

**UN CONVENTION  
AGAINST CORRUPTION  
CIVIL SOCIETY REVIEW:  
PORTUGAL 2012**

## Context and purpose

The UN Convention against Corruption (UNCAC) was adopted in 2003 and entered into force in December 2005. It is the first legally-binding anti-corruption agreement applicable on a global basis. To date, 160 states have become parties to the convention. States have committed to implement a wide and detailed range of anti-corruption measures that affect their laws, institutions and practices. These measures promote prevention, criminalisation and law enforcement, international cooperation, asset recovery, technical assistance and information exchange.

Concurrent with UNCAC's entry into force in 2005, a Conference of the States Parties to the Convention (CoSP) was established to review and facilitate required activities. In November 2009 the CoSP agreed on a review mechanism that was to be "transparent, efficient, non-intrusive, inclusive and impartial". It also agreed to two five-year review cycles, with the first on chapters III (Criminalisation and Law Enforcement) and IV (International Cooperation), and the second cycle on chapters II (Preventive Measures) and V (Asset Recovery). The mechanism included an Implementation Review Group, which met for the first time in June-July 2010 in Vienna and selected the order of countries to be reviewed in the first five-year cycle, including the 26 countries (originally 30) in the first year of review.

UNCAC Article 13 requires States Parties to take appropriate measures including "to promote the active participation of individuals and groups outside the public sector in the prevention of and the fight against corruption" and to strengthen that participation by measures such as "enhancing the transparency of and promoting the contribution of the public in decision-making processes and ensuring that the public has effective access to information; [and] respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption". Further articles call on each State Party to develop anti-corruption policies that promote the participation of society (Article 5); and to enhance transparency in their public administration (Article 10); Article 63 (4) (c) requires the CoSP to agree on procedures and methods of work, including cooperation with relevant non-governmental organisations.

In accordance with Resolution 3/1 on the review mechanism and the annex on terms of reference for the mechanism, all States Parties provide information to the CoSP secretariat on their compliance with the UNCAC, based upon a "comprehensive self-assessment checklist". In addition, States Parties participate in a review conducted by two other States Parties on their compliance with the convention. The reviewing States Parties then prepare a country review report, in close cooperation and coordination with the State Party under review, and finalise it upon agreement. The result is a full review report and an executive summary, the latter of which is required to be published. The secretariat, using the country review report, is then required to "compile the most common and relevant information on successes, good practices, challenges, observations and technical assistance needs contained in the technical review reports and include them, organised by theme, in a thematic implementation report and regional supplementary agenda for submission to the Implementation Review Group". The terms of reference call for governments to conduct broad consultation with stakeholders during preparation of the self-assessment and to facilitate engagement with stakeholders if a country visit is undertaken by the review team.

The inclusion of civil society in the UNCAC review process is of crucial importance for accountability and transparency, as well as for the credibility and effectiveness of the review process. Thus, civil society organisations around the world are actively seeking to contribute to this process in different ways. As part of a project on enhancing civil society's role in monitoring corruption, funded by the UN Democracy Fund (UNDEF), Transparency International (TI) has offered small grants for civil society organisations (CSOs) engaged in monitoring and advocating around the UNCAC review process. This aims to support the preparation of UNCAC implementation review reports by CSOs, for input into the review process.

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# Introduction

Portugal signed the UN Convention against Corruption (UNCAC) on 11 December 2003. It was approved by the Portuguese Parliament through Resolution 47/2007 of 19 July 2007 and ratified on 28 September 2007.

This report reviews Portugal's implementation and enforcement of selected articles in chapters III (Criminalisation and Law Enforcement) and IV (International Cooperation) of the UNCAC. It is intended as a contribution to the UNCAC peer review process covering those two chapters. Portugal was selected by the UNCAC Implementation Review Group in July 2010 by a drawing of lots for review in the first year of the process.

**Scope.** The UNCAC articles that receive particular attention in this report are those covering bribery (Article 15), foreign bribery (Article 16), embezzlement (Article 17), illicit enrichment (Article 20), money laundering (Article 23), liability of legal persons (Article 26), statute of limitations (Article 29), freezing, seizure and confiscation (Article 31), witness protection (Article 32), protection of reporting persons (Article 33), compensation for damages (Article 35), bank secrecy (Article 40) and mutual legal assistance (Article 46).

**Structure.** Section I of the report is an executive summary with condensed findings, conclusions and recommendations about the review process and the availability of information, as well as the implementation and enforcement of selected UNCAC articles. Section II covers in more detail the findings about the review process in Portugal and issues of access to information. Section III reviews implementation and enforcement of the UNCAC, including key issues related to the legal framework and to the enforcement system, with examples of good and bad practice. Section IV covers recent developments, and Section V elaborates on recommended priority actions.

**Methodology.** The report, produced with UNDEF funding, was prepared by Transparência e Integridade, Associação Cívica. The group made efforts to obtain information for the reports from government offices and to engage in dialogue with government officials. As part of this dialogue, a draft of the report was supplied to government officials.

The report was prepared using a questionnaire and report template designed by Transparency International (TI) for the use of civil society organisations (CSOs). These tools reflected, but simplified, the checklist from the United Nations Office on Drugs and Crime (UNODC) and called for relatively short assessments as compared with the detailed official checklist self-assessments. The questionnaire and report template asked a set of questions about the review process and, in the section on implementation and enforcement, asked for examples of good practices and areas in need of improvement in selected areas, namely with respect to UNCAC Articles 15, 16, 17, 20, 23, 26, 32, 33 and 46 (9) (b) and (c).

The report preparation process went through a number of steps, with respondents first filling out the simplified questionnaire and then preparing the draft report.

The draft report was shared with the government and the visiting peer review team for comments before it was finalised. This final report will be used to continue the dialogue and engagement with the stakeholders, including the government, beyond the first round of the country review process.

In preparing this report, the authors took into account Portugal's participation in the review processes of the Group of States against Corruption (GRECO) and the OECD Working Group on Bribery in International Business Transactions. GRECO published an evaluation report in December 2010<sup>1</sup> and the OECD Working Group published a Phase 2 evaluation in March 2007.<sup>2</sup>

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<sup>1</sup> Third Evaluation Round, Evaluation Report on Portugal on Incriminations (ETS 173 and 191, GPC 2) (Theme I), adopted by GRECO at its 49th Plenary Meeting (Strasbourg, 29 November – 3 December 2010), Strasbourg, 3 December 2010, Public Greco Eval III Rep (2010) 6E Theme 1, [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)6\\_Portugal\\_One\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)6_Portugal_One_EN.pdf) [accessed February 24 2012].

# I. Executive summary

The overall findings of this report indicate that Portugal's legislative regime, insofar as it concerns the articles under review, is by and large in compliance with the standards and principles of the UNCAC. However, enforcement of the legislation is still problematic in a number of areas.

## Assessment of the review process

### Conduct of process

Portugal is in the group of countries under review in the second year of the UNCAC review process (2011-2012). The Portuguese government self-assessment checklist responses have been made available by the Directorate-General of Justice Policy (DGJP)<sup>3</sup> on UNODC's website<sup>4</sup>, which is to be commended. The peer reviewers for the Portuguese evaluation, Spain and Morocco, were identified at the Second session of the Implementation Review Group of the United Nations Convention against Corruption (Vienna, 30 May – 3 June 2011). The review process is still under way.

**Table 1: Transparency and CSO participation in the review process**

Did the government disclose information about the country focal point?	Yes
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?	Not yet
Was civil society invited to provide input to the official reviewers?	Not yet
Has the government committed to publishing the full country report?	Not yet

### Availability of information

The statistical data required for this report was requested from the DGJP, which is the Portuguese statistical authority for justice matters. However, detailed information on corruption-related proceedings is scattered and its collection and analysis is still poor. Moreover, the DGJP reported that certain specific data, mainly regarding witness-protection details and the freezing of assets, is not collected from criminal proceedings and is therefore not available.

