

Overall Score:

78 - Moderate

Legal Framework Score:

85 - Strong

Actual Implementation Score:

69 - Weak

Category I. Civil Society, Public Information and Media

I-1. Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

100

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

Comments:

Although there are at least 500,000 CSOs (possibly as many as 750,000) in Brazil, a very small number of them focus on governance and anti-corruption.

References:

IN LAW 1 – Federal Constitution, Art. 5, items 17-18 guarantee freedom of association, barring only association for illicit purposes (http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm).

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

It might be worth mentioning also that there are some legal constraints on CSOs in terms of how they can receive funding, if they want to remain tax-exempt organizations.

References:

Law 9790/1999 – There are no defined funding conditions.

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

The first law is the key regulation among a vast body of legislation governing civil society organizations. Although not all CSOs are required to submit to its rules, in order to receive tax deductible donations or funding through the government, it makes sense to follow these rules.

Among the many rules in this law that would lead to funding disclosure, the law requires that any project above BRL 600, 000 (US\$338,600) requires an audit, creates a fiscal board in all CSOs that sign on, requires the CSO to publish its financial statements, and requires all of the CSO's financial statements to be publicly available through the Justice Ministry.

In sum, although there is no rigorous rule that forces all CSOs to disclose their funding sources, the legislation strongly encourages such disclosure if the CSOs are to obtain funding and tax benefits. Although there is no law that makes the funds of every CSO publicly accessible, political parties had to do so since the promulgation of the second law that makes public the reports about the public financing of political campaigns.

References:

IN LAW 1 – Law 9.790/99 (http://www.planalto.gov.br/ccivil_03/LEIS/L9790.htm) and law 11.300/06 (http://www.planalto.gov.br/ccivil_03/ Ato2004-2006/2006/Lei/L11300.htm#art1).

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

83

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE – Art. 5, item 18 of 1988 Constitution expressly states that there is no need to get authorization for creating an

association, and forbids state interference on associations
(http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm).

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | **50** | 25 | 0

Comments:

Non-governmental organizations are systematically invited to give their opinions. Many of them belong to government-sponsored councils and similar organizations that are aimed at monitoring public policies, and they are frequent sources for the press. In despite of their activity in political councils, or at the legislative and executive levels, they rarely engage in actual policymaking.

References:

IN PRACTICE: Mainly Folha de S. Paulo (www.folha.uol.com.br) and O Estado de S. Paulo (www.estado.com.br).

Sociedade Civil não nasceu ontem” (“Civil society ‘wasn’t born’ yesterday”). Written by journalist Roberto Almeida (O Estado de S.Paulo, Feb, 19th, 2009, <http://www.deunojornal.org.br/materia.asp?mat=262550>); the article mentions 3 CSOs: Transparencia Brasil, Voto Consciente and Amarribo

“Cabe à sociedade cobrar transparência” (“Civil Society must demand transparency”). Journalist Fernanda Brigatti (O Estado, Mar, 23rd, 2009: <http://www.deunojornal.org.br/materia.asp?mat=265063>) interviews Mauri Ricciotti, a prosecutor (Public Ministry) and professor

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

References:

IN PRACTICE: Mainly Folha de S. Paulo (www.folha.uol.com.br) and O Estado de S. Paulo (www.estado.com.br).

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

References:

IN PRACTICE – Media -See all kinds of media. Mainly Folha de S. Paulo (www.folha.uol.com.br) and O Estado de S. Paulo (www.estado.com.br).

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

References:

IN PRACTICE – Media -See all kinds of media. Mainly Folha de S. Paulo (www.folha.uol.com.br) and O Estado de S. Paulo (www.estado.com.br).

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

References:

IN PRACTICE – Media -See all kinds of media. Mainly Folha de S. Paulo (www.folha.uol.com.br) and O Estado de S. Paulo (www.estado.com.br).

We couldn't find any case in Brazil, as we reviewed relevant media coverage.

Besides, the Committee to Protect Journalists mentions no killings of Brazilian journalists in 2008: <http://cpj.org/killed/2008/>. Journalists are a significant portion of anti-corruption activists.

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

88

4a. In law, citizens have a right to organize into trade unions.

YES | NO

References:

IN LAW 1 – Federal Constitution, Art. 5, item 17 guarantees freedom of association, barring only association for illicit purposes (http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm).

Decree-Law 5452/1943, Art. 511 says that association in trade unions is allowed (http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del5452.htm).

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

Since their power has been reduced, trade unions became less relevant both politically and in regard to labor matters. As for forming new trade unions, the major obstacles are pre-existing unions. This is a relevant issue because accredited trade unions are mainly financed by compulsory discounts that are taken from workers' wages.

References:

IN PRACTICE – Media – Sindicalização cai pela metade depois da década de 80” (“Unionization falls to half after the 80’s”) (<http://migre.me/hQIG> Folha Online, May, 12th, 2008)

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

References:

IN LAW 1 – Federal Constitution, Art. 220: The manifestation of thought, the creation, the expression and the information, in any form, process or medium shall not be subject to any restriction, with due regard to the provisions of this constitution.

Paragraph 1 – No law shall contain any provision which may represent a hindrance to full freedom of press in any medium of social communication (...): <http://migre.me/hQPc>

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

References:

IN LAW 1 – Federal Constitution, art. 5, items 4 and 9 (http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm).

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

100

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

Except for the restriction mentioned above, there is no other obstacle to forming print media entities. What sometimes happens is a restriction in circulation: a person who is unsatisfied with a publication buys all the editions of it. This situation has happened in small towns.

Also, there are some controversial judicial decisions. For example, one of the major Brazilian newspapers is prohibited from mentioning an investigation involving the son of the speaker of Congress. See report by Reporters Without Borders: <http://www.rsf.org/Federal-Supreme-Court-upholds.html>.

References:

IN PRACTICE:

Federal Constitution, Art.5, 222 and others: (http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm)

Constitutional Amendment 36/02: (https://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc/emc36.htm)

Article 222 specifies that media concerns must be owned (controlled) by Brazilian citizens or by firms established in Brazil.

The Constitutional Amendment allows foreign investors a share of 30 percent in media companies while still keeping the control in native hands.

All legislation pertaining to public concessions (radio and TV) can be found here: <http://www.mc.gov.br/rtv/lei/default.htm>

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

YES | NO

References:

IN LAW 2 – Unlike broadcast media, there is no need of licenses for print media. Thus, there are no denials, obviously:

Federal Constitution, Art 220, Paragraph 6 – The publication of a printed social communication medium shall not depend on license from authorities.

<http://migre.me/hQPc>

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE – Licenses are not required for print media.

Federal Constitution, Art 220, Paragraph 6 – The publication of a printed social communication medium shall not depend on license from authorities.

<http://migre.me/hQPc>

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE – Licenses are not required for print media.

Federal Constitution, Art 220, Paragraph 6 – The publication of a printed social communication medium shall not depend on license from authorities.

<http://migre.me/hQPc>

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

56

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

Local conditions might have a strong influence on whether or not a radio or TV station will find itself fighting against interference. Also, since in most states the local economy does not create enough advertising to support economically-independent media, most regional radio/TV groups are dominated by the same oligarchies that dominate everything else.

References:

IN PRACTICE – In Brazil, the broadcast media belongs to the Union, and the law stipulates that such service should be awarded through competitive bidding, to be considered by the Legislature and signed by Executive.

As parliamentarians play an important role in the process, the politicians themselves control these services, although there's a legal constraint. According to Fórum Nacional pela Democratização da Comunicação (National Forum in Defence of Democratization of Communication), in March 2008 at least 270 politicians were either partners or directors of broadcast companies (<http://migre.me/hRyN>, Multimedia Magazine, edition 143, Oct 10th, 2008).

On the other hand, there are some important barriers for the rádios comunitárias" ("community radio stations"), which should be removed to minimize the unfairness in broadcast public concessions. Example: radios comunitárias must serve only a small area. And the directors must reside in this "community". It is clearly hard to match this criteria. (Source: Law 9.612/1998: <http://migre.me/hRCy>).

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

YES | NO

Comments:

A radio/TV concession might be revoked for a number of administrative reasons (such as noncompliance with regulations), all of which are subjected to administrative appeal. Appeal to Congress, as a last resort, is always possible.

References:

IN LAW 2: National Congress. Federal Constitution Art. 48, item 12
(http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm).

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: It is very hard for citizens to obtain a broadcast media license. As pointed out before, many politicians control broadcast media. Apart from them, only powerful groups (strong holdings or churches) succeed in getting these licenses.

CSOs or citizens are better off trying to establish radios comunitárias" ("community radio stations"). However there are some important barriers in getting a radio comunitaria license. Example: radios comunitárias must serve only a small area. And the directors must reside in this "community". It is clearly hard to match this criteria. (Source: Law 9.612/1998: <http://migre.me/hRCy>).

Besides, there is a bill in the Congress which tries to make the concession of a "radio comunitaria" even harder to get: The proposal makes eligible only the entities that have at least two years of activity: http://www.fndc.org.br/internas.php?p=noticias&cont_key=459854

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The organization has to travel to Brasília, which makes media licenses more readily available to politicians. Folha de S.Paulo also does a very competent job in that area. That happens although the Constitution of 1988 bans congressmen from owning media licenses.

References:

IN PRACTICE: Media, see Folha de S. Paulo (www.folha.uol.com.br).

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

100

8a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

However, there has been a few cases of controversial judiciary decisions, as mentioned in the Open Society report (Reporters Without Borders: Electoral court censors blog that posted cartoon of senatorial candidate," September 8, 2006): http://opennet.net/research/regions/la#footnote62_f24s42d.

References:

IN PRACTICE: Speaking during an electoral campaign, President Lula himself defended a free web" in a recent speech (<http://www.observatoriodaimprensa.com.br/artigos.asp?cod=555ASP012>, Folha de S.Paulo, Sept, 15th, 2009).

An Open Society Institute report also noted that Internet is reasonably free in Brazil: <http://opennet.net/research/regions/la>

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE:, Media, Lack of significant reports of censorship.

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

67

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

References:

IN LAW: 1: Federal Constitution, Art.220, Par. 1 and 2 (http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm)

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

Most Brazilian regional media is controlled by oligarchies that exercise all sorts of pressures on their employees. Often, they steer the news they produce into this or that direction.

However, the so-called national media is usually free from the federal government's pressures and is not subjected to undue internal pressures, though exceptions might occur.

References:

IN PRACTICE: Media: see, e.g., Transparencia Brasil's Deu no Jornal™ project (www.deunojournal.org.br), which collects and analyzes news on corruption.

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | **50** | 25 | 0

Comments:

In many states, and especially in municipalities, the exercise of political and economic pressure is commonplace. The concentration of the media in the hands of politic-economic oligarchies precludes independent reporting in most local media.

On the other hand, there have been lawsuits — many times coming from government officials — suspending the publication of unfavorable news before it's even printed. That happens especially during election time.

References:

IN PRACTICE: Currently, a major national newspaper called O Estado de S. Paulo was prohibited by the Justice from publishing any content related to a corruption episode involving the son of a senator (Jose Sarney). The newspaper has been under this censorship for more than 80 days. See the in-depth coverage made by O Estado de S. Paulo (<http://www.estadao.com.br/pages/especiais/sobcensura/>).

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

70

10a. In law, print media companies are required to publicly disclose their ownership.

YES | NO

Comments:

There are no specific rules for print media companies. In Brazil, print media companies are under the same legislation as, say, a supermarket.

As for the ownership of print media entities, the information is not publicly available, though it is not hard to detect who the official owners are.

References:

IN LAW: 1, Civil Code, Law 10406/2002 (<http://www.planalto.gov.br/CCIVIL/leis/2002/L10406.htm>).

YES: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | NO

References:

IN LAW: 1, Civil Code, Law 10406/2002 (<http://www.planalto.gov.br/CCIVIL/leis/2002/L10406.htm>).

YES: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

Comments:

The matter of journalists behaving according to a regulated code of conduct has been subjected to heated debate. An attempt to promulgate a law regulating journalism as a professional activity failed in 2005. The debate returned in 2009, but again it has not turned into legislation. Media controllers are unanimously against it. Opinions are sharply divided among journalists. In practice, even in the major media, individual journalists enjoy ample discretion and scant monitoring.

References:

IN PRACTICE: There is no global code of conduct for journalists.

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Academic: There is an academic research group named Doxa that measures the press coverage and assesses its neutrality (<http://doxa.iuperj.br/>).

On the other hand, the Observatório da Imprensa shows the concentration of the media in Brazil and its political use by the economic elites (<http://observatorio.ultimosegundo.ig.com.br/>).

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

Comments:

There are no significant complaints regarding this issue of political parties and candidates having equitable access to state-owned media outlets. The subject was extensively covered in the media many times.

References:

IN PRACTICE: Media, see:

Folha de S. Paulo (www.folha.uol.com.br)

O Estado de S. Paulo (www.estado.com.br)

O Globo (oglobo.globo.com)

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all

other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

Comments:

There is a lack of reporting on the imprisonment of journalists investigating corruption.

References:

IN PRACTICE – No sources.

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

Comments:

It is always healthy to keep in mind the immense size of Brazil. Cases of physical harm of journalists investigating corruption (especially relatively mild ones) might happen at a local level and never be known outside a small town.

References:

IN PRACTICE: CPJ reported 3 local cases in 2008:

<http://cpj.org/2008/11/cameraman-shot-while-covering-clash-in-southern-br.php>

<http://cpj.org/2008/10/political-activists-attack-journalist-in-porto-ale.php>

<http://cpj.org/2008/06/cpj-appalled-by-reported-torture-of-journalists-driver.php>

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

References:

IN PRACTICE: CPJ reports no deaths in 2008 in Brazil, <http://cpj.org/killed/2008/>

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

85
I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

67

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

However, access to information is not regulated. The availability of information varies immensely, notably in the executive branch. The formulation of this group of questions does not adapt very well to the Brazilian situation.

From experience, the Brazilian state provides incomparably more information than most other countries, especially in the federal sphere. It is not difficult to get information on judicial processes, for instance. All data is public. Most problems regarding access to information in the executive branch is a result not from unwillingness to provide it, but from the fact that the information is not properly gathered.

