

Brazil – Civil Society Report

By Amarribo Brasil

An Input to the UNCAC Implementation Review Mechanism: First year of review of UNCAC chapters III and IV

-Executive Summary-

This is the executive summary of a report by Amarribo Brasil¹ that reviews Brazil's implementation and enforcement of selected articles in the UN Convention against Corruption (UNCAC) Chapters III (Criminalization and Law Enforcement) and IV (International Cooperation). The report is intended as a contribution to the UNCAC peer review process of Brazil covering those two chapters. This executive summary is an updated version of a summary submitted in October 2011 to the Fourth Session of the UNCAC Conference of States Parties.

The UNCAC articles that receive particular attention in the report are those covering bribery (Article 15), foreign bribery (Article 16), embezzlement (Article 17), money laundering (Article 23), liability of legal persons (Article 26), witness protection (Article 32), whistleblower protection (Article 33), and mutual legal assistance (Article 46).

It appears that there are no significant inconsistencies between the Brazilian legal system and the UNCAC. Several articles in the UNCAC are present in two other international anti-corruption conventions, the Inter-American Convention against Corruption (OAS Convention) and the OECD Anti-Bribery Convention, previously ratified by Brazil, respectively on 10 July 2002 and 24 August 2000.

In the last few years, Brazil has set examples of good practice and advances in its legislation against corruption. At the same time, there are some flaws in the enforcement of laws against corruption offences. Among the most notable are delays in prosecuting cases.

Assessment of the review process

Conduct of process

The following table provides an overall assessment of transparency, country visits and civil society participation in the UNCAC review of Brazil.

Table 1: Transparency and CSO participation in the review process

Did the government disclose information about the country focal point?	Indirectly
Was civil society consulted in the preparation of the self-assessment?	No
Was the self-assessment published online or provided to CSOs?	Yes
Did the government agree to a country visit?	Yes
Was a country visit undertaken?	Yes
Was civil society invited to provide inputs to the official reviewers?	Yes
Has the government committed to publishing the full country report?	Yes

¹ The full report is available at <http://www.uncaccoalition.org/en/uncac-review/cso-review-reports.html>. Its author is Amarribo Brasil. The final report will be used for continuing the dialogue and engagement with the stakeholders including the government beyond the first round country review process.

Availability of information

The biggest obstacle faced in preparing this report was the inaccessibility of information. Even though there was help from the employees of the Comptroller General of the Union (CGU)², much of the data was scattered throughout several governmental websites and other data was not available.

Findings Implementation and enforcement

UNCAC implementation and enforcement involves several public administrations, among which the following stand out: Comptroller General of the Union (CGU) and its Secretariats, especially the Secretariat to Prevent Corruption and Strategic Information (SPCI) and the Federal Secretariat of Internal Control (SFC); Ministry of Justice; Federal and State Public Ministries; Federal Police; Audit Courts; and the judicial and legislative systems at the federal, state and municipal levels.

Amarribo concludes that there are no significant incompatibilities between the Brazilian legislation and UNCAC. Nevertheless, some UNCAC requirements have not yet been sufficiently implemented, such as the liability of corporations, the protection of victims and witnesses, the regulation of lobbying, and the improvement of rules to avoid influence-peddling in the hiring of public employees. These are therefore the main challenges and areas of interest on which the government must focus future actions to achieve full compliance of Brazilian legislation with the UNCAC.

On the enforcement side, the most important problem is delays in prosecuting cases. Considering the high number of corruption cases, very few perpetrators end up being jailed. Elected officials and high-ranking officials, unlike ordinary people, are tried by higher courts when they commit crimes and these courts are not equipped to conduct investigations. As a result, these cases are often pending for long period of time without being prosecuted. Often the cases are dismissed because of expiry of statutes of limitations. This is one of the main reasons for impunity in Brazil. Other problems in practice are lack of enforcement of the law on whistleblower and witness protection and difficulties in confiscation of assets and property derived from corruption.

Recommendations for priority actions

1. Terminate the Special Courts Privilege for elected officials (foro privilegiado).
2. Apply the Law of Administrative Misconduct to all public officials and politicians of the first and second tier of public federal administration, excepting the president of the Republic.
3. Adopt legislation on the right to access to information granted in the constitution.
4. Introduce criminal liability of legal persons.
5. Review the Criminal Code and the Code of Criminal Procedure in order to reduce the opportunity for frivolous appeals to avoid delays in the prosecution of corruption offenses.
6. Strengthen legal cooperation in criminal matters between the signatories of the UNCAC, aimed at increasing investigations into money laundering and recovery of proceeds of corruption.

² www.cgu.gov.br.

7. Disseminate information about the stages of implementation of the UNCAC in a website created specifically for that purpose.
8. Create a federal law which makes a witness protection programme mandatory in all the Brazilian states and create legal mechanisms that allow the witness protection programme to be a state programme rather than the current federal government one, thus providing stability and financial resources to the programme.
9. Include a specific mechanism that allows the confiscation of assets and property derived from illicit enrichment and other forms of corruption.

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