### Findings on Implementation and enforcement

Overall, implementation of the UNCAC criminal provisions into law has been adequate. Most of the offences provided for in the UNCAC have been adopted with a correct wording of the articles, although the introduction of the illicit enrichment offence is in doubt after the Constitutional Court ruled that unconstitutional a bill for that purpose. The recent activity of the Parliament's Interim Commission on Corruption to evaluate and analyse the phenomenon of corruption helped identify a more adequate legal framework for the combating of corruption. Of note is a recent amendment which added a new corruption offence.

Notwithstanding recent improvements in the legal framework, enforcement remains weak. The government has not adopted a national anti-corruption strategy and action plan and there is no policy guidance. The resources allocated to the fight against corruption are inadequate and unspecialised, with few staff having corruption-related expertise (such as financial expertise). Hiring

<sup>2</sup> Portugal, Phase 2, Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Revised Recommendation on Combating Bribery in International Business Transactions, adopted by the Working Group on Bribery in International Business Transactions on 14 March 2007, <http://www.oecd.org/dataoecd/28/24/38320110.pdf> [accessed 24 February 2012] as well as Written Follow up to Phase 2 Report of 30 April 2009, <http://www.oecd.org/dataoecd/31/47/44424102.pdf> [accessed 24 February 2012].

<sup>3</sup> Direcção-Geral de Política de Justiça, website: [www.dgpi.mj.pt](http://www.dgpi.mj.pt).

<sup>4</sup> See <http://www.unodc.org/unodc/en/treaties/CAC/country-pairings-year-1-of-the-review-cycle.html>.

staff with the necessary expertise requires additional funding. In addition, neither public prosecutors nor judges are properly trained on corruption issues or financial crimes, which adds to the productivity deficit and is a resource drain on the judicial system due to the challenges in handling such cases. The information available on criminal proceedings reveals weaknesses in both the legal framework and the enforcement system.

Inadequate sentencing and the need for longer statutes of limitation timeframes for certain corruption-related offences have been partially dealt with by the new anti-corruption law package, which has increased the length of prison sentences and substantially raised monetary sanctions for certain offences which previously carried only minor penalties.

There are still a number of shortcomings in the area of mutual legal assistance, as could be seen in some recent cases such as the MAN/Ferrostaal case (or Submarines/trade offsets case) and the Freeport case. In this kind of complex cross-border case, requests for assistance from Portuguese authorities to other jurisdictions are not always responded to or take too long to process, hence the recommendation for the suspension of statutes of limitation periods.

## **Recommendations for priority actions**

To ensure the correct implementation and enforcement of UNCAC articles, the following actions are recommended (for further details see section IV):

1. Identify the major corruption-risk areas and assess the strengths and weaknesses of the current anti-corruption legal and institutional frameworks.
2. Adopt an anti-corruption national strategy and action plan through a multi-stakeholder consultation process.
3. Undertake high-quality recruitment oriented towards the specialisation needs of the investigative bodies.
4. Establish an anti-corruption agency or provide existing departments with the necessary resources to investigate and prosecute corruption.
5. Treat requests for cooperation from the Prosecutor's Office to other national institutions with high priority, and fulfil them with maximum speed and the necessary resources.
6. Ensure that auditing institutions quickly report offences to the competent authorities.
7. Increase statutes of limitations for all corruption-related offences committed by political office-holders, and establish new grounds for suspension and interruption of statutes of limitations periods (such as the request for mutual legal assistance).
8. Increase public awareness of whistleblower-protection mechanisms.
9. Systematise collection and analysis of statistical information.
10. Address the issue of 'revolving doors' between public office and private industry, either through legislation on conflicts of interest or employment restrictions on political and executive officials.
11. Political office-holders' declarations of interest to the general public should be made more consistently and increased auditing of these declarations should be carried out.
12. Provide more financial and human resources to witness-protection mechanisms.
13. Evaluate the impact of implementation of these measures.

## II. Assessment of the review process for Portugal

### A. Conduct of process

As mentioned, Portugal is part of the Year 2 review group (2011-2012). The Portuguese government self-assessment checklist has already been made available online by the DGPJ on the UNODC website.<sup>5</sup> Civil society and other stakeholders (such as the Portuguese Bar Association<sup>6</sup> and the Judges' Union<sup>7</sup>) were not called to cooperate in the self-assessment preparation by the Ministry of Justice.

Regarding the contents of the Portuguese self-assessment checklist, the lack of detailed statistics concerning most corruption crimes should be highlighted. Although the Portuguese government provided numbers of convicted and acquitted defendants, it failed to provide the number of investigations or criminal proceedings that did not proceed to Court. Apart from this issue, the self-assessment seems quite complete regarding the relevant articles under analysis, although with some minor inconsistencies (e.g. the self-assessment states in paragraph 93 that the liability of legal persons has been established for the crimes within the Convention, but the law has not yet extended this liability to all of these crimes; the same happens with the recently-extended statutes of limitation – paragraph 101, which do not cover some crimes committed by political office-holders). Although the publishing of the self-assessment on UNODC website represents a step forward in transparency on corruption issues, it should also be noted that this assessment is not available on either the DGPJ or the Council for the Prevention of Corruption (CPC) websites.

The peer reviewers for the Portuguese evaluation were identified at the Second session of the Implementation Review Group of the United Nations Convention against Corruption (Vienna, 30 May – 3 June 2011): they are Spain and Morocco. Portugal agreed to a country visit of the review team, but this has not yet taken place.

### B. Availability of information

Information required for the current report was requested from the DGPJ since this body is responsible for official statistics in the domain of justice. The Directorate-General reported that certain specific data, mainly regarding witness and whistleblower protection and the freezing of property, are not available because that kind of data is not collected.

Statistics regarding the number of criminal proceedings connected with a certain kind of offence are available at the official justice statistics website.<sup>8</sup> However, these are not sufficiently detailed regarding what sanctions were levied and the number of defendants involved; and there is also a lack of information on proceedings that do not reach the court phase.

Detailed information on corruption-related proceedings is scattered and its collection and analysis is still poor. Although there is only one official statistical authority for justice matters (the DGJP), relevant information collected among various institutions for different purposes is sometimes not compiled or analysed (as is the case with data gathered by the CPC).

For example, the Central Department for Criminal Investigation and Prosecution (DCIAP) collects information on all corruption-related proceedings in Portugal (the prosecutor's services are required to report these proceedings to the DCIAP). This information, which consists of extracts from the various phases of the proceedings, is not currently being analysed (mostly due to the lack of an

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<sup>5</sup> [www.unodc.org/documents/treaties/UNCAC/SA-Report/PO\\_UNCAC\\_2011.pdf](http://www.unodc.org/documents/treaties/UNCAC/SA-Report/PO_UNCAC_2011.pdf) [accessed 24 February 2012].

<sup>6</sup> Ordem dos Advogados: [www.oa.pt](http://www.oa.pt).

<sup>7</sup> Associação Sindical dos Juizes Portugueses: [www.asjp.pt](http://www.asjp.pt).

<sup>8</sup> [www.siei.dgpi.mj.pt](http://www.siei.dgpi.mj.pt) [accessed 24 February 2012].

intelligence-gathering unit at the DCIAP). Previously, this information was analysed through a partnership with university research units but this project was discontinued due to lack of financing.

Experts consulted during DGPJ's preliminary report on the recent anti-corruption package (see section IV on recent developments) have recommended that all corruption-related information (such as cases, evaluation reports and statistics) should be posted on a micro-website available to the general public. This measure would ensure that information related to any proceedings involving public officials or public property is available to the general public.