Thus, indicators for government programs and actions are not available because they usually are not kept. Government decisions are always public (barring secret codicils in treaties, for example), but some decision processes are not. Overall, the scores given in this section will probably put Brazil in a bad light, when in fact it compares favorably with most countries. This is due to the way in which the questions are posed.

References:

IN LAW: 1, Federal Constitution, Art. 5, item 33, http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

Comments:

Such a formal process for a right of appeal if access to a basic government record is denied stems directly from the Constitution. However, it takes time and money to do so, thus it is rarely used.

References:

IN LAW: 1, Federal Constitution, art. 5, item 34a establishes the right, http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

Comments:

However, there are certain laws (such as law 8.666/93, regulating public procurement) that specifically establish mechanisms for the access of data concerning public procurement.

There is also a law on habeas data," which is an instrument to ask for one's personal data that is in the hands of the government: <http://www.stf.jus.br/portal/glossario/verVerbete.asp?letra=H&id=156>.

References:

Access to information is not regulated.

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

42

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

References:

IN PRACTICE: Access to information is not regulated.

It depends on the institution. Generally, federal organizations either respond immediately or respond that the information does not exist. In states and municipalities, most simply do not respond.

The non-governmental organization Transparencia Brasil reports that only 6 out of 27 Legislative Houses in states responded to a request for information. See: <http://www.excelencias.org.br/docs/estipendios-dep-est.pdf>

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

Comments:

If a citizen encounters resistance when trying to access information, getting hold of it might entail protracted legal proceedings, which are always very expensive. On the other hand, the access to information depends on what agreement is reached with the person who is responsible for the documents in each single institution. Sometimes, different branches of the same institution will have different procedures.

References:

IN PRACTICE, Access to information is not regulated.

The only mechanism is the judiciary system, which is a very expensive way to most of Brazilians.

The major Brazilian newspaper, Folha de S.Paulo, went to court in order do have access to public documents concerning parliamentarians' spending.

See Folha de S.Paulo, Sept 17th, 2009: Em ofício ao STF, Senado diz que notas fiscais guardam segurança nacional" ("Senate tells Supreme Court that official documents [on parliamentarians' spending] keep national security")

<http://www1.folha.uol.com.br/folha/brasil/ult96u625226.shtml>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Transparencia Brasil's assessment shows how difficult it can be to obtain data related to state parliamentary payments and shows the quality of the information provided. See: <http://www.excelencias.org.br/@carga.php?carga=docs/estipendios-dep-est.pdf>.

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

13d. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

If a citizen encounters resistance when trying to access information, getting hold of it might entail protracted legal proceedings, which are always very expensive and take a long time to produce results.

References:

IN PRACTICE: Access to information is not regulated.

There is no mechanism for appeals to access to information requests. Even a non-governmental organization (NGO), or a major newspaper, is not able access to public information (as mentioned in 13a and 13b). Thus, citizens without the support of an NGO or a media company will not be able to access the public data and will not be able to appeal, unless he or she goes to court.

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13e. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

If a citizen encounters resistance when trying to access information, getting hold of it might entail protracted legal proceedings, which are always very expensive and take a long time to produce results.

References:

IN PRACTICE:- Access to information is not regulated.

There is no mechanism for appeals to access to information requests. Even a non-governmental organization (NGO), or a major newspaper, is not able access to public information (as mentioned in 13a and 13b). Thus, citizens without the support of an NGO or a media company will not be able to access the public data and will not be able to appeal, unless he or she goes to court.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13f. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Access to information is not regulated.

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

II-1. Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

Comments:

Universal suffrage is mandatory for citizens above 18 and under 70. And is facultative for citizens between 16 and 18 and above 70.

References:

IN LAW: 1, Federal Constitution, Art.14, http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

References:

IN LAW: 1, Federal Constitution, several items:

http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm

Law 9504/97, http://www.planalto.gov.br/ccivil_03/Leis/L9504.htm

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

100

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: No reporting of noncompliance.

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

Although there are critics, fraudulent tampering with electoral results has not been reported.

References:

IN PRACTICE: Voting is electronic. In 2009, the electoral court made an open call for specialists to try to violate the secrecy of the machine. The winner of the contest was able to find a way to detect who was voted by capturing the sound of the keys on the keyboard with a huge antenna. However, no one could violate the machine itself: <http://tinyurl.com/ofhcwj>

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Always.

There have been elections in Brazil every 2 years since 1992. In 1994, 1998, 2002 and 2006, there were elections at state and federal level, whereas in 1996, 2000, 2004 and 2008 there were elections at municipal level.

At the website of the TSE (Brazilian Electoral Court), one can see information on the most recent elections in Brazil, <http://www.tse.gov.br/internet/eleicoes/index.htm#>

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

100

16a. In law, all citizens have a right to form political parties.

YES | NO

References:

IN LAW: 1, Federal Constitution, Art. 17, http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm

Law 9.096/95, http://www.planalto.gov.br/ccivil_03/LEIS/L9096.htm

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

References:

IN LAW: 1, Federal Constitution Art. 14, http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: After the country's re-democratization, many parties have been formed, but they have been in operation for only a little time.

See Supreme Electoral Court reports:

http://www.tse.gov.br/internet/partidos/arquivos/historico_partidos.pdf

<http://www.tse.gov.br/internet/partidos/index.htm>

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: See Supreme Electoral Court website, http://www.tse.gov.br/internet/eleicoes/divulg_cand.htm

Transparencia Brasil's As Claras project,; <http://www.asclaras.org.br>

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Media, see National Congress website, <http://www2.camara.gov.br/deputados/bancadas>

Newspapers' websites, mainly:

Folha de S. Paulo, www.folha.uol.com.br

O Estado de S. Paulo, www.estado.com.br

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

18. Is the election monitoring agency effective?

100

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

Comments:

The Superior Electoral Court is formed in part by judges from the Supreme Court who are appointed by presidents when a judge retires. See Sadek, 1996.

References:

IN LAW: 1, Electoral Code Art. 16-41, http://www.planalto.gov.br/ccivil_03/Leis/L4737.htm

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is

automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The major issue is not politicking itself, but the temporary nature of all TSE ministers. In this regard, it might be worth noting the chapter on "Justiça Eleitoral" in Leonardo Avritzer and Fátima Anastasia's volume *Reforma Política no Brasil* (UNDP2006).

References:

IN PRACTICE: Academic, Konrad Adenauer Stiftung, Maria Tereza Sadek. 1996. *A Justiça Eleitoral e a Consolidação da Democracia no Brasil*, <http://www.adenauer.org.br/prefor.asp>.

Appointments to the TSE (Superior Electoral Court) are made based on professional qualifications. Of the seven members, three are temporary appointees from the STF (Supreme Court), two are temporary appointees from the STJ (Superior Court), and two are appointed by the President, within a list provided by STF that contains the names of six lawyers who have demonstrated notable legal knowledge and moral integrity."

See details at TSE official website, <http://www.tse.gov.br/internet/institucional/composicao.htm>

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Electoral Authority judges are all temporary, drawn from the Judiciary and from elsewhere in the legal professions. The Federal Authority has a permanent staff, but their state counterparts do not.

References:

IN PRACTICE: Academic, Vitor Marchetti, 2008, *Governança eleitoral: o modelo brasileiro de justiça eleitoral* (Electoral governance: the Brazilian electoral justice model), http://www.scielo.br/scielo.php?pid=S0011-52582008000400003&script=sci_arttext&tlng=in

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: 1, Check on Superior Electoral Court report about 2008 election, <http://www.tse.gov.br/internet/eleicoes/index.htm>

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

According to the Movement to Combat Electoral Corruption, 667 politicians have lost their mandate because of their vote-buying from 2000 to 2008.

However, many abuses like vote-buying are difficult to legally restrain — there is a shadow area that makes it hard to get legally valid proof that such a practice is taking place.

References:

IN PRACTICE, 2, Konrad Adenauer Stiftung, Maria Tereza Sadek.1996. A Justiça Eleitoral e a Consolidação da Democracia no Brasil, <http://www.adenauer.org.br/prefor.asp>

Movimento de Combate a Corrupção Eleitoral. 2009. Prefeitos e vereadores cassados por corrupção eleitoral, <http://www.mcce.org.br/sites/default/files/RelatorioSintese.pdf>

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

100

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Media, see Superior Electoral Court website dedicated to consulting voter registration: http://www.tse.gov.br/internet/servicos_eleitor/consultaNome.htm

The Superior Electoral Court new system of online voter registration: http://www.tse.gov.br/internet/servicos_eleitor/titulo_net.htm

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

References:

IN LAW: 1, Law 9504/97, http://www.planalto.gov.br/ccivil_03/Leis/L9504.htm

Federal Constitution Art.121, http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

Comments:

Public Ministry of the State of Amazonas, Oct. 15th, 2008: MPE/AM recorre ao TRE/AM contra vereador mais votado de Manaus (Public Ministry appeals to Electoral Court of Amazonas against elected parliamentarian: <http://noticias.pgr.mpf.gov.br/noticias-do-site/eleitoral/mpe-am-recorre-ao-tre-am-contra-vereador-mais-votado-de-manaus>)

References:

IN PRACTICE: Media, see Superior Electoral Court news, <http://agencia.tse.gov.br/sadAdmAgencia/>

Newspaper's websites: Folha de S. Paulo, www.folha.uol.com.br

O Estado de S. Paulo, www.estado.com.br

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

References:

IN PRACTICE – No reporting of incidents involving military and security forces during elections.

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

Comments:

Yes/No answer to this question is not complementary. Not having an explicit reference does not equate a prohibition.

References:

IN LAW: 1: There is no regulation explicitly allowing or disallowing domestic and international election observers to monitor elections.

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

Brazilian elections are routinely observed by multilateral organizations and foreign delegations. Since at least 1988, nothing untoward has ever been reported.

References:

IN PRACTICE: Election observers come to Brazil as a matter of course.

Folha Online, Sept 30th, 2008. Cinco países vão enviar observadores para acompanhar eleições no Brasil, diz TSE " ("Five countries to send observers for elections in Brazil, says Electoral Court")
<http://www1.folha.uol.com.br/folha/brasil/ult96u450709.shtml>

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

A judiciary's branch is dedicated to the electoral process. Each state has its regional electoral tribunal and the whole system is headed by a federal superior electoral court, which formulates each election's regulations and examines appeals. See, Konrad Adenauer Stiftung, Maria Tereza Sadek, 1996, A Justiça Eleitoral e a Consolidação da Democracia no Brasil.

References:

IN LAW: 2, Superior Electoral Court, Regional Electoral Courts, Electoral Judges, Board Elections and Electoral Prosecutor. Federal Constitution, Art.118, http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm

Electoral Code Art. 16-41, http://www.planalto.gov.br/ccivil_03/Leis/L4737.htm

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

100
II-3. Political Financing

20. Are there regulations governing the financing of political parties?

67

20a. In law, there are limits on individual donations to political parties.

YES | NO

Comments:

It is important to note that party finances are kept separate from election finances.

References:

IN LAW: 1, Law 9096/95 regulates parties, http://www.planalto.gov.br/ccivil_03/Leis/L9096.htm

Law 9504/97 regulates elections, http://www.planalto.gov.br/ccivil_03/Leis/L9504.htm

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

YES | NO

Comments:

Firms can donate up to two percent of their annual revenue to candidates. Donations to parties are not limited. It is worth mentioning the discrepancy between Law 9096 and Law 9504: the former does not establish any limits on donations, while the latter does.

It is also worth quoting the chapter "O Financiamento de Campanhas Eleitorais", in Avritzer and Anastasia, Reforma Política no Brasil (UNDP:2006). This chapter provides an excellent brief on issues surrounding electoral law in Brazil.

References:

IN LAW: 1, Law 9096/95 regulates parties, http://www.planalto.gov.br/ccivil_03/Leis/L9096.htm

Law 9504/97 regulates elections, http://www.planalto.gov.br/ccivil_03/Leis/L9504.htm

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on total political party expenditures.

YES | NO

Comments:

No such limits on total political party expenditures exist. Candidates must declare how much they will spend in an election, but this amount may be adjusted. Penalties are limited to very small fines.

References:

IN LAW: 1, Law 9096/95 regulates parties, http://www.planalto.gov.br/ccivil_03/Leis/L9096.htm

Law 9504/97 regulates elections, http://www.planalto.gov.br/ccivil_03/Leis/L9504.htm

YES: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

NO: A NO score is earned if there are no limits on political party expenditures during an election. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are requirements for the disclosure of donations to political parties.

YES | NO

Comments:

All contributions are made public after the elections. After 2006, candidates are required to report twice on donations they have received, without identifying the donors, during the election campaign. Parties are not subject to such requirements. This allows for the obvious mechanism of parties receiving financing and redistributing the money among their candidates. This makes it more difficult to associate a donor with a candidate.

References:

IN LAW: 1, Law 9096/95 regulates parties, http://www.planalto.gov.br/ccivil_03/Leis/L9096.htm

Law 9504/97 regulates elections, http://www.planalto.gov.br/ccivil_03/Leis/L9504.htm

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

YES | NO

Comments:

Article 35 of the above-mentioned Law 9096/95 states:

The Superior Electoral Court and the Regional Electoral Courts, after substantiated complaint made by a member or a delegate of a party, by the Attorney General or Attorney Regional, by the internal controller, will determine the examination of bookkeeping of the party and the investigation of any act that violates the legal or statutory requirements that, in financial matters, its members are subject, and may even cause the breakdown of bank secrecy of accounts of the parties for clarification or verification of facts relating to the complaint ...”

“A party may examine, at the Electoral Court, the provision of monthly and annual accounts of other parties, fifteen days after the publication of financial statements (...). Still, a party may report facts, evidence and indicate request for investigation to determine any act that violates the laws or statutes that, in financial matters, the parties and their affiliates are subject.”

References:

IN LAW: 1, Law 9096/95 regulates parties, http://www.planalto.gov.br/ccivil_03/Leis/L9096.htm

Law 9504/97 regulates elections, http://www.planalto.gov.br/ccivil_03/Leis/L9504.htm

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

YES | NO

References:

IN LAW: 2, No sources.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

21. Are there regulations governing the financing of individual political candidates?

40

21a. In law, there are limits on individual donations to political candidates.

