for environmental audits, which have the purpose of examining and evaluating the legal, technical, and administrative aspects of institutional activities that are directly or indirectly related to the environment, in order to improve their performance with respect to the preservation of Brazil's natural resources.

The Court's main activities in this regard include the performance of environmental audits, taking into consideration, whenever possible, the environmental aspects as other types of audits are conducted; the identification of the environmental impact of the government's main projects and programs; the creation and maintenance of a database of environmental legislation and jurisprudence; membership in the Special Technical Commission on the Environment of the **Latin American and Caribbean Superior Auditing Institutions - OLACEFS** and the organization of seminars, together with other auditing entities, for the exchange and publicizing of information related to environmental issues.

Privatization of public assets is also a main concern of the Court. The National Privatization Program is inspected by the National Congress, as mandated by the Brazilian Constitution. Such inspection is conducted in conjunction with the Brazilian Federal Court of Accounts which monitors all stages of the privatization processes by examining the applicable documentation and conducting inspections and audits of the company being privatized. During the follow-up, the Court evaluates the compliance of the proceedings and the adequacy of the minimum prices being established.

Whenever necessary, on behalf of the public interest and the preservation of the public treasury, the Court determines applicable corrections to be performed, as has been the case on several occasions. As a matter of Quality Control, the Court has imposed the inclusion of Quality of Service indicators and criteria of evaluation in the contracts, to allow end users the ability to demand, from the concessionaires and from the grantor, the excellence of service agreed upon.

The Court also monitors the outsourcing of public services under the Union's responsibility, thus controlling on behalf of the common interest, the performance of the concessionaires.

Lastly, the court has been constantly working to comply with the rules of the following international institutions:

- *The Organization of the Supreme Audit Institutions of Control (ISC) of the Community of Portuguese Language Countries (CPLP).*

- *International Organization of Supreme Audit Institutions (INTOSAI).*
- *The Latin American and Caribbean Organization of Supreme Audit Institutions (OLACEFS).*
- *The Organization of Supreme Audit Institutions of MERCOSUL Countries and Associated Member Countries.*

Measures taken to promote examining, periodically or as necessary, the applicable financial and accounting frameworks and procedures, in order to determine their effectiveness in the fight against corruption;

Measures taken to ensure that the audited entities respond to the findings of the audit reports, implement the recommendations of the supreme audit institutions and take appropriate corrective action, including criminal prosecution, to ensure the proper management of public affairs and public property;

The CGU has a **National Disciplinary Office (CRG)**, which exercises functions of a repressive nature. The Disciplinary System of the Federal Executive Branch, headed by the CRG as the central body, brings CGU's sector units together with the ministries and specific corrective units which are the proper structures of organs and entities, such as Sectional Units.

The supervision of the correctional activity within the scope of the Federal Executive Branch includes the determination of disciplinary liability of public agents and the determination of administrative liability of private entities for the practice of harmful acts against the Public Administration, with the establishment of administrative procedures and application of due penalties.

**Direct Investigation under the CGU:** The direct investigation comprises the activities carried out by the CRG through its subsidiary activities, in the capacity of central body, in the instauration, invocation, conduction and judgment of processes that examine alleged irregularities practiced throughout the Federal Executive Branch. Both in the determination of public agents and of private entities liability, direct assessment occurs only in situations where the relevance and complexity of the matter are rigorously considered.

**Disciplinary Procedures under the CGU:** Disciplinary Procedures can be divided into processes of investigative and punitive nature. In the first group, there is the preliminary investigation, investigative procedures and patrimonial affiliation, which may result in a suggestion for filling or initiating a punitive process, which is the contradictory investigation and the administrative disciplinary process, aimed at ascertaining the truth of the facts. Then, the CGU can establish ex officio and also accompany the ongoing disciplinary procedures in federal agencies and entities. Since 2003, more than 7,800 civil servants have been punished with the so-called expulsion penalties, with about 65% being for acts related to corruption.