### III. Implementation and enforcement of the UNCAC

#### A. Key issues related to the legal framework

##### 1. Areas showing good practices

**UNCAC Article 15: Bribery of national public officials; and Article 16: Bribery of foreign public officials.** The Portuguese legal system prohibits bribery of both domestic and foreign officials in accordance with the UNCAC principles and provisions. The wording used in articles 373 and 374 of the Portuguese Criminal Code contains all the elements used in Article 15 of the UNCAC, and explicitly adds another element which broadens the scope of the type of offence. The targeted act or omission may take place prior to the bribery pact.

A public official is defined by Article 386 and includes the notions set in paragraph a) Article 2 of the UNCAC, except political office-holders. However, similar legislative provisions and corresponding sanctions that apply to political office-holders are contained in another law (Law 34/87, 16 July). The definition of public official and political office-holder<sup>9</sup> includes any person who performs those functions in international organisations (of which Portugal is a member) and EU member states.

In addition, a new type of corruption offence has been added to the Portuguese Criminal Code: the acceptance or offering of an undue advantage. Unlike bribery, this type of offence does not require evidence of a link between the offering of the advantage and a supposed act or omission that would constitute the objective of the bribe.

**UNCAC Article 17: Embezzlement, misappropriation or other diversion of property by a public official.** Embezzlement is established, according to the requirements of Article 17 of the UNCAC, as a criminal infraction in the Portuguese Criminal Code, Articles 375 and 376. Article 375 relates to the traditional embezzlement of values, objects and other pecuniary advantages, while Article 376 relates to embezzlement through usage of third party rights or objects for private gain/advantage. The same offences are provided for political office-holders in Law 34/87, 16 July.

In Article 377, the Portuguese Penal Code provides for an additional type of offence which can be roughly translated as "unlawful economic advantage". This type of offence has two main forms: (1) damaging a third party's pecuniary interests whose protection or administration were bestowed on the public official, with the purpose of obtaining a pecuniary advantage; and (2) obtaining a pecuniary advantage, even if no damage occurs upon the bestowed interests.

Embezzlement offences tend to have a higher rate of prosecutions and convictions because they are mainly financial accounting offences traceable through forensic auditing and documentary evidence, and thus are much easier to prove and to get a successful conviction with less investigative burden.

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<sup>9</sup> Article 3 of Law 34/87, 16 July.



**UNCAC Article 23: Laundering of proceeds of crime.** Money laundering legislation is also consistent with the UNCAC. The sanctions for money laundering, or laundering of proceeds of crime, are provided in Article 368-A/2 of the Penal Code.

**UNCAC Article 26: Liability of legal persons.** The provision for criminal liability for legal persons regarding most of the UNCAC offences is a rather recent measure (2007). Several articles have been added to the Portuguese Criminal Code (Article 11 of the Penal Code) which provide for the liability of legal persons in the case of corruption-related offences (such as bribery, money laundering, embezzlement, unlawful advantage, acceptance of undue advantage, and trade in influence).

The sanctioning of criminal offences committed by legal persons is carried out through monetary fines (which are inadequate for the proper punishment of larger corporations), but a broad range of supplementary sanctions may also be applied such as dissolution, debarment, or suspension of activities. Portuguese companies (particularly small and medium-sized enterprises) and their management are not aware of their criminal liability for corruption offences and of the sanctions that may be applied.<sup>10</sup>

**UNCAC Article 40: Bank secrecy.** Due to recent legislative changes, bank secrecy can now be automatically overcome in certain tax-related corruption offences, and a common database of all bank accounts for the purpose of criminal investigation is being set up by the Bank of Portugal.

**UNCAC Article 46 (9) (b) and (c): Mutual legal assistance.** Responses to requests for mutual legal assistance (MLA) are regulated by Law 144/99 of 31 August stating that, in the conditions set by the law (similar to those present in the UNCAC), this kind of cooperation must be provided. According to Article 3 of Law 144/99, the forms of cooperation mentioned in Article 1 shall be carried out in accordance with the provisions of the international treaties, conventions and agreements that bind the Portuguese State and, where such provisions are non-existent or do not suffice, with the provisions of this law.

In practice, Portuguese authorities have reported that foreign requests for MLA have been answered with due haste and diligence. However, there is no comparative data to confirm this. Regarding Portuguese MLA requests to foreign authorities, some news reports<sup>11</sup> and other sources seem to indicate that foreign authorities tend to delay their replies or send no reply at all, in a manner that endangers the correct prosecution of corruption cases and investigations. This claim, however, relates to a small number of individual cases (e.g. involving the UK and Germany).

This may have affected recent major cases such as the Freeport case or the MAN/Ferrostaal case, where foreign authorities were reported to have been less than diligent in their responses to the Portuguese Prosecutor's Office.<sup>12</sup> Such delays or non-replies may hamper investigations or push offences to reach their statutes of limitations, particularly since MLA requests are not grounds for the suspension of the statutes of limitations periods, resulting in the dismissal of criminal procedures by the Prosecutor's Office.

## 2. Areas with deficiencies

**UNCAC Article 20: Illicit enrichment.** The bill criminalising illicit enrichment was approved by the Portuguese Parliament in September 2011, but failed to be enacted after the Constitutional Court

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<sup>10</sup> Transparency International, Progress Report 2011 on Enforcement of the OECD Anti-Bribery Convention, p. 56, available at [http://files.transparency.org/content/download/102/411/file/2011\\_OECDreport\\_EN.pdf](http://files.transparency.org/content/download/102/411/file/2011_OECDreport_EN.pdf) [accessed 16 May 2012].

<sup>11</sup> LUSA, "Vale e Azevedo: PGR critica morosidade inglesa" in *Público Online*, 12 December 2011. Available at: [http://www.dn.pt/especiais/interior.aspx?content\\_id=2179536&especial=Duarte%20Lima%20a%20contas%20com%20a%20Justi%20E7a&seccao=SOCIEDADE](http://www.dn.pt/especiais/interior.aspx?content_id=2179536&especial=Duarte%20Lima%20a%20contas%20com%20a%20Justi%20E7a&seccao=SOCIEDADE) [accessed 15 May 2012]. See also footnote 12.

<sup>12</sup> LUSA, "Caso submarinos. PGR diz que não há dinheiro para perícias e aguarda verbas do governo" in *I Online*, 17 April 2012. Available at: <http://www.ionline.pt/dinheiro/caso-submarinos-pgr-diz-nao-ha-dinheiro-pericias-aguarda-verbas-governo> [accessed 16 May 2012].

declared it unconstitutional (Court decision 179/2012, 4 April 2012<sup>13</sup>) on the grounds that it did not respect the principles of presumption of innocence and determinability of the legal type of offence.<sup>14</sup>

The issue of the criminalisation of illicit enrichment was first raised by a Socialist Member of Parliament, Cravinho, who presented a package of anti-corruption measures which included the new offence of illicit enrichment and the creation of a specialised anti-corruption agency. The package of reforms was dismissed by the government of the day and by his own party. Cravinho was later appointed senior official at the European Bank for Reconstruction and Development (EBRD). The issue was raised again in the context of the Parliament's Interim Commission for the Study of Corruption,<sup>15</sup> but was not approved. The opposition of some part of academia against the creation of such an offence and the difficulty of drafting an article not violating the presumption of innocence are thought to be the main causes for the dismissal of the bill.

Other legal systems have discussed these matters in great detail and found alternative ways of establishing this new type of offence without violating constitutional rights and freedoms. In the case of Portugal, this debate was deliberately omitted from Parliament during the previous legislature. In response to this lack of political will, a civil society movement for codifying illicit enrichment as a criminal infraction has been active since the end of the Interim Commission's work.