YES | NO

Comments:

Article 23 says that individual donations are limited to 10 percent of the gained gross incomes in the year previous to the election.

References:

IN LAW: 1, Law 9504/97. Art.23, http://www.planalto.gov.br/ccivil_03/Leis/L9504.htm

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

YES | NO

Comments:

Article 24 prevents some public and private organizations from making donations to individual political candidates.

References:

IN LAW:1, Law 9504/97, http://www.planalto.gov.br/ccivil_03/Leis/L9504.htm

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | NO

References:

IN LAW: 1, No sources.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

YES | **NO**

Comments:

There is no regulation in regard to requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered. However, finances are examined after the candidate sends their accountings to the Electoral Justice.

References:

IN LAW: 1, No sources.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | **NO**

References:

IN LAW: 2, No sources.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

22. Are the regulations governing the political financing of parties effective?

50

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

Comments:

Individual (reported) donations are always kept within the legal limits. However, since the limits are expressed in terms of percentage (10 percent) of the donor's income, wealthy individuals might exercise a decisive influence on an election, especially at the local level. Furthermore, recent political scandals suggest the practice of off-the-records' donations' ("caixa dois") is still alive, well, and extraordinarily important.

There are many ways to bypass this regulation (for example, volunteers that are campaigning for a candidate can get free fuel at a certain gas station, which is a non-declared donation to the candidate). Sometimes, politicians donate to themselves sums that amount more than their disclosed assets, and none of this is reported (for the specific case of politicians' donations, see a report by the non-governmental organization Transparência Brasil: <http://www.excelencias.org.br/docs/daa2008.pdf>).

Receita Federal (the Brazilian counterpart of the U.S. Internal Revenue Service and Superior Electoral Court signed an agreement to share data. As a result, thousands of irregular donations have been detected.
<http://agencia.tse.gov.br/sadAdmAgencia/noticiaSearch.do?acao=get&id=11812>

For the 2008 elections, the Superior Electoral Court and the Brazilian Revenue Secretary shared data that allowed for the identification of thousands of irregular donations. See agencia.tse.gov.br/sadAdmAgencia/noticiaSearch.do?acao=get&id=11812.

References:

IN PRACTICE: In only 1 of the 27 Brazilian States, Espírito Santo, are there more than 50 people who have been fined for making irregular donations:

A Gazeta, Nov. 11, 2009: Doações irregulares na campanha de 2006 resultaram em 52 multas no TRE (Irregular donations during the 2006 electoral season resulted in 52 fines in the Regional Electoral Court"): <http://www.deunojornal.org.br/materia.asp?mat=282132>

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

Comments:

Since the limits are expressed in percentage terms (2 percent) of the company's revenues, large companies might have a decisive influence on an election, especially at the local level. Some candidates use the companies owned by them to make huge donations (albeit within the legal limits) to their own campaigns. Furthermore, donations of services, heavy discounting, and other types of contributions whose monitoring is difficult, are possible.

Besides the absence of limits for corporations to donate to parties (only to candidates), it is also very easy to circumvent legal limits (as observed in the previous question, it is just the case of paying some campaign costs directly to suppliers). A very competent independent audit could prevent these things from occurring (up to now, we do not have this kind of audit being performed).

Receita Federal (the Brazilian counterpart of U.S. Internal Revenue Service) and Superior Electoral Court signed an agreement to share data. As a result, thousands of irregular donations have been detected:
<http://agencia.tse.gov.br/sadAdmAgencia/noticiaSearch.do?acao=get&id=11812>

References:

IN PRACTICE: O Globo, Oct. 18, 2009: TRE pode multar 131 empresas por doações eleitorais acima do limite” (Regional Electoral Court might fine 131 companies over electoral donations above limits”), <http://www.deunojornal.org.br/materia.asp?mat=280874&p1=>

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

References:

Law 11.300/2006 (<http://migre.me/i8e4>) says that a limit will be stipulated by law every electoral year and if this does not happen, the political party is the one responsible for stipulating its own limit. In practice, the self-appointed limit is what has happened.

MEDIA: Jornal do Brasil, Oct. 8, 2008. Caixa dois eleitoral: <http://migre.me/i8eV>

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The entity that regulates elections is part of the Judiciary, and thus does not act ex officio. However, Public Prosecutors offices (both federal and state) do initiate investigations.

References:

IN PRACTICE: Media, See Supreme Electoral Court website, <http://migre.me/i8A1> (bylaw)

Electoral General Attorney website, <http://migre.me/i8B8> (about")

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. The agency, thought limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Following the 2008 elections, many businesses and individuals were identified by the Electoral Authority as possible offenders, have been fined (see, agencia.tse.gov.br/sadAdmAgencia/noticiaSearch.do?acao=get&id=11812).

References:

Estado de Minas (newspaper), Apr. 10, 2008. Doações – Empresa é multada em R\$ 450 mil (Donations – company is fined: 450 thousand reais"; around 240 thousand american dollars): <http://migre.me/i8Dy>.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

Although some courts audit and, in some cases (as the one mentioned above), even fine parties, Brazil is a large country, marked by inequality. This means that many regional courts are not able to audit donations and expenditures properly.

References:

Yes, the Electoral Courts audit the contributions to political parties:

Newspaper O Estado do Paraná, Nov 9th, 2008:

<http://www.deunojornal.org.br/materia.asp?mat=254611>

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

60

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Media, Transparencia Brasil maintains the 'As Claras' project (www.asclaras.org.br), in which political financing is systematically analyzed.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Media, Transparencia Brasil maintains the 'As Claras' project (www.asclaras.org.br), in which political financing is systematically analyzed.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The entity that regulates elections belongs to the judiciary, thus does not act ex officio. However, the Public Attorney's office has an electoral branch, which does initiate investigations. This justifies the score, since the public attorney is part of the judicial system.

On the other hand, most of cases have been investigated only after public denunciation in the media. Considering that media in Brazil is highly concentrated under few corporate groups and still fewer regional groups, we get a scenario in which investigations follow what the media considers deserving of being investigated.

References:

IN PRACTICE: Media, Check on Supreme Electoral Court website: www.tse.gov.br and Electoral General Attorney website: <http://eleitoral.pgr.mpf.gov.br/>.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

As mentioned before, the agencies that monitor political financing tend to follow what the media thinks should be investigated. Insofar, there is a high degree of tolerance, depending on the circumstances of each case. In some cases penalties have been imposed; in others not. There is a large shadow area in the middle.

References:

IN PRACTICE: Reports found on www.tse.gov.br and in each Regional Electoral Court.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

References:

The Electoral Courts audit individual campaigns. However, it is virtually impossible for them to perform an adequate audit, as a former electoral attorney at Rio Grande do Sul State stresses in this article: <http://www.deunojornal.org.br/materia.asp?mat=284969> (Folha de S.Paulo, Jan 4th, 2010)

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Party finances are only published in the Superior Electoral Court's Official Gazette.

References:

IN PRACTICE: Media: Parties must disclose data not later than April 30 of every year. However, some parties simply disrespect the rule. See <http://www.deunojornal.org.br/materia.asp?mat=220678>.

A Gazeta, May 6, 2008

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Party finances are published in Superior Electoral Court's Official Gazette, which is available online. However, most Brazilians do not have Internet access.

References:

IN PRACTICE: Media, see Superior Electoral Court's Official Gazette, <http://www.tse.gov.br/sadJudDiarioDeJusticaConsulta/>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

Comments:

Parties finances are kept separate from electoral finances. This has been increasingly used to mask the actual origin of moneys flowing from the private sector to candidates, in the following manner: the firm donates ear-marked moneys to the party and the party donates moneys to candidates. Thus, who actually donated to whom remains occult. Thus, in what matters (what is the visibility of moneys flowing to elections), the financial reports from parties are not transparent”.

References:

IN PRACTICE: Media, see Superior Electoral Court’s Official Gazette, <http://www.tse.gov.br/sadJudDiarioDeJusticaConsulta/>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

24d. In practice, the publicly available records of political parties’ finances are of high quality.

Comments:

Party finances are only published in the Superior Electoral Court’s Official Gazette, which is available online. However, most Brazilians do not have high-quality, high-speed, broadband Internet access.

References:

IN PRACTICE: Media, see Superior Electoral Court’s Official Gazette, <http://www.tse.gov.br/sadJudDiarioDeJusticaConsulta/>

100: Publicly available records of political parties’ finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties’ finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties’ finances, when available, are so incomplete or overly general as to render them useless in understanding a party’s sources of income and its expenditures.

25. Can citizens access records related to the financing of individual candidates’ campaigns?

63

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Candidates' finances are posted on the Internet about a month after the elections. In 2009, for example, the second round of municipal elections happened on Oct. 26, 2008. Exactly a month later, the data were on the Electoral Court's website. However, many have suggested that the data should be available before the elections.

There is also a lot of criticism about the way that candidates report their finances because in the last few elections, politicians from all parties have started reporting that the committee or the party itself is the main donor. Obviously, they do that in order to hide the origin of the money (see second reference in comments).

References:

Folha de S.Paulo, Nov. 27, 2008: <http://tinyurl.com/y9uq6er>

Folha de S.Paulo, Nov. 27, 2008: <http://tinyurl.com/yauzyc9>

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

About a month after the elections, the electoral finances are available on the Internet. It is worth noting, however, that most Brazilians do not have access to the Internet.

References:

IN PRACTICE: Media, see Superior Electoral Court website, www.tse.gov.br

Transparencia Brasil's Às Claras project, www.asclaras.org.br

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Media, see Supreme Electoral Court website, www.tse.gov.br

Transparencia Brasil's Às Claras project, www.asclaras.org.br

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Although the data is available free online, most Brazilians do not have high-quality, high-speed, broadband access to Internet.

References:

IN PRACTICE, Media: see Supreme Electoral Court website, www.tse.gov.br, Transparencia Brasil's Às Claras project, www.asclaras.org.br.

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

27. Can the chief executive be held accountable for his/her actions?

88

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Media, National Congress website (www.camara.gov.br) and Senate website (www.senado.gov.br) display semi-annual plans, annual budgets, and committee reports.

Art. 48 of the Constitution establishes the right of Congress to summon ministers to submit explanations about their spheres of authority, http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:

Any executive action is subject to judicial contest.

References:

IN LAW: 1, Federal Constitution, several items, http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

It often happens that the judiciary reviews the actions of the executive.

References:

IN PRACTICE: Media, The Supreme Court website (www.stf.gov.br) reports every process.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

Provisional measures have been issued in increasing amounts by successive presidents. A provisional measure must be approved by Congress within 60 days of issuance, otherwise it will be nullified. In the meantime, whatever it states holds. Since many provisional measures define nonreversible regulations, Congress has no actual power to reverse them.

There's also the institute of urgency" that speeds up the transaction of projects of interest of the executive power and is also used by College of Parties' Leaders.

References:

IN PRACTICE: Federal Constitution, art. 62, allows the president to issue provisional measures"

Art.64 provides the right of the President to ask for urgent action on a project that he has sent to Congress.

Academic, see also the effect of these mechanisms on the relationship between the executive and legislative branches in Brazil at the end of the 1980s and beginning of 1990s in Fundação Getúlio Vargas.1999. Argelina Cheibub Figueiredo and Fernando Limongi. Executivo e Legislativo na nova ordem constitucional.

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

Comments:

No president has ever been prosecuted for a crime. (A former president was impeached by Congress, but such a procedure is political, not judicial.) Mayors are often prosecuted, as well as governors, but less frequently. It is worth mentioning that ministers of the federal government have access to a special forum," with expedited treatment, in the Supreme Court.

References:

IN LAW: 1, Federal Constitution, http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm

Law 1079/50, http://www.planalto.gov.br/ccivil_03/LEIS/L1079.htm

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

Comments:

There is no exemption or immunity from prosecution for ministers under the Constitution. Ministerial-level officials have the right to a privileged forum. Recently, the President of the Central Bank of Brazil asked for this status and received it so he could avoid ordinary forums.

References:

IN LAW: 1, Federal Constitution, http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm

Law 1079/50, http://www.planalto.gov.br/ccivil_03/LEIS/L1079.htm

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

Comments:

Disclosure forms are published in the Gazette. Asset disclosure is also required by the electoral law. See <http://noticias.uol.com.br/fernandorodrigues/politicospdobrasil/>, a comprehensive electoral asset-disclosure database.

References:

IN LAW: 1, Law 8.730/93, http://www.planalto.gov.br/ccivil_03/Leis/L8730.htm

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

Comments:

Asset disclosures are published in the Gazette (www.in.gov.br), which is published on the Internet; however, the search engine is not user friendly.

If the minister was elected, his or her asset disclosure is more easily available at the Superior Electoral Court's website (www.tse.gov.br). See <http://noticias.uol.com.br/fernandorodrigues/politicospdobrasil/>, a comprehensive electoral asset disclosure database.

References:

IN LAW: 1, Law 8.730/93, http://www.planalto.gov.br/ccivil_03/Leis/L8730.htm

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

Comments:

Regulations governing gifts and hospitality exclude the president, but apply to all federal civil servants in the executive branch.

References:

IN LAW: 1, Federal decree, 1171/94, http://www.planalto.gov.br/ccivil_03/decreto/d1171.htm

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | **NO**

Comments:

Federal decree 1171/94 does not provide for the independent auditing of the executive branch asset disclosure forms.

References:

IN LAW:1, No references.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | **NO**

Comments:

The restrictions on heads of state and government and ministers entering the private sector after leaving the government exclude the president.

