

Distr.: General

14 October 2011

English only

**Conference of the States Parties to the United
Nations Convention against Corruption**
Fourth session
Marrakech, Morocco, 24-28 October 2011
Item 2 of the provisional agenda


**Document submitted by Transparency International*, a
non-governmental organization in consultative status
with the Economic and Social Council**

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V.11-86437 (E)



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Brazil - Civil Society Report by Amarribo Brazil

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 an Amarribo Brasil report¹ that reviews Brazil's implementation and enforcement of selected articles in 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.

The UNCAC articles that receive particular attention in the 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), witness protection (Article 32), whistleblower protection (Article 33), and mutual legal assistance (Article 46).

In the last few years Brazil has set examples of good practice and advances in the compliance of the legislation against corruption. At the same time there are some flaws in terms of enforcement against corruption offences. Among the most notable is 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 received a review team visit of evaluators. According to information from the Comptroller General of the Union, Civil Society organisations were invited to contribute to the review process.

Table 1 Transparency and CSO participation in the review process

Has the government disclosed the data of the contact point in the country?	No
Was the civil society consulted for the preparation of the self-evaluation?	No
Was the self-evaluation published on the internet or provided to the CSOs?	Yes
Was the country in agreement with a visit to the country?	Yes
Was a country's visit carried out?	Yes
Was Civil Society invited to provide comments to the official reviewers?	Yes
Did the government commit to publish the full country's report?	Don't know

Availability of information

¹ The full report is available at <http://www.uncaccoalition.org/en/uncac-review/cso-review-reports.html>. Its authors are Dr. Rita de Cássia Biason, Ana Lúcia Gasporoto and Isabela Gerbelli Garbin, Josmar Verillo, Amarribo Brasil. A draft of the report was shown to the government and 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.

To elaborate this report the biggest difficulty was to locate the information. Even though there was help from the employees of the Comptroller General of the Union, a lot of the data was scattered in several governmental *websites*, others were not available and this represented an obstacle. Another aspect that must be emphasized is the lack of familiarity of Brazilian Non Governmental Organizations with the target/object of this report, which means they have not assembled and made available any relevant information.

Implementation and enforcement

This report concludes that there are no significant incompatibilities between the Brazilian legislation and UNCAC, considering that the country since 2000 and 2002, respectively, had already ratified two other important Conventions against Corruption (The OECD Convention and OAS Convention), which included several equivalent articles.

The implementation and fulfillment of the UNCAC has demanded dedication and inter-institutional articulation among the Organs of the Public Administration, among which stand out: Comptroller General of the Union (CGU) and its Secretariats especially, Secretariat to Prevent Corruption and Strategic Information (SPCI) and 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.

Nevertheless, some the UNCAC requirements have not yet been sufficiently implemented in the Brazilian legal framework, such as the liability of corporations, the protection of victims and witnesses, the regulation of lobbying and the improvement of rules to avoid “favoritism” in the hiring of public employees. These are therefore the main challenges and areas of interest on which the country must concentrate its future actions to achieve full compliance of the Brazilian legislation to the UNCAC.

Recommendations on priority actions

- Introduce criminal liability of legal persons
- Provide greater resources so as to reduce delays in the prosecution of corruption offense
- Strengthen legal cooperation in criminal matters between the signatories of the convention aiming at increasing the investigations into money laundering and extradition of proceeds of corruption;
- Disseminate information about the stages of implementation of the UNCAC in a specifically created website;
- Creation of a federal law making a program to protect witnesses and witnesses mandatory in all the Brazilian States; Create legal mechanisms that allow the witness protection program to be a State program rather than the current Federal? Government one, creating and providing stability and financial resources to the program;
- Include a specific device that allows the confiscation of assets and property derived from illicit enrichment and corruption.

The full Amarribo Brazil review report can be found at
<http://www.uncaccoalition.org/en/uncac-review/cso-review-reports.html>