A major daily newspaper, *Correio da Manhã*, also sponsored this initiative and gathered a petition of more than 30,000 signatures supporting a provision on illicit enrichment, which it delivered to the president of the Portuguese Parliament. The promoters of this popular legislative initiative organised several public debates throughout the country. This media and civil society movement and the recent change of government (currently a coalition between the dominant party, Partido Social Democrata/PSD and a minor party, Partido Popular/CDS-PP is in office) resulted in the approval of a bill (Bill 72/XII) providing for an illicit enrichment offence, which was then found unconstitutional by the Constitutional Court.

**UNCAC Article 29: Statute of limitations.** The Portuguese Parliament has recently approved Law 32/2010, 2 September, which increased the statutes of limitations for most corruption-related offences to 15 years (absolute statutes of limitations of 22.5 years) through an amendment to Article 118/1/a of the Portuguese Criminal Code (enacted by Law 32/2010, 2 September 2010). However, some types of offences were left out of these increased limitations periods, particularly those related to political office holders (e.g. abuse of functions).

To fully comply with Article 29 of the UNCAC, the Portuguese legislature should:

1. Enlarge the list of offences mentioned in Article 118/1/a, so that it includes all corruption-related offences regarding political office-holders, mainly those which are present in Law 34/87, 16 July.
2. Amend the Penal Code in such a way that statutes of limitations stop having effect after a formal accusation/prosecution or after a first instance decision, even if a final decision is still pending.

**UNCAC Article 32: Witness protection; and UNCAC Article 33: Protection of reporting persons.** The articles on protection of witnesses are present in Law 19/2008, 21 April; Law 93/99, 14 July; and Decree-Law 190/2003, 22 August. Although these laws provide a broad and comprehensive legal framework for the protection of witnesses and other informants, they are hardly ever applied because there are no resources to adequately put them in place. In addition, there has been no evaluation of how protection and reporting mechanisms currently perform, and their respective efficiency. Currently, there are no agreements, bilateral or multilateral, with other countries for the purpose of relocating witnesses or experts.

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<sup>13</sup> Available at: <http://www.tribunalconstitucional.pt/tc/acordaos/20120179.html> [accessed 7 April 2012].

<sup>14</sup> LUSA, "Lei do enriquecimento ilícito é inconstitucional", in *Expresso Online*, 4 April 2012. Available at: <http://expresso.sapo.pt/lei-do-enriquecimento-ilicito-e-inconstitucional=f717051> [accessed 5 April 2012].

<sup>15</sup> Comissão Eventual para o Acompanhamento Político do Fenómeno da Corrupção e para a Análise Integrada de Soluções com Vista ao seu Combate, activities website:

<http://www.parlamento.pt/sites/com/XILeg/CEAPFCAISVC/Paginas/Default.aspx> [accessed 24 February 2012]. This Commission was charged with the study of the phenomenon of corruption in order to find new solutions and mechanisms to increase the enforcement of anti-corruption policies.

**UNCAC Articles 6 and 36: Anti-corruption agencies.** The creation of the National Unit to Fight Corruption (Unidade Nacional de Combate à Corrupção – UNCC) in the judiciary police (investigation/repression) and the Corruption Prevention Council (Conselho de Prevenção da Corrupção – CPC), working along with the Supreme Audit Court (prevention), are cosmetic solutions to the setting of specialised anti-corruption bodies under Articles 6 and 36 of the convention. The UNCC is but a new name for the old Central Directorate for Investigation of Corruption and Financial and Economic Criminality (also known as DCICCEF-PJ), while the CPC’s activity until now has been little more than to implement and review corruption-risk management plans in public institutions and bodies.

## B. Key issues related to enforcement

### 1. Statistics

The following data concerns the years 2007 to 2009, and has been provided by the DGPJ. The numbers of cases of corruption-related offences, however, represent only a percentage of all the cases reported to the competent authorities. In fact, since the creation of a whistleblowing micro-website<sup>16</sup> accessible through the Prosecutor General’s Office website, more than 1,000 corruption-related complaints have been received. Of these, only six resulted in the initiation of criminal proceedings, and 83 resulted in preliminary investigations.<sup>17</sup>

**Table 2: Statistics of cases in first instance courts 2007-2009. Source: DGPJ.**

	Prosecutions (underway and concluded)	Convicted individuals	Acquitted individuals
Bribery of foreign public officials (Article 16) <sup>18</sup>	4	2	1
Bribery of national public officials (passive) (Article 15 (b))	Data available	not 64	42
Bribery of national public officials (active) (Article 15 (a))	Data available	not 90	70
Embezzlement, misappropriation or other diversion by a public official (Article 17)	Data available	not 302	119
Illicit enrichment <sup>19</sup> (Article 20)	N/A	N/A	N/A
Money laundering, corruption-related (Article 23)	Data available	not 21	23
Liability of legal persons	Data available	not Data available	Data not available

NB: settlements are not allowed, according to the principles governing criminal and penal procedure law in Portugal.

<sup>16</sup> <https://simp.pgr.pt/dciap/denuncias/>.

<sup>17</sup> Paula Torres de Carvalho, “Mais de mil denúncias de corrupção na PGR em oito meses” in *Público*, 16 July 2011. Available at: [http://www.publico.pt/Sociedade/mais-de-mil-denuncias-de-corrupcao-na-pgr-em-oito-meses\\_1503271](http://www.publico.pt/Sociedade/mais-de-mil-denuncias-de-corrupcao-na-pgr-em-oito-meses_1503271) [accessed 12 May 2012].

<sup>18</sup> Data on Foreign Bribery has been provided both by the Prosecutor’s Office and the Directorate-General for Justice Policy, and includes proceedings previous to 2009.

<sup>19</sup> Although approved by Parliament, Bill 72/XII criminalising illicit enrichment was recently considered unconstitutional by the Constitutional Court. See pages 7 and 8.

Currently, there is no systematic and comprehensive treatment of the information regarding corruption proceedings which would allow for the tracking of these offences from the moment of their notification to authorities to a final decision from the courts. However, recent (discontinued) research projects run jointly by the Prosecutor-General's Office (and the DCIAP) and a research centre for social studies (Centro de Investigação e Estudos em Sociologia – CIES-ISCTE) revealed a great deal of information about corruption-related proceedings.<sup>20</sup>

**Table 3: Statistics of corruption-related proceedings initiated during 2004-2008. (Source: PGR-DCIAP and CIES-ISCTE: 2010)**

Phase of the Proceeding	2004-2008										Total	
	Bribery		Unlawful economic advantage		Embezzlement		Two or more offences		N/A			
	#	%	#	%	#	%	#	%	#	%	#	%
Investigation	117	30.2%	25	46.3%	77	27.9%	32	27.8%	3	50.0%	254	30.3%
Formally charged	7	1.8%	2	3.7%	32	11.6%	6	5.2%	-	-	47	5.6%
Dismissed	237	61.2%	23	42.6%	114	41.3%	68	59.1%	3	50.0%	445	53.1%
Preliminary court hearing	3	0.8%	1	1.9%	2	0.7%	1	0.9%	-	-	7	0.8%
Trial	5	1.3%	1	1.9%	2	0.7%	1	0.9%	-	-	9	1.1%
Conviction	14	3.6%	2	3.7%	36	13.0%	6	5.2%	-	-	58	6.9%
Acquittal	2	0.5%	-	-	11	4.0%	1	0.9%	-	-	14	1.7%
N/A	2	0.5%	-	-	2	0.7%	-	-	-	-	4	0.5%
<b>Total</b>	<b>387</b>	<b>100%</b>	<b>54</b>	<b>100%</b>	<b>276</b>	<b>100%</b>	<b>115</b>	<b>100%</b>	<b>6</b>	<b>100%</b>	<b>838</b>	<b>100%</b>

According to this study,<sup>21</sup> of the 838 criminal proceedings involving corruption-related offences during the above-mentioned period (2004-2008), only 16.6% had reached the court phase and only 6.9% of the total cases reached a conviction by a court (most of those being embezzlement cases which are less difficult to investigate) by the end of 2009. There is a very high dismissal rate for corruption-related offences: 53% by the end of 2009 (61.2% in bribery offences), with a possibly increasing rate, since 30% of the offences were still pending a final order from the Prosecutor's Office either pressing or dismissing the charges.