References:

IN LAW: 1, Federal decree 1171/94 establishes such restrictions to about 800 officials up to the ministerial level, http://www.planalto.gov.br/ccivil_03/decreto/d1171.htm

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

References:

IN PRACTICE: Media, Jose Alencar, current Vice President, owns Coteminas, a major textile company that is current directed by his son. See 'Exame' magazine's report Empresa de José Alencar vira sócia da MMartan", April 6, 2009, available on <http://portalexame.abril.com.br/negocios/empresa-jose-alencar-vira-socia-mmartan-433168.html>

Antonio Cabrera, former Minister of Agriculture (1992-1994), is reported to be the head of an etanol company. See 'Reporter Brasil's News Agency' report "Após flagra, ex-ministro da Agricultura ataca fiscalização", June 15, 2009, available on <http://www.reporterbrasil.org.br/exibe.php?id=1593>

Afonso Celso Pastore, former President of Central Bank of Brazil (1983-1985), acts as economic consultant on his own firm, A.C. Pastore & Associados. See <http://www.acpastore.com/ACPastore/a-empresa/default.aspx?Area=AEmpresa>

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

Comments:

Though there are regulations that affect civil servants who work in the executive branch. In practice, these regulations remain limited to civil servants who are hired by tender. They seem not applicable to servants in positions of trust (in the Federal Executive branch, they number about 30,000).

References:

IN PRACTICE: Some Ministers often are honored by unions, associations and other civil organizations. See, Ministry of Cities' news website, <http://www.cidades.gov.br/noticias/fortes-recebe-homenagem-do-creci-rj/>

In 2008, secretaries for the President received gifts from several companies during a party: Folha de S. Paulo, Oct. 1, 2008. Available on <http://www.deunojornal.org.br/materia.asp?mat=249292>.

After media reports, the servants were ordered by Presidential Staff Office to give the gifts back: O Estado de S. Paulo, 2008.10.1. Available on <http://www.estadao.com.br/noticias/nacional,secretarias-da-presidencia-terao-de-devolver-brindes,251751.0.htm>.

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: There is no provision for auditing of executive branch asset disclosures.

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

88

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

Comments:

There are those who maintain that Art. 5, Item 33 (dealing with access to information) is to be taken without exception, considering that all information held by the State is in principle accessible.

Those who consider that privacy principles apply would say that assets constitute private information and may not be disclosed. However, the fact is that because the electoral law requires asset disclosure, and since the heads of state/government are elected, they must disclose their information to the Electoral Court, which makes it public.

References:

IN LAW: 1, Federal Constitution, Art. 5, item 33, http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Superior Electoral Court has published online the asset disclosure records of all candidates to all elected positions. However, it is worth mentioning that most Brazilians do not have access to the Internet.

References:

IN PRACTICE: Media, The Official Gazette, www.in.gov.br

Superior Electoral Court, www.tse.gov.br

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

It is worth mentioning that most Brazilians do not have access to the Internet.

References:

IN PRACTICE: Media, The Official Gazette, www.in.gov.br

The Superior Electoral Court, www.tse.gov.br

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Most Brazilians do not have access to high-quality, high-speed, broadband Internet.

References:

IN PRACTICE: Media, The Official Gazette, www.in.gov.br

The Supreme Electoral Court, www.tse.gov.br

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

26. In law, can citizens sue the government for infringement of their civil rights?

100

26. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

References:

IN LAW: 1, Federal Constitution Art. 5, item 34b, http://www.planalto.gov.br/ccivil_03/constitucao/constitui%C3%A7ao.htm

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

50

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

Comments:

The executive freely designates about 23,000 people to fill management posts in the administration and in state companies. Such power of political appointment is used to fill the spots with party cadre and is used to negotiate parliamentary support from other parties. The situation is the same in states.

The score given to this question significantly differs from the score given in 2004, not because there were regulatory changes, but because the problem has become especially acute since 2003.

References:

IN PRACTICE: Media, abundant reports; see Transparencia Brasil's Deu no Jornal project, www.deunojournal.org.br.

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

32. Can members of the legislature be held accountable for their actions?

100

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

References:

IN LAW: 1, Federal Constitution, several items, http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

The judiciary reviews laws if there is a lawsuit questioning the law's constitutionality. According to research done by journalist Marcio Chaer for Exame magazine in 2005, three out of four laws that are challenged are considered unconstitutional.

References:

IN PRACTICE: Media, see www.stf.jus.br, the Supreme Court website, for numerous examples.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

The only exception against prosecution is for defamation. According with Constitution art. 53, members of the national legislature are inviolable in their opinions, in exercise of their mandate.

References:

IN LAW: 1, Constitution, art. 5.

But art. 102, item I, b, establishes that members of Congress must be prosecuted in the Supreme Court, http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

14

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

Comments:

The law allows candidates to present even handwritten asset disclosures — not necessarily the ones they use for tax purposes, for example.

References:

IN LAW, 1: The electoral law requires that candidates fill an assets disclosure form. Law 9.504/97, http://www.planalto.gov.br/ccivil_03/Leis/L9504.htm

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

References:

IN LAW: 1, No such restriction for national legislators entering the private sector after leaving the government is reported in the Constitution (see mainly Chapter 1 of the Title 4, that regulates Legislative. http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm).

Nor is there one in Congress' bylaws (<http://www2.camara.gov.br/legislacao/publicacoes/regimentointerno.html> and <http://www.senado.gov.br/sf/legislacao/regsf/>).

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

References:

IN LAW: 1, No such restriction governing gifts and hospitality offered to members of the national legislature is reported in the Constitution (see mainly Chapter 1 of the Title 4, that regulates Legislative. http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm).

Nor is there one in Congress' bylaws (<http://www2.camara.gov.br/legislacao/publicacoes/regimentointerno.html> and <http://www.senado.gov.br/sf/legislacao/regsf/>).

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | **NO**

References:

IN LAW 1: No such regulation for the independent auditing of the asset disclosure forms of members of the national legislature exists.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | **0**

References:

IN PRACTICE: Not applicable.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | **0**

References:

IN PRACTICE: Not applicable.

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Not applicable.

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

34. Can citizens access the asset disclosure records of members of the national legislature?

88

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

References:

IN LAW 1: Federal Constitution art. 5, item 33, http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Although there are such sources, most Brazilians do not have access to Internet.

References:

IN PRACTICE: Media, see the Superior Electoral Court website (www.tse.gov.br).

See also Políticos do Brasil, <http://noticias.uol.com.br/fernandorodrigues/politicosdobrasil/>

Transparencia Brasil's Excelencias" project, www.excelencias.org.br

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Although there are free sources for accessing legislative asset disclosure records, most Brazilian do not have access to Internet.

References:

IN PRACTICE: Media, see the Superior Electoral Court website, www.tse.gov.br

Políticos do Brasil, <http://noticias.uol.com.br/fernandorodrigues/politicosdobrasil/>

Transparencia Brasil's Excelencias" project, www.excelencias.org.br

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Although there are such sources for asset disclosure records of members of the national legislature, most Brazilian do not have access to high-quality, high-speed, broadband Internet.

References:

IN PRACTICE: Media, see the Superior Electoral Court website. www.tse.gov.br

Políticos do Brasil, <http://noticias.uol.com.br/fernandorodrigues/politicosdobrasil/>

Transparencia Brasil's Excelencias" project, www.excelencias.org.br

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

92

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

References:

IN LAW : Federal Constitution, art. 5, item 33, and art.

37, http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

Comments:

In addition, the federal legislature displays records of the legislative process in a reasonable way. The State and City legislative houses are not that complete. Some of them do not display any record of legislative processes.

References:

IN PRACTICE: Media, the National Congress website (www.camara.gov.br) and the Senate website (www.senado.gov.br) display records of legislative processes and documents and search engines to access them.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

Comments:

Although there are such free sources, it is worth mentioning that most Brazilians do not have access to the Internet.

References:

IN PRACTICE: Media, the National Congress website (www.camara.gov.br) and the Senate website (www.senado.gov.br) display free records of legislative processes and documents and search engines to access them.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

The nomination for a national-level judge is submitted to a public debate by senators who then vote yes or no on the appointment.

References:

IN LAW 2: Federal Constitution, Title IV, Chapter III, Section II, (http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm) states that the ministers (judges) of Supreme Court are appointed by the President only after the nomination is approved by the Senate.

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

As Constitution states on its Title IV, Chapter III, Section II, the requirements to be appointed to the Supreme Court are the following: one must be a professional lawyer, aged 35-65 and have an unblemished reputation."

Notice that being a professional lawyer is the only requirement that can be considered a professional criteria. Therefore, it is quite an unreliable criteria, since being a professional does not necessarily means that one is fully qualified. However, we can say that despite this the quality of the appointees is generally quite good: Supreme Court (STF) ministers are usually at the top of their profession as lawyers, prosecutors or judges.

References:

IN PRACTICE: Media, e.g., news about the most recent appointment to be a Supreme Court judge: O Globo. 17.sep.2009. Saiba mais sobre a carreira de José Antonio Toffoli. Available on <http://oglobo.globo.com/pais/mat/2009/09/17/saiba-mais-sobre-carreira-de-jose-antonio-toffoli-indicado-por-lula-ao-stf-767649443.asp>

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

National-level judges must be approved by the Senate.

References:

IN LAW 2: Federal Constitution Title IV, Chapter III, http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

37. Can members of the judiciary be held accountable for their actions?

92

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

Comments:

As in the Roman law tradition, Brazilian law is heavily procedural. For everything there's a reason, however recondite.

References:

IN LAW 1: Penal Code, <http://www.planalto.gov.br/CCIVIL/Decreto-Lei/Del2848.htm>

Civil Code, <http://www.planalto.gov.br/CCIVIL/leis/2002/L10406.htm>

Penal Processual Code, (<http://www.planalto.gov.br/CCIVIL/Decreto-Lei/Del3689.htm>) and

Civil Processual Code, <http://www.planalto.gov.br/CCIVIL/Leis/L5869.htm>

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

All superior courts maintain websites where all decisions are published.

References:

IN PRACTICE: Media, any superior court website. See mainly Supreme Court, www.stf.jus.br

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

Comments:

The National Justice Council is independent from the Judiciary branch and has performed well in disciplining some aspects of the judiciary, such as nepotism (which is itself just a product of the prerogative of judges to hire individuals to serve in tribunals). The National Public Attorney Council is also independent and is responsible for the accountability of prosecutors.

References:

IN LAW 2: Constitutional amendment N°45/2004 established a National Justice Council with oversight duties toward the judiciary (www.cnj.gov.br).

Also the National Public Attorney Council was established (www.cnmp.gov.br).

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

Comments:

As an offshoot of the Judiciary, the National Justice Council is automatically protected from executive and legislative interference.

References:

IN LAW 1: National Justice Council, www.cnj.jus.br

National Public Attorney Council, www.cnmp.jus.br

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: In April 2009, the National Justice Council introduced an inquiry into Amazonas State Court, where judges were suspected of being involved in nepotism, administrative impropriety and irregular inactivity:

<http://www.deunojornal.org.br/materia.asp?mat=268584&pl=Conselho%20Nacional%20de%20Justi%E7a>.

There are other cases, <http://www.deunojornal.org.br/materia.asp?mat=280878&pl=Conselho%20Nacional%20de%20Justi%E7a>.

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: In October 2009, several judges have been held off from their positions by National Justice Council. The cases refer to the sale of court decisions, bribe-taking and illegal facilitating. see, <http://www.deunojornal.org.br/materia.asp?mat=280880&pl=CNJ>

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

71

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | **NO**

References:

IN LAW 1: Title IV, Chapter III, Sections II and III of Constitution regulates the national-level judiciary, but the sections do not mention any requirement to file an asset disclosure form for ministers of Supreme Court or Superior Court. The bylaws of Supreme Court and of Superior Court do not mention that, either.

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

Comments:

The article prevents judges and prosecutors from having another job (except in teaching).

References:

IN LAW 1: Federal Constitution, Art.95 (http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm).

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | **NO**

Comments:

Despite this, the National Justice Council has done inspections of the courts and the Justiça em Números” annuary shows the data about the budget and expenses of the courts since 2004 (http://www.cnj.jus.br/images/base_de_dados_2004_a_2008.xls), (http://www.cnj.jus.br/index.php?option=com_content&view=category&layout=blog&id=262&Itemid=835).

References:

IN LAW 1: No references.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | NO

References:

IN LAW : Constitutional amendment N°45/2004 Art.95
(http://www.planalto.gov.br/ccivil_03/constituicao/Emendas/Emc/emc45.htm).

YES: A YES score is earned if there are regulations restricting national-level judges’ ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Media, One of the most well-known cases is of the ex-minister of the Supreme Court (STF) Maurício Corrêa who, even after retiring and waiting through the quarantine period, was accused of influence peddling. Corrêa was the attorney in a case that was being judged by the Supreme Court and had asked one of the ministers to accelerate the procedure of the case. This kind of request is common in the Brazilian Judiciary in long-term cases.

See Consultor Jurídico, “Ministro acusa ex-presidente do STF de tráfico de influência”, Nov. 23, 2006, available on http://www.conjur.com.br/2006-nov-23/ministro_acusa_mauricio_correa_trafico_influencia .

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: No cases have been reported in the media about Supreme Court and Superior Court ministers receiving gifts or hospitality. A search was made in the following websites:

Folha de S. Paulo (www.folha.uol.com.br)

O Estado de S. Paulo (www.estadao.com.br)

O Globo (<http://oglobo.globo.com>).

Transparencia Brasil's Deu no Jornal" project database (www.deunojournal.org.br).

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: The Brazilian Court of Audit is responsible for auditing the national-level judiciary asset disclosures. The audit can be viewed on:

STF (Supreme Court): <http://www.contaspublicas.gov.br/AtuLinks2.asp?cod=76440> ; <http://www.contaspublicas.gov.br/AtuLinks2.asp?cod=37>

STJ (Superior Court): <http://www.contaspublicas.gov.br/AtuLinks2.asp?cod=76390> ; <http://www.contaspublicas.gov.br/AtuLinks2.asp?cod=38> .

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

63

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | **NO**

References:

IN LAW: No sources.

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Professional. See National Justice Council's Justiça em Números⁷ project website (http://www.cnj.jus.br/index.php?option=com_content&view=article&id=7731&Itemid=944).

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

Comments:

The data on judicial asset disclosure records is available online with no costs, but most Brazilians do not have access to the Internet.