**Liability of Legal Persons:** The Anti-Corruption Law (No. 12,846 / 2013) represents an important advance in Brazil by providing for the objective, civil and administrative liability of companies that practice harmful acts to the Brazilian or foreign public administration. The regulations provide for penalties such as administrative fines -up to 20% of gross sales - and the leniency agreement instrument, which allows damages to be repaid more quickly, in addition to investigative leverage.

The CGU is responsible for a large part of the procedures such as instauration and judgment of the administrative processes of administrative liability. Another administrative sanction applied by the CGU, provided for in the Public Procurement Law (No. 8.666 / 1993), is the declaration of unworthiness. The penalty prohibits the company from bidding and contracting with agencies and entities of all powers (Executive, Legislative and Judicial) and all spheres of government (Municipal, State and Federal).

**Anticorruption Federal Secretariat (SCC):** Created in 2019, the Anticorruption Federal Secretariat (SCC) is responsible for the negotiation of leniency agreements. The SCC also organizes and carries out special operations together with partner institutions. In addition, the Secretariat performs investigative and intelligence activities, including the use of operational techniques, inspections and analysis, with a view to collecting and searching for data to generate strategic information to support the activities of the CGU.

**Leniency Agreements:** The CGU holds the exclusive competence, within the Federal Executive branch, negotiate leniency agreements with legal persons investigated for the performance of wrongful acts against national and foreign public administration, which includes foreign bribery. Companies may be exempted or have the applicable sanctions attenuated – which include fine and debarment, as long as they effectively collaborate with the investigations and the administrative liability proceeding.

According to the Brazilian legal framework and the international best practices, the leniency agreement is an innovative instrument for investigation and fight against corruption and aims at rapidly compensate Public Administration for the damages caused by illicit acts.

The TCU, for its part, is a typical administrative court, with jurisdiction and a mandate to apply sanction and issue corrective determinations, set deadlines and suspend acts. Individuals or entities that do not comply with the Court's determinations are sanctioned. Both functions – sanctioning and corrective – are provided by the Constitution and other federal laws.

Measures taken to involve the supreme audit institutions and the internal audit units in the country reviews under the second cycle of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption, in particular in relation to the review of the implementation of chapter II, on preventive measures, including in the country visits, where applicable.

Measures taken to promote integrity and honesty through the application of codes of conduct in the supreme audit institutions and in particular measures for aligning these codes of conduct with the Code of Ethics promulgated by the International Organization of Supreme Audit Institutions.

Measures to increase trust in supreme audit institutions, anti-corruption bodies and governmental and public institutions as a whole.

In addition to promoting transparency in the Federal Executive Branch, the CGU also promotes actions by other entities (states and municipalities), either through supporting local governments, through the “Brasil Transparente” Program, or by encouraging social control, training of local managers and advisers. Regarding Citizen Education, the “One for All and All for One!” Program disseminates among public school students - more than 48 million students - ethics and citizenship issues, spreading values related to democracy, social participation and respect for diversity.

The TCU also contributes to building trust in federal systems and public institutions in general, and in the Court's work, specifically by providing several contact channels. These channels also serve for dissemination of audits conducted by its staff, addressing questions and providing general information about subjects related to the mandate and the constitutional competence of this Court of Accounts:

- *TCU'S WEB PORTAL TCU's web portal can be accessed through the address: [www.tcu.gov.br](http://www.tcu.gov.br)*
- *#EUFISCALIZO BLOG The #EuFiscalizo blog is a forum where the most relevant themes to good citizenship are presented in a clear and concise way.*
- *TCU'S OFFICE OF THE OMBUDSMAN TCU's Office of the Ombudsman is located at Setor de Administração Federal Sul, quadra 4, lote 1, Anexo III, rooms 43 to 51. It can be*