## 2. Major cases

The cases described below highlight a number of difficulties regularly encountered in the prosecution of corruption offences. Although some of the offences described were committed before the ratification of the UNCAC, their pending proceedings demonstrate problems within the Portuguese criminal enforcement system.

**Case Face Oculta.** This case relates to an alleged corruption network with the purpose of favouring the business group of a famous scrap dealer, Manuel Godinho, in its business with the State.<sup>22</sup> On October 2010, an indictment was issued accusing a total of 34 individual suspects and two companies.<sup>23</sup> The main defendants/suspects are Manuel José Godinho (waste sector businessman), Armando Vara (ex-minister and ex-administrator of BCP Bank), José Penedos (ex-

<sup>20</sup> DCIAP-PGR and CIES-ISCTE, *Reported corruption in Portugal 2004-2008. Global results from an ongoing research (A corrupção participada em Portugal 2004-2008 Resultados globais de uma pesquisa em curso)*, Final Report, 2010.

<sup>21</sup> *Ibid.*, p. 75.

<sup>22</sup> LUSA, "Tribunal anexa ao processo 'Face Oculta' dez dossiers carregados por uma testemunha" in *SIC notícias Online*, 15 May 2012, available at: <http://sicnoticias.sapo.pt/pais/2012/05/15/tribunal-anexa-ao-processo-face-oculta-dez-dossiers-carregados-por-uma-testemunha> [accessed 17 May 2012].

<sup>23</sup> LUSA, "MP acusa 34 pessoas e duas empresas no 'Face Oculta'" in *Diário de Notícias Online*, 27 October 2010. Available at: [http://www.dn.pt/especiais/interior.aspx?content\\_id=1696536&especial=Face%20Oculta&secao=ECONOMIA](http://www.dn.pt/especiais/interior.aspx?content_id=1696536&especial=Face%20Oculta&secao=ECONOMIA) [accessed 12 May 2012].

CEO of REN energy sector company), and O2 (environmental cleaning and waste treatment company).

The offences charged in this case include passive and active bribery of public officials, unlawful economic advantage, abuse of functions, aggravated fraud, active bribery on the private sector, trading in influence, and forgery of technical documents. The trial of this case is currently underway (39<sup>th</sup> Court Session<sup>24</sup>) at the Court of Aveiro, having begun on 8 November 2011.<sup>25</sup>

The case has suffered several delays, one of them due to a reported wiretapping.<sup>26</sup> While tapping one of the defendant's phone communications, the judiciary police also reportedly tapped a communication between the defendant and the then prime minister, José Socrates. Since the phone-tapping of the prime minister's communications requires a previous authorisation of the president of the Supreme Court of Justice, all these phone records had to be destroyed.

**Case Universidade Independente (Unl – Independent University).** In January 2009, Amadeu Lima de Carvalho (major shareholder of Unl) and Rui Verde (vice-dean of Unl) were charged with money laundering, aggravated fraud, bribery and tax evasion. The Prosecutor's Office also requested around €1 million as compensation for damages to the Portuguese State. The trial of this case began on 16 May 2011<sup>27</sup> and is still pending.

**Case Saco Azul.** In September 2008, Fátima Felgueiras (mayor of Felgueiras) was convicted for embezzlement, embezzlement through usage, and abuse of power.<sup>28</sup> Júlio Faria (ex- mayor of Felgueiras), RESIN (environmental cleaning and treatment company) and Horácio Costa (the mayor's advisor) were reportedly acquitted of the charges brought against them.<sup>29</sup>

The mayor was charged with illegal licensing of industrial construction within the municipality, receiving in exchange financial contributions to her political party's campaign and forging contracts with private parties to subsidise RESIN, allegedly defrauding the state by an amount of €150,000. The first instance decision acquitted the mayor of 20 out of 23 charges, including the most serious charges of bribery. She was convicted of the remaining three charges (see above) and received a suspended imprisonment sanction and loss of political office mandate.

Upon appeal, Felgueiras was acquitted for all charges, mainly by a decision of the Guimarães Court of Appeals which provided for the acquittal for some of the charges and for a re-trial by the first instance court for the rest of those charges (she was then acquitted).

Several delays have affected this case which triggered statutes of limitations regarding some of the offences charged. These delays possibly also caused the leaking of privileged information, which led to the main suspect (Fátima Felgueiras) fleeing to Brazil in May 2003 and the consequent lack of extradition. Felgueiras eventually also appealed to the Constitutional Court to prevent the suspension of her political office.

**Case Freeport.** An indictment<sup>30</sup> was issued in June 2010 against Charles Smith (Smith & Pedro employee), Manuel Pedro (Smith & Pedro employee), Carlos Guerra (ex-president of ICN – Institute for the Protection of Nature, operating under the Ministry of Environment) and José Dias Inocêncio (ex-mayor of Alchochete).

The Freeport case involves the waiver of environmental restrictions allowing the construction of a commercial area. The waiver of these restrictions was allegedly the result of bribes in which the

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<sup>24</sup> LUSA, "Greve geral obriga a cancelamento de audiência do caso Face Oculta" in *SIC Notícias Online*, 22 March 2012. Available at: <http://sicnoticias.sapo.pt/pais/2012/03/22/greve-geral-obriga-a-cancelamento-de-audiencia-do-caso-face-oculta> [accessed 5 April 2012].

<sup>25</sup> *Ibid.*

<sup>26</sup> Público, "Face Oculta: Supremo diz que escutas a Sócrates são nulas" in *Público Online*, 10 November 2009. Available at: [http://www.publico.pt/Sociedade/face-oculta-supremo-diz-que-escutas-a-socrates-sao-nulas\\_1409212](http://www.publico.pt/Sociedade/face-oculta-supremo-diz-que-escutas-a-socrates-sao-nulas_1409212) [accessed 15 May 2012].

<sup>27</sup> LUSA, "Julgamento do caso da Universidade Independente arrancou hoje" in *SOL Online*, 16 May 2011. Available at: [http://sol.sapo.pt/inicio/Sociedade/Interior.aspx?content\\_id=19307](http://sol.sapo.pt/inicio/Sociedade/Interior.aspx?content_id=19307) [accessed 24 February 2012].

<sup>28</sup> António Arnaldo Mesquita, Cláudia Bancaleiro, "Fátima Felgueiras condenada a 3 anos e 3 meses de prisão com pena suspensa" in *Público Online*, 7 November 2008. Available at: <http://www.publico.pt/Sociedade/fatima-felgueiras-condenada-a-3-anos-e-3-meses-de-prisao-com-pena-suspensa-1349217> [accessed 15 May 2012].

<sup>29</sup> *Ibid.*

<sup>30</sup> LUSA, "Freeport: Manuel Pedro e Charles Smith acusados de extorsão na forma tentada" in *Público Online*, 27 June 2010. Available at: [http://publico.pt/Sociedade/freeport-manuel-pedro-e-charles-smith-acusados-de-extorsao-na-forma-tentada\\_1449002](http://publico.pt/Sociedade/freeport-manuel-pedro-e-charles-smith-acusados-de-extorsao-na-forma-tentada_1449002) [accessed 15 May 2012].

abovementioned defendants were involved. This project was initially owned by RJ McKinney and later acquired by Freeport Plc and the Carlyle Group. The company Smith & Pedro, consultants, was in charge of the licensing of the project.