References:

IN PRACTICE: Professional. See National Justice Council's Justiça em Números" project website; free access (http://www.cnj.jus.br/index.php?option=com_content&view=article&id=7731&Itemid=944).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

Comments:

It is worth mentioning that most Brazilians do not have access to high-quality, high-speed broadband Internet.

References:

IN PRACTICE: Professional. See National Justice Council's Justiça em Números" project website (http://www.cnj.jus.br/index.php?option=com_content&view=article&id=7731&Itemid=944).

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

III-4. Budget Processes

40. Can the legislature provide input to the national budget?

40a. In law, the legislature can amend the budget.

YES | NO

References:

IN LAW 1: Federal Constitution, Art.48, item 2; Arts. 165-168
(http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm).

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

We can still say that the legislative approval of the budget is not a major source of control. The Constitution allows automatic spending of a share of the previous year's budget if Congress has not approved the budget.

In addition, the budgetary process is vulnerable to political bargaining. The executive can use the fact that the budget is not compulsory to co-opt parliamentary support by offering budget expenditures to get favorable voting.

References:

IN PRACTICE: Media — All budgetary processes are reported both on the National Congress website and the Senate's website (http://www.camara.gov.br/internet/comissao/com_dstags_1.asp?id=5967&link=index/mista/orca/c_orca.asp).

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Media; all information about the national budgetary process is available on the National Congress website: <http://www.camara.gov.br/internet/orcament/principal/>.

See also news about the budgetary process on Deu no Jornal" project: <http://www.deunojournal.org.br/busca.php?assunto=4905>

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

67

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

The individual amendments extrapolate budget limits, but the budget is approved anyway including imaginary revenues. The executive formally accepts many proposals but at the beginning of the respective fiscal year, an Executive Contingency Decree is released. According to the political needs of the executive, some proposals could be individually excluded from the contingency decree.

References:

IN PRACTICE: Media; the national budgetary process is available on <http://www.camara.gov.br/internet/orcament/principal/>. However, deputies usually propose individual amendments to the budget proposal that comes from the executive. In 2008, the amount for those individual amendments was increased from BRL 8 million (US\$ 4.5 million) to BRL 10 million (about US\$ 5.7 million) – see Folha de S. Paulo, Nov. 4, 2008, Apesar de crise, congressistas aumentam valor de emendas", available on <http://www.deunojournal.org.br/materia.asp?mat=253985&pl=>

Some of mentioned amendments are called "generic", i.e., the proposal displays only the amount intended, but not its application. This practice can be used for political bargaining in order to ensure voting in some regions. See, e.g., Estado de Minas, Nov. 19, 2008, "Emendas para os currais eleitorais," <http://www.deunojournal.org.br/materia.asp?mat=256033&pl=> .

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Media The National Congress maintains the Comissão de Legislação Participativa (Committee of Participatory Legislation – <http://www2.camara.gov.br/comissoes/clp>). Through the committee, citizens and CSOs can suggest amendments to Pluri-annual Plans and Budgetary Process.

Nevertheless, the attention paid to those suggestions is negligible. In the 2008 budget, 14 of 24 proposed amendments were rejected by the Congress Budgetary Committee (see on http://apache.camara.gov.br/portal/arquivos/Camara/internet/comissoes/clp/emendas.html/%28SUGEST_3030%20DE%20EMENDAS%20_3C%20Tabela%20I%29.pdf).

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

The data in regard to itemized budget allocations is available online, but most Brazilians do not have access to the Internet.

References:

IN PRACTICE: Media: The application of budget's resources is available on <http://www2.camara.gov.br/orcamentobrasil/fiscalize/index.html>.

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

43. Is the legislative committee overseeing the expenditure of public funds effective?

50

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Media; see e.g. the National Congress website dedicated to the committee, <http://www2.camara.gov.br/comissoes/cmo>

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Media; see all kinds of media, mainly:

Folha de S. Paulo (www.folha.uol.com.br)

O Estado de S. Paulo (www.estado.com.br).

News on the Deu no Jornal" project (<http://www.deunojornal.org.br/busca.php?assunto=4905>).

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

Comments:

Occasionally, the Congress's constitutional duty of overseeing the executive branch is not appropriately carried out. Due to political influence of the executive, Congress may find itself barely equipped to systematically follow up what is going on administratively within the executive branch.

See "A farra com o Orçamento da União", Gazeta do Povo, June 4, 2007, available on <http://www.deunojournal.org.br/materia.asp?mat=167317&pl=>

References:

IN PRACTICE: Even though there is the Committee of Financial Oversight and Control, its work is slow; proposals for oversight and control made in 1999 have not had their final report released until 2008 (see 2008 Activity Report of the committee, pp. 14-20, available

on <http://apache.camara.gov.br/portal/arquivos/Camara/internet/comissoes/cffc/relativ/RELAT%C3%93RIO%202008%20VERS%C3%83O%20FIN>

In addition, the mentioned report shows that those proposals of oversight and control refer to punctual questions, which vary according to committees' composition (e.g., 2008 proposals refer from the banks' tax reviews to the budget for health).

There is a collaboration with Brazilian Court of Audit, but the relationship is based on one-way dependence, i.e., the Court of Audit demands investigations from the committee. The committee barely contributes input to the Court. In 2008, the Brazilian Court of Audit has sent 77 advisories to the committee, and the committee itself has deliberated 58 proposals for oversight and control (see the 2008 Activity Report).

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

References:

IN LAW 2: The Finances and Control Committee of the National Congress. Bylaws of the National Congress, Art.32, item 11 (<http://www2.camara.gov.br/legislacao/publicacoes/regimento-interno-da-camara-dos-deputados/RICD%20Resolucao%2010-2009.pdf>).

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

IV-1. ⁷⁹Civil Service Regulations

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

Comments:

However, all positions of trust in the civil service are filled by political appointees. In the federal sphere alone, there are more than 23,000 such positions. The appointment of those is used by the Executive in order to hold together the legislative coalition.

References:

IN LAW 1: Federal Constitution (http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm)

Law 8.112/90 (http://www.planalto.gov.br/ccivil_03/LEIS/L8112cons.htm)

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

Comments:

Nepotism does not seem to be a problem after the approval of Supreme Court stare decisis nr. 13, but cronyism is widespread.

References:

IN LAW 1: Law 8112/90 (http://www.planalto.gov.br/ccivil_03/LEIS/L8112cons.htm) regulates the federal civil service.

The Supreme Court stare decisis nr. 13 forbids nepotism in executive, legislative and judiciary powers in all ranges (http://www.stf.jus.br/arquivo/cms/jurisprudenciaSumulaVinculante/anexo/DJE_11.11.2008.pdf, pp. 9-12)

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

Such mechanisms are not independent” from the functional structure itself. (How would an absolutely “independent” body function and what is the meaning of it?) As a last resource, there is always recourse to the judiciary.

References:

IN LAW 2: Law 8112/90 establishes rights and procedures to punish public servants, appeal mechanisms and so on (http://www.planalto.gov.br/ccivil_03/LEIS/L8112cons.htm).

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism’s decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

Comments:

The Office of the Comptroller General publishes charges against public officials (<http://www.cgu.gov.br/Publicacoes/RelatGestao/index.asp>). The actual process, however, is protracted and few people are actually found guilty of corruption. It must be noted that actually proving corruption is very difficult in any country, and in any country punishment for corruption is relatively rare.

References:

IN LAW 1: Law 8112/90 (http://www.planalto.gov.br/ccivil_03/LEIS/L8112cons.htm).

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

67

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

According to article 22 of 8112/90 law, civil servants cannot be fired at will

(http://www.planalto.gov.br/ccivil_03/LEIS/L8112cons.htm). However, their posting is subject to arbitrary decision (see article 15, §3rd of 8112/90 law). Thus, political interference is the rule.

References:

IN PRACTICE: Media; There are abundant reports in the media: Mainly Folha de S. Paulo (www.folha.uol.com.br) and O Estado de S. Paulo (www.estado.com.br).

E.g., Lula dobra criação de cargos de confiança no 2º mandato” e “Sindicalistas e petistas ocupam cargos mais altos”, Feb. 1, 2010, Folha de S. Paulo, available on <http://www.deunojornal.org.br/materia.asp?mat=286425&pl=> and on <http://www.deunojornal.org.br/materia.asp?mat=286427&pl=>. According to this story, 1.9 percent of Brazilian federal civil servants are “commissioned,” i.e., are chosen by the president or by the ministers. In addition, the story states that 25 percent of these “commissioned” civil servants are affiliated with a party.

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Media: There are abundant reports in the media, mainly in:

Folha de S. Paulo (www.folha.uol.com.br)

O Estado de S. Paulo (www.estado.com.br).

E.g., Lula dobra criação de cargos de confiança no 2º mandato” e “Sindicalistas e petistas ocupam cargos mais altos”, Feb. 1, 2010, Folha de S. Paulo, available on <http://www.deunojornal.org.br/materia.asp?mat=286425&pl=> and on <http://www.deunojornal.org.br/materia.asp?mat=286427&pl=>. According to this story, 1.9 percent of Brazilian federal civil servants are “commissioned,” i.e., are chosen by the president or by the ministers. In addition, the story states that 25 percent of these “commissioned” civil servants are affiliated with a party.

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

Comments:

The number of appointed personnel is around 5 percent and it would be unfair to all the remaining civil servants to consider that nepotism, cronyism and patronage are the rules. Since most civil servants have passed public contests and have disciplined careers, these problems do exist but they are not overwhelming.

References:

IN PRACTICE: Media. In 2008, the Supreme Court has issued a stare decisis that forbids nepotism in the judiciary, executive and legislative branches (see On the Supreme Court Stare Decision nr. 13, available on <http://www.stf.jus.br/portal/jurisprudencia/listarJurisprudencia.asp?s1=13.NUME.%20E%20S.FLSV.&base=baseSumulasVinculantes>).

Since then, Congresspersons have fired their relatives from positions of trust; see: Câmara exonerou 102 servidores por nepotismo”, Folha de S. Paulo, Oct. 31, 2008, available on <http://www.deunojornal.org.br/materia.asp?mat=253541>; and:

“Senado faz novas dispensas e chega a quase 80 número de parentes exonerados”, Tribuna do Norte, Oct. 24, 2008, available on <http://www.deunojornal.org.br/materia.asp?mat=252440>

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Mainly in legislative branch there are reported cases of function deviation. See:

Procurador investiga a contratação de mordomo”, Folha de S. Paulo, June 21, 2009, available on <http://www.deunojornal.org.br/materia.asp?mat=272286> ;

“Cargos vão passar por readequação”, O Popular, June 25, 2009, available on <http://www.deunojornal.org.br/materia.asp?mat=272793> ;

“A serviço do partido”, Correio Braziliense, Nov. 9, 2008, available on <http://www.deunojornal.org.br/materia.asp?mat=254606>

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person’s authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

A system of bonuses defined on the basis of the collective performance of tax collectors is in place in some local jurisdictions.

References:

IN PRACTICE: See the cases that occurred in Congress in 2009.

Media: Deu no Jornal (www.deunojournal.org.br).

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Media: Since the year 2000, aggregated numbers of the federal government are published monthly (see the Planning Ministry's reports in http://www.servidor.gov.br/publicacao/boletim_estatistico/bol_estatistico.htm).

This not a default procedure for states and municipalities.

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

It would be illegal to fire anybody baseless, and the Judiciary would promptly revert any such attempt.

References:

IN PRACTICE: There are no reports of unmotivated firings in the public sector.

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: In past year, due to recent financial crisis, some municipalities (specially small cities) have had difficulty paying their civil servants. However, it has been a pretty punctual situation; see "Crise leva 100 prefeituras a atrasar salários", Hoje em Dia, Sept. 9, 2009, available on <http://www.hojeemdia.com.br/cmlink/hoje-em-dia/noticias/politica/crise-leva-100-prefeituras-a-atrasar-salarios-1.10595>

Altogether, the payment is made on time.

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

Comments:

The current process is protracted and few people are actually found guilty of corruption. It must be noted that actually proving corruption is very difficult in any country, and in any country punishment for corruption is relatively rare.

References:

IN PRACTICE: Government studies: The Office of the Comptroller General publishes charges brought against civil servants (<http://www.cgu.gov.br/Publicacoes/RelatGestao/index.asp>).

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

31

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

References:

IN LAW 1: Art. 13, § 5o of 8112/90 law states that regarding assets, the civil servant must present an asset disclosure.

YES: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

References:

IN LAW 1: Law 8112/90 vaguely establishes such barriers (http://www.planalto.gov.br/ccivil_03/LEIS/L8112cons.htm).

Some specific laws, such as the public bidding regulation 8.666/93, specifies prohibitions (http://www.planalto.gov.br/ccivil_03/LEIS/L8666cons.htm).

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | **NO**

References:

IN LAW 1: Law 8112/90 vaguely establishes such barriers (http://www.planalto.gov.br/ccivil_03/LEIS/L8112cons.htm).

Some specific laws, such as the public bidding regulation 8.666/93, specifies prohibitions (http://www.planalto.gov.br/ccivil_03/LEIS/L8666cons.htm).

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | **NO**

Comments:

The only regulation concerning gifts and hospitality in place concern senior Federal servants. For the rest there are no regulations.

References:

IN LAW 1: Upper-echelon officials are subject to a policy governing gifts and hospitality that is enforced by the Public Ethics Committee (<http://www.presidencia.gov.br/etica/>). Lower-echelon servants are not covered.

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | **NO**

References:

IN LAW 1: Upper-echelon officials are subject to a policy regarding asset disclosure forms that is enforced by the Public Ethics Committee (<http://www.presidencia.gov.br/etica/>). Lower-echelon servants are not covered.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are plenty of upper-echelon civil servants who go to work for the private sector one day after retirement and even before then. See the notorious examples reported by the media in regard to some key agencies like the Central Bank.

References:

IN PRACTICE: Regulations restricting post-government private sector employment are only applicable to higher-level federal servants (<http://www.presidencia.gov.br/etica/>).

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Regulations governing gifts and hospitality apply only for higher level servants.

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Requirements for civil service recusal from policy decisions are applicable when specifically prohibited (such as in public procurement), but not generally.

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Although there is an audit mechanism for civil service asset disclosures, the procedure is not made public.

