

Portugal – Civil Society Report

By Transparência e Integridade – Associação Cívica

An input to the UNCAC Implementation Review Mechanism: Second year of review of UNCAC chapters III and IV

-Executive Summary-

This is the executive summary of a report by Transparência e Integridade - Associação Cívica¹ that reviews Portugal'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 Portugal covering those two chapters.

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).

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)² on UNODC's website³, 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

¹ The full report is available at <http://www.uncaccoalition.org/en/uncac-review/cso-review-reports.html>. Its authors are Luís de Sousa, David Marques and Priscilla Serafini, Transparência e Integridade - Associação Cívica. 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.

² Direcção-Geral de Política de Justiça, website: www.dgpi.mj.pt.

³ See <http://www.unodc.org/unodc/en/treaties/CAC/country-pairings-year-1-of-the-review-cycle.html>.

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 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.

The full review report by Transparência e Integridade - Associação Cívica can be found at <http://www.uncaccoalition.org/en/uncac-review/cso-review-reports.html>