*reached by calling 0800-644- 1500, option 1, or by fax +55 61 3316-5015.*

- *TCU ON SOCIAL MEDIA Always interested in being close to the Brazilian citizen, the Federal Court of Accounts can also be found on social media, such as Facebook, Twitter and YouTube;*
- *TCU IN THE PUBLIC RADIO HOUR TCU's minute is broadcasted on Mondays, Wednesdays and Fridays during the public radio hour A Voz do Brazil. The idea is to bring information related to the actions of the Federal Court of Accounts to Brazilian citizens in the most isolated areas of the country.*
- *DISTANCE LEARNING AND THE TCU The Federal Court of Accounts (TCU), through the Serzedello Corrêa Institute (ISC), provides distance-learning courses for staff members of TCU and other institutions. These courses are offered free of charge with the purpose of disseminating legal provisions and good practices and contributing to the proper and regular use of public resources.*
- *PUBLICATIONS The Federal Court of Accounts disclose several publications available for download on TCU's Web Portal.*
- *WEB TV TCU TV gathers special news reports about audits carried out by the court, excerpts of sessions and lectures, in addition to the #EuFiscalizo program, a monthly documentary about themes of TCU's work.*

Measures taken to build and strengthen relations between national legislatures and supreme audit institutions, and to encourage national legislatures to be aware of the findings of supreme audit institutions so that they may be taken into account when exercising parliamentary functions.

Measures taken to strengthen the national, regional and international coordination and cooperation among the bodies involved in the prevention of and fight against corruption.

The Federal Court of Accounts is part of several international cooperation actions, particularly within the International Organization of Supreme Audit Institutions (Intosai) and its Regional Group for Latin America and the Caribbean (Olacefs). The goal is to disseminate knowledge and techniques to monitor the development of themes connected with government audit in different countries and to maintain the exchange of experiences and ideas within the scope of control. TCU also works in partnership with regional and multilateral organizations – United Nations (UN) agencies and the World Bank, for instance.

Joint projects, exchange of information and of experts improve TCU's monitoring work and provide independent assessment of programs and policies that may be supported by international projects. From 2013 to 2015, TCU was chair of the Olacefs. During this period, TCU worked for the modernization of the Organization and the improvement of its member-institutions, solidifying its leadership amongst the Supreme Audit Institutions. Within Intosai, TCU is part of the discussions about the strategic planning and the certification by the Institution.

In addition, TCU is member of several technical groups and for the last decade, having presided over the Performance Audit Subcommittee. All this resulted in the election to be the chair of one of the most important committees of Intosai – the Professional Standards Committee, starting in 2017.

The results of TCU's international cooperation are not only related with other Supreme Audit Institutions (SAIs), but also with control institutions from all over the world. The court has worked hard on bi-lateral cooperation opportunities in order to promote knowledge and experience exchange for the development of its own employees and of other institutions, whose core business is to control public expenditures.

There are national agreements with the great majority of the Brazilian States Courts of Accounts. By doing this, TCU gives permanent opportunity of professional development to these institutions'

auditors, through the Capacity Building Institute, called Instituto Serzedello Corrêa. Besides the contribution it promotes, it also is aligned to the TCU's professional appreciation policy and establishes the Federal Court as a reference on governmental auditing.

TCU has obtained huge benefits from the agreements with some international development organizations. It has lead the Court to knowledge improvement in performance auditing, government accounts analysis and financial auditing.

As of January 2016, the TCU has worked in an international project with the German cooperation agency, named Deutsche Gesellschaft für Internationale Zusammenarbeit (GmbH), known as GIZ. The project entitled "Strengthening of external financial control in the environmental field". The project deadline is December 2020. As a result, it is expected that TCU and other SAIs of the Regional Group for Latin America and the Caribbean (Olacefs) are able to effectively achieve their institutional mission, which is to improve the Public Administration, mainly regarding environmental government investments, as presented in the project summary.

Measures taken to improve the exchange of information between anti-corruption bodies, supreme audit institutions and other governmental bodies operating in the field of combating corruption, including for consultative purposes. **(Please see answer to the previous point).**

Measures taken to promote transparency including by publishing findings of both the anti-corruption bodies and the supreme audit institutions.