References:

IN PRACTICE: The Office of the Comptroller General (CGU) uses the civil servants compulsory annual disclosure asset to keep up with the civil servants development assets (see CGU's FAQ, Q16, on <http://www.cgu.gov.br/Destaques/IRPF.asp>).

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

0

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | **NO**

Comments:

Senior officials (ministers, etc.) must file a declaration of assets in the Public Ethics Committee. These records are kept in sealed envelopes and are not accessible to citizens.

References:

IN LAW 1: Not mentioned in the regulations.

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | **0**

References:

IN PRACTICE: Not mentioned in the regulations.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | **0**

References:

IN PRACTICE: Not applicable.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Not applicable.

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

IV-2. Whistle-blowing Measures

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

0

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

Although the constitutional text clearly limits the prohibition to the expression of thought (opinions), the Supreme Court has ruled that it encompasses denunciations (whistle-blowing). Thus, most organizations refuse to accept anonymous charges.

Many entities refuse to accept anonymous denunciations. A few organizations (such as the Brazilian Court of Audit) do accept them, and charge culprits ex-officio (so that the charge is attributed to the organization's servant who moves on it, not to the person who originally brought attention to the matter). The online form used by the Office of the Comptroller General to present a denunciation (<http://www.cgu.gov.br/denuncias/>) does not require full identification.

References:

IN LAW 1: Federal Constitution, art. 5, item IV states that expressing one's opinion is guaranteed, anonymity being prohibited." This is taken as meaning that the state cannot receive anonymous denunciations (http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm).

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

Due to the Constitutional lack of protection for whistle-blowers, some offices are adopting the procedure of receiving anonymous charges and then assuming for themselves the role of accuser ex-officio. E.g., the Office of the Comptroller General (CGU) maintains a website dedicated to receive denunciations – <http://www.cgu.gov.br/Denuncias/>.

References:

IN PRACTICE: Constitution, art. 5, item IV states that expressing one's opinion is guaranteed, anonymity being prohibited.". This is taken as meaning that the state cannot receive anonymous denunciations (http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm).

Once denunciations are not allowed to be made anonymously, there is political interference with civil servants, and they are subjected to recrimination.

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

IN LAW 1: Constitution, art. 5, item IV states that expressing one's opinion is guaranteed, anonymity being prohibited." This is

taken as meaning that the state cannot receive anonymous denunciations (http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm).

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Constitution, art. 5, item IV states that expressing one's opinion is guaranteed, anonymity being prohibited." (http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm). In addition, if there is no specific law about corruption in private sector companies, nor a specific law to protect private sector employees who report such cases, the employee is vulnerable to penalties.

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

50

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Almost all Ministries have some whistle-blowing mechanism. The Office of Comptroller General maintains a centralized system. See <http://www.cgu.gov.br/Denuncias/>

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Office of Comptroller General is underfunded (see the federal budget), so this specific task is affected accordingly.

References:

IN PRACTICE: The funding for the internal reporting mechanism for public sector corruption comes from budget. See the 2009 Federal Budget, p.42: http://www.planejamento.gov.br/secretarias/upload/Arquivos/sof/orcamento_09/loa09/loa_VOL_IV.pdf

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The task is bigger than the available resources. Investigating all charges of corruption is impossible and discretion is exercised as to what is investigated.

References:

IN PRACTICE: Media: See the Office of Comptroller General's reports (<http://www.cgu.gov.br/AreaAuditoriaFiscalizacao/OQueE/>)

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

When necessary" is subject to discretion in regard to initiating investigations.

References:

IN PRACTICE: See:

The Office of Comptroller General's reports: <http://www.cgu.gov.br/AreaAuditoriaFiscalizacao/OQueE/>

Regarding skills: <http://www.cgu.gov.br/CGU/Competencias/index.asp>

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

Comments:

Almost all ministries have some whistle-blowing mechanism, but tips are not accepted if they are made anonymously. Furthermore, in states and municipalities these mechanisms are not usually found.

References:

IN LAW 2: The Office of Comptroller General has posted an online form (http://www.cgu.gov.br/cgu/form_main.htm).

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

51. Is the public procurement process effective?

78

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

Comments:

An official who has any interest (or a spouse or dependent) in a field addressed in a tender cannot participate in the procurement process.

References:

IN LAW 1: Law 8.666/93 (http://www.planalto.gov.br/ccivil_03/LEIS/L8666cons.htm).

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

YES | NO

Comments:

However, in the federal government, most officials dealing with public procurement are trained or have extensive experience in the field.

References:

IN LAW 1: There is no such explicit requirement in law.

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Media: There are some punctual reported violations of conflicts of interest regulations for public procurement officials, that have been investigated by Federal Police; e.g., the Parasite Agency, which occurred in 2009. See on Deu no Jornal” project: <http://www.deunjournal.org.br/busca.php?assunto=6734>

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | **NO**

References:

IN LAW 2: There are no such mechanisms.

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

YES | NO

Comments:

All purchases are subjected to competitive bidding, including major ones, except for those that involve fairly small amounts (less than about US\$4,000).

References:

IN LAW 1: Law 8.666/93 (<http://www.planalto.gov.br/ccivil/Leis/L8.666cons.htm>).

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

References:

IN LAW 1: Law 8.666/93 (<http://www.planalto.gov.br/ccivil/Leis/L8.666cons.htm>).

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

References:

IN LAW 1: Law 8.666/93 (<http://www.planalto.gov.br/ccivil/Leis/L8.666cons.htm>).

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

References:

IN LAW 1: 1988's Constitution Article 5, item 34b (http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm).

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

Comments:

However, it has not been difficult for violations of procurement regulations to find their way back into public bidding in the past, using a variety of legal disguises.

References:

IN LAW 1: Law 8666/93 (<http://www.planalto.gov.br/ccivil/Leis/L8.666cons.htm>).

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

The number of companies guilty of major violations of procurement regulations being prohibited from participating in future procurement bids is relatively small due to the difficulties of actually proving corruption.

References:

IN PRACTICE: Media: Companies that are found guilty of corruption are publicly blacklisted. See several government Web sites (e.g., the Office of the Comptroller General's National Registry of Unsuiited and Suspended Companies: <http://www.portaldatransparencia.gov.br/ceis/>).

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

100

52a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

All documents that concern a tender and subsequent contracts are public. However, the usual problems of delay and distance play a dissuasive role.

References:

IN LAW 1: Law 8.666/93 (<http://www.planalto.gov.br/ccivil/Leis/L8.666cons.htm>).

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

References:

IN LAW 1: Law 8.666/93 (<http://www.planalto.gov.br/ccivil/Leis/L8.666cons.htm>).

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It is worth mentioning that most Brazilians do not have access to Internet.

References:

IN PRACTICE: Media: Summaries regarding public procurement regulations are published in the Internet. In most cases, the full documents are also made available there. If not, full documents are readily available upon request.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: The 8.666/93 law is freely available online (<http://www.planalto.gov.br/ccivil/Leis/L8.666cons.htm>), and it determines that the only admissible charge corresponds to reproduction.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

It is worth mentioning that most Brazilians do not have access to the Internet.

References:

IN PRACTICE: Media: All public procurements, small or large are published, either in:

Official Gazette (Federal – <http://www.in.gov.br>); or

Transparency Portal (<http://www.portaldatransparencia.gov.br>)

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

Results of major public procurement bids can be accessed in newspapers and in the Official Gazette (available on <http://www.in.gov.br>). Some institutions also display the information online (e.g., National Congress Bidding and Procurement Homepage at <http://www2.camara.gov.br/licitacoes>)

References:

IN PRACTICE: Media: All (small or large) are published.

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

53. Is the privatization process effective?

100

53a. In law, all businesses are eligible to compete for privatized state assets.

YES

| NO

Comments:

There is much controversy on the privatizations that were carried out during the previous president's tenure (1994-2002). Critics maintain that many of them were harmful to the public interest, either because the prices paid were too low, or because the Brazilian Development Bank financed most of them under unfavorable circumstances.

Those who defend these privatizations hold that they freed the state of a heavy burden and allowed the affected sectors to develop. The new Public-Private Partnership regulation was criticized for containing rules that allow preferential selection of contenders. The matter is still open, as the method is new.

References:

IN LAW 1: Privatizations are subsumed to the public procurement law, 8.666/93 (<http://www.planalto.gov.br/ccivil/Leis/L8.666cons.htm>) and are regulated by the 9.491/97 law (http://www.planalto.gov.br/ccivil_03/Leis/L9491.htm#art35).

Concessions, a type of privatization, are regulated by 8.987/95 law (http://www.planalto.gov.br/ccivil_03/LEIS/L8987cons.htm).

In 2004, Congress passed a Public-Private Partnership law, 11.079/04 (http://www.planalto.gov.br/ccivil_03/ato2004-2006/2004/Lei/L11079.htm).

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

Comments:

However, the expression conflict of interest" itself does not appear in the law. In fact, there is no comprehensive regulation for conflicts of interest, although in late 2006 a project establishing such regulation was sent by the president to Congress.

However, there is no specific law for government officials in privatization deals, specifically. They are covered by the general public procurement regulations.

References:

IN LAW 1: They are spelled out in the public procurement regulation law, 8666/93, Art. 9 (http://www.planalto.gov.br/ccivil_03/LEIS/L8666cons.htm).

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Media: There are a lack of reports to the contrary regard to conflicts of interest regulations for government officials involved in privatization.

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

100

54a. In law, citizens can access privatization regulations.

YES | NO

Comments:

It is worth mentioning that most Brazilians do not have access to the Internet.

References:

IN LAW 1: Law 8.666/93 is available online (http://www.planalto.gov.br/ccivil_03/LEIS/L8666cons.htm).

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

The data in regard to privatizations are available in newspapers or the Official Gazette.

References:

IN PRACTICE: Media – All privatizations, small or large, are published.

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

References:

IN LAW 1: Law 8.666/93, Art. 3º, § 3º; 4º (http://www.planalto.gov.br/ccivil_03/LEIS/L8666cons.htm).

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

References:

IN PRACTICE: Media: All (small or large) are published.

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

References:

IN PRACTICE-Media – All regulations, small or large, are published in newspapers and in the Official Gazette, which is available online (<http://www.in.gov.br>).

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ⁷³National Ombudsman

56. Is the national ombudsman effective?

56a. In law, the ombudsman is protected from political interference.

YES | **NO**

Comments:

Each ministerial ombudsman is appointed by the corresponding minister and is not protected from interference. The same holds for the general ombudsman.

References:

IN LAW 1: Law 10.683/03 (http://www.planalto.gov.br/ccivil_03/LEIS/2003/L10.683.htm). As a indication of the lack of independence, see the heavily politicized comments included in the office's 2008 annual report (http://www.cgu.gov.br/Publicacoes/RelatAtividadesOuvidoria/Arquivos/rel_anual2008.pdf).

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | **0**

References:

IN PRACTICE: Each ministerial ombudsman is appointed by the corresponding minister and is not protected from interference. The same holds for the general ombudsman. Since the role of federal ombudsman is mostly timid, their answers are irrelevant.

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | **0**

References:

IN PRACTICE: Each ministerial ombudsman is appointed by the corresponding minister and is not protected from interference. The same holds for the general ombudsman.

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: See the 2009 list of ombudsman

agencies: <http://www.cgu.gov.br/AreaOuvidoria/Arquivos/RelacaoOuvidoriasAgo2009.pdf>

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: The general ombudsman occupies a position of trust." This kind of hiring on federal level is highly subjected to political interference.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Media – The ombudsman agency receives regular but small funding. See the Office of the Comptroller General (CGU) budget (www.cgu.gov.br).

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

The report shows how wrongly conceived role the ombudsman is. It merely lists events that office holders attended and complaints received and forwarded, but no information is given about the effects of the complaints or how they changed the affected organizations.

References:

IN PRACTICE: Media: See the 2008 Ombudsman's office's report, http://www.cgu.gov.br/Publicacoes/RelatAtividadesOuvidoria/Arquivos/rel_anual2008.pdf

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman office has no power of investigation. It forwards serious complaints to other bodies within the Comptroller General (CGU)

References:

IN PRACTICE: There is no such provision.

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman office has no power of punishment. It forwards serious complaints to other bodies within the Comptroller General (CGU).

References:

IN PRACTICE: There is no such provision.

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

As mentioned before, the ombudsman's office does not investigate; nor does it collect complaints to direct them to the appropriate organization; it does not do follow up.

References:

IN PRACTICE: Not applicable.

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman's office in Brazil does not collect complaints; nor does it direct them to the appropriate organization or perform follow up.

References:

IN PRACTICE: There is no such provision.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

83

57a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:

But these ombudsman reports are next to useless.

References:

IN LAW 1: Law 10.683/03 (http://www.planalto.gov.br/ccivil_03/LEIS/2003/L10.683.htm).

See e.g. http://www.cgu.gov.br/Publicacoes/RelatAtividadesOuvidoria/Arquivos/rel_anual2007.pdf .

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | **50** | 25 | 0

References:

IN PRACTICE: Media – There is an annual national ombudsman report. See

e.g. http://www.cgu.gov.br/Publicacoes/RelatAtividadesOuvidoria/Arquivos/rel_anual2008.pdf

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

But most Brazilians do not have Internet access.

References:

IN PRACTICE: The reports are free and available online on <http://www.cgu.gov.br/Publicacoes/RelatAtividadesOuvidoria/>

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

0

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES

NO

Comments:

Reading the Federal Ouvidoria" report shows the office's irrelevance. There is not a single example of a complaint that was followed up. The office just acts as a repository of complaints (and praise!??), without any sequence. This is typical of the Brazilian "Ouvidorias" situation.

References:

IN LAW 2: Law 10.683/03 (http://www.planalto.gov.br/ccivil_03/LEIS/2003/L10.683.htm) established the Ombudsman's Office under the Office of the Comptroller General (CGU).

Yet in Brazil, there is no ombudsman in the European sense; that is, a person or office that is independent from the body it covers. The word has the approximate meaning of "hearers". The ombudsmen are appointed by the executive. In Brazil, they are not independent, although in some cases practice makes it next to impossible to dismiss such a person. Ombudsman's offices are more active in states than in the federal government. See <http://www.cgu.gov.br/Publicacoes/RelatAtividadesOuvidoria/> for the Ombudsman's office report.