Initially the defendants were charged with bribery, trading in influence, money laundering, and illegal financing of political parties. Most of these charges, however, have been dropped due to lack of evidence (including those involving José Socrates, former minister of the environment and former prime-minister). Only Charles Smith and Manuel Pedro have been indicted, for tax evasion and aggravated fraud. The trial of this case is currently underway, having begun on 8 March 2012 at Barreiro's Court (*Tribunal do Barreiro*).<sup>31</sup>

Bilateral cooperation between the Portuguese Prosecutor's Office and UK authorities has not worked well and requests for MLA were not executed. Prosecutors in charge of the criminal proceeding have allegedly been pressured to drop the investigations by the senior prosecutor and former president of Eurojust, Lopes da Mota<sup>32</sup> (who was later suspended due to disciplinary action<sup>33</sup>). An additional recent delay in the proceeding was caused by the court declaring itself incompetent to deal with the case.

**Case Submarines (MAN/Ferrostaal).** An indictment was reportedly issued on 1 October 2009 against Pedro Ramalho (president of Simoldes), António Lavrador (administrator of Ipetex), Filipe Moutinho (president of Sunviauto), Jorge Gonçalves (Amorim Industrial Solutions), Rui Santos (Inapal Plásticos), José Medeiros (Comportest) and Horst Weretecki (vice-president of MAN/Ferrostaal).<sup>34</sup>

The case involves various charges including aggravated fraud and forgery of documents, but evidence also appears to exist regarding corruption-related offences which are being investigated by the Prosecutor's Office.<sup>35</sup> The continuity of these investigations, however, has been questioned by MEP Ana Gomes, who recently urged the Prosecutor's Office to show results regarding this case.<sup>36</sup>

A contract was concluded between the Portuguese government and the German Submarine Consortium (GSC) for the delivery of two submarines, and trade offsets such as the creation of industrial projects in Portugal had been established. According to the indictment, the defendants defrauded the Portuguese State by about €34 million, having made an agreement with some of the companies benefiting from the trade offsets to include several old contracts. The trial hearing has been scheduled for 17 September 2012.<sup>37</sup>

In addition to the delays of the German authorities in responding to the MLA requests from the Portuguese Prosecutor's Office, further delays were caused by the team of prosecutors being taken off the case. Disciplinary investigations were started regarding the prosecutors involved and, in the case of one of the prosecutors, a disciplinary proceeding followed; as a result, the team requested to be removed from the case.<sup>38</sup> This kind of pressure on prosecutors (in particular those belonging to the DCIAP) may constitute an indicator of political or economic influence in the activities of the Prosecutor's Office.<sup>39</sup>

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<sup>31</sup> LUSA, "Começa hoje julgamento do caso Freeport" in *SOL Online*, 8 March 2012. Available at: [http://sol.sapo.pt/inicio/Sociedade/Interior.aspx?content\\_id=43455](http://sol.sapo.pt/inicio/Sociedade/Interior.aspx?content_id=43455) [accessed 24 February 2012].

<sup>32</sup> LUSA, "Lopes da Mota suspenso por 30 dias pelo Conselho" in *Diário de Notícias Online*, 16 December 2009. Available at: [http://www.dn.pt/inicio/portugal/interior.aspx?content\\_id=1449222](http://www.dn.pt/inicio/portugal/interior.aspx?content_id=1449222) [accessed 14 May 2012].

<sup>33</sup> *Ibid.*

<sup>34</sup> LUSA/Cláudia Garcia, "Submarinos: juiz decide levar todos os arguidos a julgamento" in *I Online*, 25 January 2011. Available at: <http://www1.ionline.pt/conteudo/100475-submarinos-juiz-decide-levar-todos-os-arguidos-julgamento> [accessed 16 May 2012].

<sup>35</sup> Felícia Cabrita and Ana Paula Azevedo, "Caso dos submarinos vai ao Supremo" in *SOL Online*, 7 June 2011. Available at: [http://sol.sapo.pt/inicio/Sociedade/Interior.aspx?content\\_id=21237](http://sol.sapo.pt/inicio/Sociedade/Interior.aspx?content_id=21237) [accessed 24 February 2012].

<sup>36</sup> LUSA, "Caso de submarinos não pode ficar 'em águas de bacalhau'" in *Diário de Notícias Online*, 20 December 2011. Available at: [http://www.dn.pt/politica/interior.aspx?content\\_id=2197705](http://www.dn.pt/politica/interior.aspx?content_id=2197705) [accessed 24 February 2012].

<sup>37</sup> LUSA, "Início do julgamento marcado para 17 de setembro" in *Diário de Notícias Online*, 26 January 2012. Available at: [http://www.dn.pt/inicio/portugal/interior.aspx?content\\_id=2265465](http://www.dn.pt/inicio/portugal/interior.aspx?content_id=2265465) [accessed 24 February 2012].

<sup>38</sup> Nelson Morais, "Procurador novo nos submarinos" in *Jornal de Notícias Online*, 29 January 2011. Available at: [http://www.jn.pt/PaginalNacional/Policia/Interior.aspx?content\\_id=1769630](http://www.jn.pt/PaginalNacional/Policia/Interior.aspx?content_id=1769630) [accessed 16 May 2012].

<sup>39</sup> Transparência e Integridade, Associação Cívica, *Relatório Sistema Nacional de Integridade – Portugal*, Pilar Ministério Público e Organismos de Investigação Criminal (Law Enforcement pillar), May 2012. General Report available at: [http://www.transparency.org/files/content/pressrelease/20120510\\_SistemaNacionalDeIntegridade\\_PO.pdf](http://www.transparency.org/files/content/pressrelease/20120510_SistemaNacionalDeIntegridade_PO.pdf) [accessed 16 May 2012].

**Case Isaltino Morais.**<sup>40</sup> An indictment was issued in this case in April 2007. The main defendant, Isaltino Morais, is the mayor of the municipality of Oeiras, and is charged with passive bribery, unlawful economic advantage, money laundering, abuse of functions, and tax evasion.

These offences relate to the alleged abuse by the mayor of his functions by providing illegal licensing of construction projects while receiving money for this licensing. The funds received through these bribes were allegedly stored in Swiss bank accounts. The Prosecutor's Office requested more than €600,000 as damages (compensatory) in favour of the Portuguese State.

The first instance court sentenced Isaltino Morais to seven years imprisonment, loss of mandate and c. €460,000 compensation. The imprisonment sentence was reduced to two years by Lisbon's Court of Appeals.<sup>41</sup>

There have been several delays in the criminal procedure which triggered the statutes of limitations for some of the abovementioned offences, and consequent impunity of their alleged criminal agent, Isaltino Morais. These includes delays in responding to MLA requests and constant appeals to higher courts; as in the Portuguese legal system, statutes of limitation periods continue to have an effect even after a first instance decision. Although already convicted for the crimes of money laundering and tax fraud, the mayor of Oeiras continues to avoid the application of his imprisonment sanction by continuing to appeal to higher or different courts<sup>42</sup> (such as the Constitutional Court), and has recently managed to expire the statutes of limitations of an additional crime<sup>43</sup> (corruption) for this reason.

**Case Portucale.** An indictment was issued in the summer of 2007 and was confirmed by the Criminal Instruction Court on 27 February 2010 against Abel Pinheiro (businessman and supporter of political party CDS/PP), José Manuel de Sousa, Luís Horta e Costa, Carlos Calvários (administrators from Grupo Espírito Santo [GES]), and António de Sousa Macedo (former general director of Forests).

The defendants are accused of participating in a scheme in which members of the political parties (PSD and CDS/PP), in government at the time of the events in 2005, illicitly supported a construction project of the company Portucale which belongs to GES in Benavente, and allowed more than 2,500 cork oak trees (a protected species) to be cut down.