When it comes to transparency, the TCU is making efforts to promote civic engagement throughout Brazil, including holding public events and investing in new technologies to facilitate public participation, such as mobile applications.

The Brazilian Federal Constitution establishes that any citizen has the legitimate right to denounce irregularities and illegalities before the Court. In addition, the Public Bidding Law provides that any participant in the bidding process – natural person or legal entity – may bring to the Federal Court of Accounts-Brazil a petition regarding irregularities in the application of the Law. In recent years, the number of cases brought forth has grown significantly, demonstrating the strengthening of the relationship between the Court and society.

The TCU offers general information to the citizens about its decisions or regulations through several online channels, such as e-mail or apps for mobiles and tablets. The Court has also developed the concept of Civic Cloud, with a long-term citizenship vision that aims to strengthen social control and to improve the TCU's actions as an external audit organization.

**2. Please provide examples of the implementation of those measures, including related court or other cases and available statistics.**

In relation to article 9, paragraph 2 and examples of implementation of those measures, States parties may wish to consider including the following:

Reports prepared by the supreme audit institutions, national legislatures of body or bodies that prevent corruption.

The Federal Court of Account's plethora of publications, including papers, manuals and reports that describe the implementation of anti-corruption measures, accountability promotion and the like can be accessed at;

[https://portal.tcu.gov.br/en\\_us/english/publications/](https://portal.tcu.gov.br/en_us/english/publications/). One example is the Manual "Referencial de Combate a Fraude e Corrupção", (Reference Guide on Fighting Fraud and Corruption), from 2018.

All the statistics from the Court, including the sum corresponding to the result of the Court's action when it comes to controlling public moneys, number of cases judged etc. can be found at <https://portal.tcu.gov.br/tcu-em-numeros/>.

External reports on the operation of the supreme audit institutions.

**Information requested from States parties in relation to the role of national parliaments and other legislative bodies in preventing and combating corruption in all its forms (resolution 8/14 of the Conference of the States Parties to the United Nations Convention against Corruption)**

**3. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related time frame) to promote the implementation of resolution 8/14.**



In relation to measures/steps that have been taken to promote the implementation of resolution 8/14, States parties may wish to consider including the following:

- Measures taken to support the role and strengthen the capacity of parliaments and other legislative bodies to prevent and combat corruption, including in areas where they have a mandate for review or oversight;
- Measures taken by national parliaments or other legislative bodies to identify and implement any legislative or other measures that may be necessary to implement the Convention and address relevant recommendations emerging from the Mechanism for the Review of Implementation of the United Nations Convention against Corruption;
- Measures taken to strengthen interparliamentary dialogue and cooperation, including in coordination with the Inter-Parliamentary Union and similar organizations, as appropriate, to promote the exchange of good practices relating to legislation, review and oversight controls in the fight against corruption, and measures taken to consider implementing those good practices in domestic law;
- Measures taken to recognize the important role of parliaments and other legislative bodies in strengthening the implementation of the Convention, with a view to effectively preventing and combating corruption in all its forms and preventing money-laundering related to corruption by, inter alia, promoting transparency and accountability in the management of public finances, exercising budget oversight, criminalizing corruption offences and facilitating the asset recovery process, in accordance with chapter V of the Convention;
- Measures taken, in the framework of States parties' preparations for the special session of the General Assembly against corruption, to be held in 2021, to address the strengthening of the role of parliaments and other legislative bodies in preventing and combating corruption in all its forms, while duly respecting the independence of the legislative authorities;
- Any good practices in relation to the role of parliaments and other legislative bodies in preventing and combating corruption.

**4. Please provide examples of the implementation of those measures, including related court or other cases and available statistics.**

In relation to examples of implementation of those measures, States parties may wish to consider including the following:

- Reports by national parliaments or other legislative bodies on their efforts to implement the Convention;
- Reports on good practices in relation to the role of national parliaments or other legislative bodies in preventing and combating corruption, either by such legislative bodies or third-party observers.