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

84

59a. In law, the supreme audit institution is protected from political interference.

YES

NO

Comments:

Once appointed, ministers can only be removed by impeachment. Since appointments involve negotiations between the

executive branch and the senate, political considerations are always present.

References:

IN LAW 1: Constitution Art. 52 and law 8443/92 Art.72 stipulates that SAI ministers (as they are called) appointed by the president must be approved by the Senate. There are nine ministers, seven of them appointed by the president, two rise from the technical staff
(http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm;http://www.planalto.gov.br/ccivil_03/LEIS/L8443.htm).

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Media: No SAI minister has ever been impeached.

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The audit agency staff is hired by a public contest and promotions are made using fair criteria.

References:

IN PRACTICE: See the Brazilian Court of Audit staff website, http://portal2.tcu.gov.br/portal/page/portal/TCU/institucional/quadro_pessoal.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: See Brazilian Court of Audit staff website, http://portal2.tcu.gov.br/portal/page/portal/TCU/institucional/quadro_pessoal .

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The budget for the audit agency has been around BRL 1 billion (US\$566 million).

References:

IN PRACTICE: The funding comes from federal budget. See 2009 Budget Law, p. 23: http://www.planejamento.gov.br/secretarias/upload/Arquivos/sof/orcamento_09/loa09/loa_VOL_III.pdf .

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The Brazilian Court of Audit (BCA) reports on its activities abundantly.

References:

IN PRACTICE: Media, see Brazilian Court of Audit's website, www.tcu.gov.br.

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE – Media – E.g., National Congress' Committee of Financial Oversight and Control 2008 report, pp. 32-

45: <http://apache.camara.gov.br/portal/arquivos/Camara/internet/comissoes/cffc/relativ/RELAT%C3%93RIO%202008%20VERS%C3%83O%20FI>

See also reports on media about action of Brazilian Court of Audit on Program to Accelerate Growth,

e.g.: <http://www.deunojornal.org.br/materia.asp?mat=279978&pl=> .

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE Media – The audit agency initiates investigations continuously. All proceedings, minutes, questionings etc. are

published on the Brazilian Court of Audit website. Proceedings about any person can be found at <https://contas.tcu.gov.br/portaltextual/PesquisaLivre> (of course, the name of the person is required).

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

100

60a. In law, citizens can access reports of the audit agency.

YES | NO

Comments:

All audit agency proceedings are public and published on the Internet. But most Brazilians do not have Internet access.

References:

IN LAW 1 – See www.tcu.gov.br

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

They even have a list of former administrators with accounts that have been judged as irregular — they were published before elections, because that initially makes them ineligible (though they can run for elected positions if they merely appeal to the court).

References:

IN PRACTICE – See www.tcu.gov.br

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE – See www.tcu.gov.br.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

References:

IN LAW 2: Brazilian Court of Audit. Federal Constitution, Art. 71 (http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm).

Law 8.443/92 (http://www.planalto.gov.br/ccivil_03/LEIS/L8443.htm).

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE – Media – See the National Association of Accountants and Tax Revenue website: <http://www.unafisco.org.br/juridico/legislacao.htm>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE – The funding comes from federal budget. See on 2009 Federal Budget Law, p. 170, available on http://www.planejamento.gov.br/secretarias/upload/Arquivos/sof/orcamento_09/loa09/loa_VOL_1.pdf

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Media: See the National Association of Accountants and Tax Revenue website <http://www.unafisco.org.br/juridico/legislacao.htm>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: As part of the Secretariat of the Federal Revenue of Brazil budget. See on 2009 Federal Budget, p.139, Program 0770: http://www.planejamento.gov.br/secretarias/upload/Arquivos/sof/orcamento_09/loa09/loa_VOL_IV.pdf

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

61. In law, is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

Comments:

See the website <http://www.receita.fazenda.gov.br/SRF.asp>

References:

IN LAW 2: Secretariat of the Federal Revenue of Brazil (Decree 6.764/09 (http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2009/Decreto/D6764.htm)). The decree that created the institution is the 63.659/68.

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

63. In practice, are tax laws enforced uniformly and without discrimination?

50

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

In 2008, according to Instituto Brasileiro de Planejamento Tributário (IBPT), tax evasion from firms had reached over BRL 200 billion (about US\$113 billion). The amount represents 32 percent of the 2009 Federal Budget. See on Virgula News, Sonegação de impostos no Brasil foi de R\$ 200 bi em 2008", 2009.03.09 – [http://virgula.uol.com.br/ver/noticia/economias/2009/03/09/117720-sonegacao-de-impostos-no-brasil-foi-de-r\\$-200-bi-em-2008](http://virgula.uol.com.br/ver/noticia/economias/2009/03/09/117720-sonegacao-de-impostos-no-brasil-foi-de-r$-200-bi-em-2008).

The higher score for 2009 is due to the creation of some mechanisms to prevent tax evasion, mainly by firms. E.g., the Internal Revenue Service' system is called Sistema Público de Escrituração Digital (SPED). See on <http://www1.receita.fazenda.gov.br/sobre-o-projeto/apresentacao.htm>.

See also Sintegra, a system that aggregates State Tax Administration: <http://www.sintegra.gov.br/info1.html>

References:

IN PRACTICE – There is a recent case that illustrates the score given. In law, Brazilian institutions that are considered to be public utilities can get some tax exemptions (see Ministry of Justice's FAQ, Q11. On <http://portal.mj.gov.br/main.asp?View={804631FB-A577-456F-B272-615ECB9104CB}>).

In order to renovate the public utility condition (thus, in order to maintain the tax exemptions), they have to present periodic reports to Ministry of Justice (see Ministry of Justice's FAQ, Q10. On <http://portal.mj.gov.br/main.asp?View={804631FB-A577-456F-B272-615ECB9104CB}>).

Until 2008, many of those institutions have not delivered the compulsory report. Furthermore, some of them were accused of giving tips in order to renovate their public utility title (see stories about the Fariseu Agency, investigated by the federal police. In O Estado de S. Paulo, PF prende 6 acusados de fraudar concessão de título de filantropia", 2008.03.14 – <http://www.deunojornal.org.br/materia.asp?mat=211675&pl=>).

In 2008, the federal government issued a provisional executive order that have granted amnesty to over 2,000 public utility institutions that owed the compulsory reports, including those which were investigated by federal police. They have had their public utility title automatically renovated, without presenting any reports. In O Globo, "Vitória da quadrilha do pagou, isentou", 2008.11.12 – <http://www.deunojornal.org.br/materia.asp?mat=255077> .

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. In law, is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

Comments:

Customs is a department of the Secretariat of the Federal Revenue of Brazil.

References:

IN LAW 2: Department of Customs (<http://www.receita.fazenda.gov.br/Grupo1/Aduana.asp>).

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

The customs people are held to be profoundly corrupt.

References:

IN PRACTICE: Media: In 2009, a commissary was denounced by Public Attorney for participation in a gang that was operating in Viracopos International Airport (see on Supreme Court News, 2009.09.14, *Indeferida liminar para delegado acusado de corrupção no Aeroporto Internacional de Campinas* – <http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=113183>).

The border between Brazil, Paraguay and Uruguay is a long-term and well-known point of huge smuggling operations, despite the efforts of the Internal Revenue Service to stop it. Up to August 2009, the seizures on mentioned border area had reached the sum of BRL 880 million (about US\$498 million). See on O Globo, 2009.10.23, *“Receita reforça combate ao contrabando na triplíce fronteira”* – <http://oglobo.globo.com/economia/mat/2009/10/23/receita-reforca-combate-ao-contrabando-na-triplice-fronteira-795713883.asp>.

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

100

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES

NO

References:

IN LAW 1: Art. 73 of Constitution (http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm) defines the requirements for appointment to Brazilian Court of Audit.

YES: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100

75

50

25

0

Comments:

Hiring for the staff that oversees state-owned companies is by public contest.

References:

IN PRACTICE: Media: See <http://www.cvm.gov.br/port/estagio/concurso2008.asp>.

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Federal budget. Law 6.385/76, Art 7 (http://http://www.planalto.gov.br/ccivil_03/Leis/L6385.htm).

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The agency overseeing state-owned companies has a reputation for initiating investigations. All decisions are published on the Internet.

References:

IN PRACTICE: Media: See <http://www.cvm.gov.br/port/descol/formdecis.asp>

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Media. See <http://www.cvm.gov.br/port/descol/formdecis.asp>

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

100

69a. In law, citizens can access the financial records of state-owned companies.

YES | NO

References:

IN LAW 2: 6404/76 law: http://www.planalto.gov.br/ccivil_03/LEIS/L6404consol.htm

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Media: Financial records of state-owned companies are published in the media and the Web; e.g., the Petrobras' website (www.petrobras.com.br).

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: see http://www.planalto.gov.br/ccivil_03/LEIS/L6404consol.htm

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It is worth mentioning that most Brazilians do not have Internet access.

References:

IN PRACTICE: Media and the Internet.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Media and the Internet.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

Comments:

See <http://www.cvm.gov.br/>.

References:

IN LAW 2: Securities and Exchange Commission of Brazil, Law 6.385/76 (http://http://www.planalto.gov.br/ccivil_03/Leis/L6385.htm).

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

V-5. ¹⁰⁰Business Licensing and Regulation

70. Are business licenses available to all citizens?

63

70a. In law, anyone may apply for a business license.

YES | NO

References:

IN LAW 1: Federal Constitution (http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm)

Civil Code (<http://www.planalto.gov.br/CCIVIL/leis/2002/L10406.htm>).

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

References:

IN LAW 2: Civil Code <http://www.planalto.gov.br/CCIVIL/leis/2002/L10406.htm>

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Brazil ranked in 127 in the World Bank's 2009 Doing Business® report. The average time it takes to open a business in São Paulo is 136 days.

References:

IN PRACTICE: Media: See <http://www.doingbusiness.org/ExploreEconomies/?economyid=28>

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | **50** | 25 | 0

References:

IN PRACTICE: Media: Average cost of opening a business is evaluated by the World Bank at about US\$340.

See <http://www.doingbusiness.org/ExploreTopics/StartingBusiness/Details.aspx?economyid=28>.

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

Comments:

All regulations are free to access and publicly available, but they are so complex that only specialists can (barely) work with them. Since the regulations are so complex, this creates frequent opportunities for extortion by corrupt public officials. As for the more important regulations, the problem is that there are too many of them. There are federal, state and municipal regulations all over the place.

References:

IN LAW 1 – There is an enormous amount of regulations pertaining to those fields. In federal field, we can emphasize:

986/69 Ordinance, which regulates production and commerce of food (<http://e-legis.anvisa.gov.br/leisref/public/showAct.php?id=16613&word=>);

6437/77 Law, which regulates punishment for public health law offenders (<http://e-legis.anvisa.gov.br/leisref/public/showAct.php?id=16617&word=>);

74170/74 Decree, which regulates drug commerce control (<http://e-legis.anvisa.gov.br/leisref/public/showAct.php?id=16610&word=>).

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

Comments:

All regulations are free and publicly available, but they are so complex that only specialists can (barely) work with them. Since regulations are so complex, this creates frequent opportunities for extortion by corrupt public officials. As for the more important ones, the problem is that there are too many of them. There are federal, state and municipal regulations all over the place.

References:

IN LAW 1 – There is an enormous amount of regulations pertaining to those fields. In federal field, we can punctuate:

9605/98 Law, which establishes penalties to Environmental Law offenders (http://www.planalto.gov.br/ccivil_03/LEIS/L9605.htm);

4771/65 Law, which establishes the Forest Code (http://www.planalto.gov.br/ccivil_03/LEIS/L4771.htm);

6938/81 Law, which establishes the National Policy for Environment (http://www.planalto.gov.br/ccivil_03/Leis/L6938.htm).

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

Comments:

All regulations are free to access and publicly available, but they are so complex that only specialists can (barely) work with them. Since regulations are so so complex, this creates frequent opportunities for extortion by corrupt public officials. As for the more important regulations, the problem is that there are too many of them. There are federal, state and municipal regulations all over the place.

References:

IN LAW 1 – There is an enormous amount of regulations pertaining to those fields. In federal field, we can punctuate:

7102/83 Law, which regulates security for financial institutions and the offering of private security services (<http://www.planalto.gov.br/CCIVIL/Leis/L7102.htm>);

10826/2003 Law, which regulates the arms trade (http://www.planalto.gov.br/ccivil_03/L/EIS/2003/L10_826.htm);

420/2004 National Agency for Inland Freight Resolution, which regulates the freight of hazardous substances (http://www.anit.gov.br/resolucoes/00500/resolucao420_2004.htm).

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

0

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Professional studies: See e.g., www.transparencia.org.br/docs/PMSP.pdf, section III, for an assessment by business representatives about corruption in municipal inspections.

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Professional studies: see e.g., www.transparencia.org.br/docs/PMSP.pdf, section III, for an assessment by business representatives about corruption in municipal inspections.

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Professional studies: see eg www.transparencia.org.br/docs/PMSP.pdf, section III, for an assessment by business representatives about corruption in municipal inspections.

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ~~82~~ Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

YES | NO

References:

IN LAW 1: Law 8.429/92 (http://www.planalto.gov.br/ccivil_03/Leis/L8429.htm).

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

Comments:

In the penal code, the art.158 defines extortion as being, or not being, a kind of bribe.

References:

IN LAW 1: Law 8.429/92 (http://www.planalto.gov.br/ccivil_03/Leis/L8429.htm); 1.079/50 – Art. 6 e 9 (<http://www.planalto.gov.br/ccivil/LEIS/L1079.htm>).

Penal Code – Art.158 (<http://www.planalto.gov.br/CCIVIL/Decreto-Lei/Del2848compilado.htm>).

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:

IN LAW 1: Law 8.429/92 (http://www.planalto.gov.br/ccivil_03/Leis/L8429).

Penal Code – Art.333 (<http://www.planalto.gov.br/CCIVIL/Decreto-Lei/Del2848compilado.htm>).