In exchange, the parties involved allegedly received from GES a financial donation amounting to €1 million. Although the ministers who signed the administrative documents allowing the removal of protected species have not been accused, a number of administrators from GES and public officials from CDS/PP are currently on trial.

The defendants have been charged with several offences, including trading in influence and forgery of official documents, and the case has already been to trial. The final sentence, made available on 12 April 2012, acquitted all suspects.<sup>44</sup>

Additional note: it was from the Portucale case that the first evidence regarding the Submarines case was acquired.

### 3. Examples of good practice

Due to international pressure and the increasing concern about corruption since the beginning of the economic crisis, the Portuguese State and authorities have been putting an extra degree of effort into tackling corruption. Although the actions taken until now lack coordination, strategy and efficiency, there are still some examples of good practice which should be highlighted:

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<sup>40</sup> A full timeline of this case can be found at: <http://sicnoticias.sapo.pt/pais/2011/09/30/caso-isaltino-cronologia> [accessed 24 February 2012].

<sup>41</sup> LUSA, "Caso Isaltino: Relação reduz pena de prisão para 2 anos e anula perda de mandato" in *Jornal de Notícias Online*, 13 July 2010. Available at: [http://www.jn.pt/paginainicial/interior.aspx?content\\_id=1617565](http://www.jn.pt/paginainicial/interior.aspx?content_id=1617565) [accessed 24 February 2012].

<sup>42</sup> Lilitana Monteiro, "Isaltino Morais evita outra vez ordem de prisão" in *Rádio Renascença Online*, 9 May 2012. Available at: [http://rr.sapo.pt/informacao\\_detalhe.aspx?fid=25&did=61585](http://rr.sapo.pt/informacao_detalhe.aspx?fid=25&did=61585) [accessed 16 May 2012].

<sup>43</sup> Joana Ferreira da Costa, "Isaltino já escapou à condenação por corrupção" in *SOL Online*, 11 May 2012. Available at: [http://sol.sapo.pt/inicio/Sociedade/Interior.aspx?content\\_id=49105](http://sol.sapo.pt/inicio/Sociedade/Interior.aspx?content_id=49105) [accessed 16 May 2012].

<sup>44</sup> LUSA/Paula Torres de Carvalho, "Absolvidos todos os arguidos do caso Portucale" in *Público Online*, 12 April 2012. Available at: <http://www.publico.pt/Sociedade/absolvidos-todos-os-arguidos-do-caso-portucale-1541798> [accessed 14 May 2012].

- a. The establishment of an Anti-Corruption Unit (Unidade de Combate à Corrupção – UNCC) within the judiciary police, which, in coordination with the DCIAP and Lisbon’s Department for Penal Action and Investigation (DIAP-LX), has been gradually investigating complex cases with some degree of success. It is, however, yet to be seen whether this success was by chance or whether it results from consolidated investigative practices and methodologies that have gradually been incorporated into the *modus operandi* of these bodies.
- b. The independence demonstrated by certain prosecutors and judges in the prosecution of high-profile and high-pressure criminal proceedings such as the Submarines (MAN/Ferrostaal) case, the Freeport case or the Face Oculta (Hidden Face) case.
- c. The statutory independence of magistrates and judges prohibiting the accumulation of functions in the public and private sector, e.g. by prohibiting the exercise of any other professions except for the teaching and research of law or related legal issues.
- d. The recent recruitment of more criminal investigators for the judiciary police (one recruitment drive for 150 investigators in 2006, and one for 100 investigators in 2010). Although human resources are not the main obstacle to the efficiency of investigations, this recruitment has slightly aided the constantly-mentioned lack of human resources in this police body. Special training requirements and recruitment procedures should, however, be established to adequately respond to the needs of investigation bodies. The goal (faster, more efficient investigations) of this extra input of police human resources may, however, be thwarted by the recent decision not to recruit any new judicial magistrates and prosecutors for two consecutive years.
- e. The prioritisation, within the judiciary police and the Prosecutor’s Office, of criminal proceedings which are nearing the end of their respective statutes of limitations’ periods.
- f. Actions taken to partially deal with inadequate sanctions of certain corruption-related offences (see the case of Domingos Névoa in which the defendant, a successful entrepreneur, was convicted by the first instance court and fined a mere €5,000 for committing active bribery<sup>45</sup>): the new anti-corruption law package substantially increased imprisonment and fine sanctions for certain offences.

#### 4. Significant inadequacies in the enforcement system

One of the main conclusions of *Transparência e Integridade*, Associação Cívica’s recent National Integrity System assessment<sup>46</sup> of Portugal is the lack of coordination and strategy in the fight against corruption. This major issue is the root of all the inadequacies listed below:

***Lack of priority given to corruption cases by law enforcement agencies.*** Although corruption offences are investigated by the corruption unit of the judiciary police (UNCC), a specialised unit which allows for faster and more detailed investigations, there are still some concerns regarding how the overall system performs in order to reach an indictment by the Prosecutor’s Office. The Director of DCIAP (of the Prosecutor’s Office) has complained about the lack of priority given to certain offences, in particular to corruption-related offences, by the administrative inspectorates.<sup>47</sup> The administrative inspectorates are essential to the correct investigation and prosecution of offences, since their staff has been trained on specific issues and thus has specialised expertise, knowledge, and skills, such as local administration, environmental and urban construction rules, and public accounting directives.

<sup>45</sup> LUSA, “Domingos Névoa paga 5 mil euros por corrupção” in *Diário de Notícias Online*, 24 February 2009. Available at: [http://www.dn.pt/inicio/interior.aspx?content\\_id=1173240](http://www.dn.pt/inicio/interior.aspx?content_id=1173240) [accessed 11 May 2012].

<sup>46</sup> *Transparência e Integridade*, Associação Cívica, *Relatório Sistema Nacional de Integridade*, page 9. See note 38.

<sup>47</sup> Interview with the Director of the Central Department for Criminal Investigation and Prosecution, Cândida Almeida, 15 February 2011.



**Lack of skills and training to investigate corruption cases.** Lack of skills and training of criminal investigators, prosecutors and judges is a serious impediment to the enforcement of anti-corruption legislation. This lack of specific knowledge on corruption-related and other economic offences often leads to a lower rate in the detection of such offences and to a slower criminal procedure, due to prosecutors and judges requiring more time and resources to understand the legal framework and specifications.

Problems related to the training and education of magistrates (both judges and public prosecutors) start with their training at the school of magistrates (Centro de Estudos Judiciários<sup>48</sup>). The lack of training in non-legal subjects or specific training on criminality (economic or otherwise), leaves magistrates without the tools they need to carry out an efficient and speedy investigation or trial, and adds to the inherent productivity problems of the judicial system. The excessive number of cases the judiciary is faced with leads to delays and flaws in otherwise feasible prosecutions.

**Opportunities for procedural delays in processes and proceedings.** Although recent changes have considerably increased the periods of statutes of limitations regarding most corruption-related offences, all offences committed prior to the entry into force of these new provisions are still under shorter statutes of limitations. Due to this and to the nature of corruption-related offences ('inside pacts', 'victimless crime') late detection and procedural delays have a strong impact on the impunity or conviction of perpetrators.

Since the Portuguese legal system is considered to be "ultra-defensive"<sup>49</sup> of certain fundamental rights, particularly within criminal procedures, opportunities for procedural delays are common, revolving around the admissibility of criminal evidence and the constant appeal of court decisions.

**Lack of awareness raising.** Lack of public awareness has been often deemed as a major obstacle in fighting corruption. Although corruption-related offences have a strong presence in the media, public knowledge of what constitutes corruption, what specific behaviours and situations trigger it and what encourages whistleblowers to provide information, hardly exists.

Awareness-raising in the private sector is almost non-existent. The recommendations of the OECD Working Group on Bribery<sup>50</sup> on this particular issue have not yet been fully complied with. Companies are not aware of their liability (as legal persons), what sanctions may be incurred, or of the risks of corruption both in international trade and procurement.