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

IN LAW 1: Law 8.429/92 (http://www.planalto.gov.br/ccivil_03/Leis/L8429).

Penal Code – Art.317 (<http://www.planalto.gov.br/CCIVIL/Decreto-Lei/Del2848compilado.htm>)

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | NO

Comments:

Brazil signed and ratified the Organisation for Economic Cooperation and Development anti-bribery convention, the Organization of American States anti-corruption convention and the United Nations anti-corruption convention.

References:

IN LAW 1: 5687/2006 Decree (http://www.planalto.gov.br/ccivil_03/ Ato2004-2006/2006/Decreto/D5687.htm).

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES | NO

References:

IN LAW 1: Law 8.429/92 (http://www.planalto.gov.br/ccivil_03/Leis/L8429).

Plus other laws, e.g. Penal Code art. 312 (<http://www.planalto.gov.br/CCIVIL/Decreto-Lei/Del2848compilado.htm>).

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

IN LAW 1: Law 8.429/92 (http://www.planalto.gov.br/ccivil_03/Leis/L8429). Plus other laws.

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

YES | NO

References:

IN LAW 1: Law 8.429/92 (http://www.planalto.gov.br/ccivil_03/Leis/L8429);

Law 9.613/98 (http://www.planalto.gov.br/ccivil_03/Leis/L9613.htm).

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

IN LAW 1: Penal Code Art.62 and 288 (<http://www.planalto.gov.br/CCIVIL/Decreto-Lei/Del2848compilado.htm>).

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

75. Is the anti-corruption agency effective?

72

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:

There is no law about the constitutional warranties of the Office of the Comptroller General that can be consider as protection

from political interference. The Federal Police is directed by the Ministry of Justice, so there is no protection from political interference there.

References:

IN LAW 1: Public Attorney: Federal Constitution Art.128 (http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm);

Brazilian Court of Audit: Federal Constitution Art. 73 (http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm).

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The Office of the Comptroller General is a department of the Office of the President's Chief of Staff (Casa Civil). Thus, it is a political appointment. Although in recent times there was no credible complaints concerning the Office's political dependence, that situation can change according to circumstances, because the Office is not formally protected from political influence.

References:

IN PRACTICE: Academic: DADOS Sociedade e Estado. Leonardo Andrade e Castro. 2008. Sem ódio e sem favor: formação de juízos técnicos na Secretaria Federal de Controle Interno(http://www.scielo.br/scielo.php?pid=S0102-69922008000300027&script=sci_arttext).

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The president of the Comptroller's Office and the Minister of the Justice are nominated by the president of the Republic. The members of the Supreme Audit Institution are also nominated by the president (the head of the SAI, however, is elected within that group).

The general prosecutor of the Republic, also nominated by the chief executive, may be removed by the president under an authorization by the Senate.

References:

Although the president can arbitrarily remove heads of agencies, there has been no relevant removal in the past few years. The chief of Comptroller's Office has been in charge since June 2006 (<http://tinyurl.com/y95xcwm>).

The head of the Supreme Audit Office has been in charge since December 2008 (<http://tinyurl.com/ydzbzb9>).

The current Ministry of Justice has been in charge since March 2007 (<http://tinyurl.com/yzos6u6>).

A new general-prosecutor took office in July 2009 because the previous prosecutor's four-year-term had come to the end (<http://tinyurl.com/y8k6ydw>).

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | **75** | 50 | 25 | 0

References:

The head of the Controller's Office (Controladoria-Geral da União-CGU) has been in the agency since 2003 (and became head of the agency in 2006). He is a lawyer, with a master's degree in public administration. See his résumé at CGU's official webpage (<http://tinyurl.com/y95xcwm>).

The General-Prosecutor is also a renowned professional who was nominated by the president after having been elected" by his peers (prosecutors all over the country vote and the association presents a triple list to the president; usually the president picks the candidate with the most votes. See media report (Folha Online, July 22nd, 2009 <http://tinyurl.com/y8k6ydw>).

On the other hand, the mechanism for appointments in the Supreme Audit Institution (Tribunal de Contas da União-TCU) has suffered criticism because of the politically-oriented appointments. See media report (Gazeta do Povo, Nov 11th, 2009 <http://tinyurl.com/y18aqey>).

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Media: See agencies' charts:

Office of the Comptroller General: <http://www.cgu.gov.br/CGU/Organograma/index.asp> ;

Brazilian Court of Audit: http://portal2.tcu.gov.br/portal/page/portal/TCU/institucional/estrutura_organizacional ;

Public Attorney: <http://www2.pgr.mpf.gov.br/procuradores> and http://www2.pgr.mpf.gov.br/o_mpf/organograma .

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Federal Police is undergoing a restructuring in order to extend their resources; this could indicate that their budget is not large enough.

References:

IN PRACTICE: The funding comes from federal budget.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Media: See agencies' websites:

www.pgr.mpf.gov.br,

www.tcu.gov.br

www.cgu.gov.br

www.dpf.gov.br.

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | **50** | 25 | 0

Comments:

Each agency specializes in one phase of the criminal prosecution, and all of them perform investigations, which causes problems with coordination.

References:

IN PRACTICE: 1 and 2:

See www.pgr.mpf.gov.br,

www.tcu.gov.br,

www.cgu.gov.br,

www.dpf.gov.br.

Latin American Politics and Society, 2007. Matthew Taylor and Vinicius Buranelli. Ending up in Pizza: accountability as a problem of institutional arrangement in Brazil."

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Each agency specializes in one phase of the criminal prosecution, and all of them perform investigations, which causes problems with coordination.

References:

IN PRACTICE: 1 and 2: See:

www.pgr.mpf.gov.br,

www.tcu.gov.br,

www.cgu.gov.br,

www.dpf.gov.br.

Latin American Politics and Society. 2007. Matthew Taylor and Vinicius Buranelli. Ending up in pizza: accountability as a problem of institutional arrangement in Brazil" (<http://sites.google.com/site/matthewmacleodtaylor/TaylorBuranelliPizzaLAPS2007.pdf>).

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

50

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Oversight of the Brazilian Court of Audit can be about irregularities that happened a long time ago. The prosecutions by the Public Attorney (PA) take a long time because the the Judiciary is overloaded of cases . The conflicts between PA and Federal Police about the criminal inquiry can slow down the resolution of cases.

References:

IN PRACTICE: Media:

Mainly Folha de S. Paulo (www.folha.uol.com.br) and

O Estado de S. Paulo (www.estado.com.br)

Academic: Latin American Politics and Society. 2007. Matthew Taylor and Vinicius Buranelli. Ending up in pizza: accountability as a problem of institutional arrangement in Brazil"

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: No sources.

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

References:

IN LAW 2: Public Attorney – Federal Constitution, Arts. 128-130

http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm;

Brazilian Court of Audit: Federal Constitution, Art.71 and 73,

http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm;

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

74
VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

50

77a. In law, there is a general right of appeal.

YES | NO

References:

IN LAW 1: Constitution Art. 5, item 34b guarantees the right to appeal all decisions, including judicial ones. The whole judicial system is built around the appeals process.

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Professional: See National Justice Council "Justiça em Números" project (http://www.cnj.jus.br/index.php?option=com_content&view=article&id=7731&Itemid=944).

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Although there is a system of public defenders for poor defendants, a good defense costs a fortune.

References:

IN PRACTICE: Luiz Eduardo Motta, Acesso À Justiça, Cidadania E Judicialização No Brasil, http://www.achegas.net/numero/36/eduardo_36.pdf

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

75

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Penal code: Few cases of misjudgment have been reported, and these refer to new evidence or false testimony being given in the original trial. There have been no reported cases where an individual was convicted by a wrongful reading of the law.

However, sometimes there are reports on judicial corruption, as this one: Gazeta do Povo, Oct 15, 2008 (<http://www.deunojornal.org.br/materia.asp?mat=251037>).

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. In practice, are judicial decisions enforced by the state?

100

79. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Media:

Mainly Folha de S. Paulo (www.folha.uol.com.br); and

O Estado de S. Paulo (www.estado.com.br).

A mayor was arrested for disrespecting a judicial decision: Correio da Bahia, July 8, 2008 (<http://www.deunojornal.org.br/materia.asp?mat=231048>).

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

88

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

IN LAW 1: Federal Constitution, Art. 95 (http://www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao.htm).

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence includes financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Once Supreme Court ministers are appointed by the president, there are risks they will be subjected to political interference.

100: National-level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National-level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National-level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

References:

IN LAW 2: See www.stf.gov.br for the system.

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:

IN LAW 1: Constitution of 1988, Chapter 3 Art. 95 (http://www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao.htm).

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

Comments:

That is correct, but threats to judges adjudicating corruption cases have been reported.

References:

IN PRACTICE: Media:

Mainly Folha de S. Paulo (www.folha.uol.com.br); and

O Estado de S. Paulo (www.estado.com.br).

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

Comments:

That is correct, but threats to judges adjudicating corruption cases have been reported.

References:

IN PRACTICE: Media

Mainly Folha de S. Paulo (www.folha.uol.com.br); and

O Estado de S. Paulo (www.estado.com.br).

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

The Courts' behaviour reflect the Brazilian income disparities. Most blacks are poor and most poor people have diminished access to Justice, as it happens almost universally.

References:

IN PRACTICE: Media

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE – No cases have been reported. There are no reports, in media or elsewhere, of exceptions or practices in which women are treated differently by the judicial system.

Example: Brazil has the most advanced legislation against violence against women in Latin America, according to a United Nations specialist (Folha Online, Aug. 28, 2008 <http://www1.folha.uol.com.br/folha/cotidiano/ult95u439026.shtml>).

And this law works well, in practice: Folha Online, July 3, 2009 <http://www1.folha.uol.com.br/folha/cotidiano/ult95u590325.shtml>

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

Comments:

Recently, the National Congress deliberated law 132/2009, which organizes the Union Public Defenders in federal level and the states.

References:

IN LAW 1: Federal Constitution:

Art. 133-135 (http://www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao.htm).

Law 132/09 (http://www.planalto.gov.br/ccivil_03/Leis/LCP/Lcp132.htm).

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

Although there are public defenders for criminal defendants who cannot afford representation, a good defense is pretty expensive.

References:

The president of the association, which gathers public defenders from São Paulo (the richest state in Brazil), says the institution is scrapped": Folha de São Paulo, Oct 25th 2008 <http://www.apesp.org.br/Imprensa/newlette27-10-08.htm>.

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Access to justice is all but impossible for anybody earning anything less than twenty or thirty times the minimum wage (median income" would be inadequate as a standard, due to Brazil's appalling income imbalance).

José Inácio de Freitas Filho, Feb. 12, 2009: <http://www.forumseguranca.org.br/artigos/nao-existe-republica-sem-acesso-a-justica>

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

There are no robust sets of data to go very far into the question of small businesses access or lack thereof to Justice. Intuition leads one to believe that such access is limited, due to the high cost of legal counsel.

References:

IN PRACTICE: According to one source, access to justice is all but impossible for anybody earning anything less than twenty or thirty times the minimum wage. José Inácio de Freitas Filho, Feb. 12, 2009: <http://www.forumseguranca.org.br/artigos/nao-existe-republica-sem-acesso-a-justica>

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Government studies: Secretariat of Judicial Reform (<http://http://www.mj.gov.br/main.asp?View={597BC4FE-7844-402D-BC4B-06C93AF009F0}>).

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

83. Is the law enforcement agency (i.e. the police) effective?

83

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

This does not mean that the personnel hired are actually qualified. Federal police agents are far more qualified than state police agents. However, the Federal Police is directed by the Ministry of Justice, which is a political appointment that is made by the president of the republic.

References:

Federal Police records of 2009: http://www.dpf.gov.br/DCS/noticias/2009/Dezembro/21122009_balanco2009.html

Among the figures: 281 operations on fight against corruption, money laundering, narcotics, environmental crimes, among others.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

Since the Federal Police has undergone reform, its budget has increased.

References:

The Public Ministry (Ministério Público da União) has had a significant increase in its budget since the beginning of the decade, according to a report by the Brazilian Senate. <http://tinyurl.com/yescbeye>

The Federal Police has had increase in budget and number of professionals, according to a report by National Secretary of Public Security: <http://tinyurl.com/yjxu46j>

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In recent years, the Federal Police has developed a reputation for acting independently. The same cannot be said of the average Brazilian state police department. However, the Federal Police is directed by the Ministry of Justice, which is a political appointment that is made by the president of republic.

References:

IN PRACTICE: Media:

Mainly Folha de S. Paulo (www.folha.uol.com.br); and

O Estado de S. Paulo (www.estado.com.br).

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

The Ombudsman's Office can receive the complaints about police action.

References:

IN LAW 2:

Law 10.683/03 Art. 17 (http://www.planalto.gov.br/ccivil_03/LEIS/2003/L10.683.htm) and others.

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

As mentioned before, the ombudsman's office in Brazil does not collect complaints nor does it direct them to the appropriate organization or perform any follow up.

References:

There is no mention of the Ouvidoria-Geral da União™ (ombudsman's office) from 2007 to 2009 in Folha de S.Paulo, the most influential Brazilian newspaper: <http://tinyurl.com/yhde6ztc>

Ombudsman's Office: <http://www.sfc.fazenda.gov.br/english/AreaOuvidoria/OQueE/>

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

References:

IN LAW 2: Public Attorney (Ministério Público): Federal Constitution Art.129:
(http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm).

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

References:

IN PRACTICE: Media:

Mainly Folha de S. Paulo (www.folha.uol.com.br); and

O Estado de S. Paulo (www.estado.com.br).

Also see stories about inquiries regarding the Military Police of Sao Paulo state in the Deu no Jornal project
(<http://www.deunojornal.org.br/busca.php?assunto=6600>).

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

References:

IN LAW 1: Federal Constitution (http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm).

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | **50** | 25 | 0

Comments:

Law enforcement officials are often accused of various crimes. Bringing them to justice is improbable in poorer states, but happens relatively frequently in the richer ones.

References:

IN PRACTICE: Amnesty International reports, available on <http://www.br.amnesty.org/?q=node/316>

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.