## IV. Recent developments

In the last couple of years, the Portuguese system for the enforcement of corruption laws and the prevention of corruption has been evaluated by an ad-hoc commission created solely for that purpose. This temporary commission, called *Comissão Eventual para o Acompanhamento Político do Fenómeno da Corrupção e para a Análise Integrada de Soluções com Vista ao seu Combate*, was approved by the Portuguese Parliament in December 2009 and finished its work in late 2010, resulting in the approval of an anti-corruption law package. The DGJP of the Ministry of Justice is overseeing and monitoring the application of the recently approved measures and has issued a preliminary report on their implementation.<sup>51</sup>

Among the laws and decisions discussed by the commission and consequently approved by Parliament are the following:

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<sup>48</sup> [www.cej.mj.pt](http://www.cej.mj.pt).

<sup>49</sup> Although criticised by some, (mainly prosecutors) (see <http://www.inverbis.pt/2007-2011/ministeriopublico/excesso-garantias-arguidos.html>), the current system is thoroughly defended by others (mainly academia) (see <http://www.inverbis.net/2007-2011/opiniao/fernandapalma-discurso-antigarantismo.html>) [accessed 24 February 2012].

<sup>50</sup> OECD WGB, *Report on the application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 revised recommendation on combating bribery in international business transactions, Portugal: Phase 2*, October 2009. Available at: <http://www.oecd.org/dataoecd/31/47/44424102.pdf> [accessed 15 May 2012].

<sup>51</sup> Available at: [http://www.dgjp.mj.pt/sections/DestBanner/prevenir-e-combater-a/downloadFile/attachedFile\\_f0/Prevenir\\_combater\\_corrupcao\\_preliminar.pdf?nocache=1308589045.35](http://www.dgjp.mj.pt/sections/DestBanner/prevenir-e-combater-a/downloadFile/attachedFile_f0/Prevenir_combater_corrupcao_preliminar.pdf?nocache=1308589045.35) [accessed 24 February 2012].

- *Law 26/2010 of 30 August 2010* amending the Code of Criminal Procedure. This amendment allowed for the suspension of investigation stage periods while an MLA request is pending.
- *Law 32/2010 of 2 September 2010* amending the Criminal Code. The distinction between passive corruption for illicit and licit acts has been removed; the statutes of limitations for corruption offences has been extended to 15 years; and arbitrators, jurors and experts have been included in the definition of public officials.
- *Law 34/2010 of 2 September 2010* amending the professional legal regime of public officials (prohibiting the accumulation of public and private functions).
- *Law 36/2010 of 2 September 2010* amending the Credit Institutions and Financial Companies Legal Framework. It created in the Central Bank a central database that can be accessed by judges and public prosecutors in the framework of criminal investigations and criminal cases.
- *Law 37/2010 of 2 September 2010* abolishing the banking secrecy system.
- *Law 38/2010 of 2 September 2010* amending Law 4/83 on the public control of richness of persons holding political positions.
- *Law 41/2010 of 3 September 2010* amending Law 34/87 (introducing the same changes that were made to the Penal Code), applicable to political office holders, now including members of domestic public assemblies.
- *Law 42/2010 of 3 September 2010* amending Law 93/99 of 14 July 1999 concerning implementation of witness-protection measures in criminal procedures.

In addition, the Portuguese Parliament has recently approved a bill<sup>52</sup> providing for the creation of:

1. An Assets Recovery Office, which will perform its functions under the supervision of the judiciary police; and
2. An Assets Management Office, which will be in charge of the management of all assets confiscated or seized and perform its functions under the auspices of the Institute for Financial Management and Management of Justice Infrastructures.

Finally, the last and most important development (as mentioned above) was the bill criminalising illicit enrichment, making the Portuguese legal system compliant with UNCAC Article 20. The legal instrument (Bill 72/XII) containing this provision was approved in September 2011 with a majority of votes in the Portuguese Parliament, although the party of the previous government (Partido Socialista) voted against it. The Constitutional Court considered declared the bill unconstitutional.<sup>53</sup>

## V. Recommendations for priority actions

To ensure the correct implementation and enforcement of the UNCAC's articles and policies, the following actions are recommended (in order of importance):

1. Identify the major corruption-risk areas and assess the strengths and weaknesses of the current anti-corruption legal and institutional frameworks, both in terms of their

<sup>52</sup> Parliament's Official Gazette (Diário da Assembleia da República), II series A, N<sup>o</sup>. 122/XI/2 2011.04.06 (pp. 47-54).

<sup>53</sup> Available at: <http://www.tribunalconstitucional.pt/tc/acordaos/20120179.html> [accessed 7 April 2012].

preventive and repressive role. An assessment report would inform the anti-corruption national strategy and action plan.

2. Adopt a national anti-corruption strategy and action plan through a multi-stakeholder consultation process (involving the key anti-corruption agents in government, civil society, the business community and other relevant sectors). These strategic documents should include: a set of guiding principles to all bodies with competences in this domain; a diagnosis of the major corruption-risk areas, setting priorities and different modes of intervention; a diagnosis of existing means and resources, focusing on their performance and coordination and identifying areas of reform to improve their efficacy; definition of broad strategic guidelines and more concrete objectives; definition of a work plan with a timeline for the implementation of the proposed measures and clear landmarks; discussion of a budget for the fulfilment of those objectives; and the establishment of a method and set of indicators to assess results and impact.
3. Ensure high-quality recruitment oriented towards the specialisation needs of the investigative bodies, including regular performance evaluation of the various judicial actors with competences in the fight against corruption, through objective criteria and according to international best practice.
4. Establish an anti-corruption agency to independently investigate and prosecute corruption-related offences. This agency should either be provided with the necessary specialised human and material resources to ensure effective law enforcement on corruption-related offences, or existing departments (the Public Prosecutor's Office investigation and penal action departments, and the judiciary police's national unit for combating corruption) should be provided with the necessary human and material resources to ensure the effective detection, prevention and repression of corruption. This may be through the hiring and training of more criminal investigators, prosecutors, judges or experts; the implementation of database networks; or the creation of intelligence offices or departments.
5. Requests for cooperation from the Prosecutor's Office to public and private institutions should be treated with high priority and be fulfilled with maximum speed and with the necessary resources.
6. Public institutions, particularly general inspectorates and administrative inspectorates, must report any evidence of corruption-related offences to the Prosecutor's Office as soon as the evidence is discovered (even if during an audit).
7. Increase statutes of limitations for all corruption-related offences committed by political office-holders, and establish new grounds for suspension and interruption of statutes of limitations periods (such as the request for mutual legal assistance).
8. Increase public awareness of whistleblower-protection mechanisms.
9. Systematise the collection and analysis of statistical information in the field of criminal and civil sanctioning of corruption.
10. Address the issue of 'revolving doors' between members of the public and private sectors, either through legislation on conflicts of interests or restrictions to the public/private transition of political and executive mandate-holders.
11. Political office-holders' declarations of interest to the general public should be made more consistently and increased auditing of these declarations should be carried out.
12. Provide more material and human resources for effective witness-protection mechanisms.
13. Evaluate the impact of all these measures.

**Acknowledgments:**

This report has been prepared with a grant from the United Nations Democracy Fund (UNDEF) and the support of the Transparency International-Secretariat (TI-S). The authors of this report wish to express their appreciation for the advice and input from Francisca Teixeira Duarte of the Cardigos e Associados, Sociedade de Advogados RL law firm, who provided pro bono services, as well as for the support from TI-S. The author would also like to thank TrustLaw, the global service for free legal assistance run by the Thomson Reuters Foundation, and the global law firm Mayer Brown for its pro bono assistance in the preparation of the report.

