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Brazil: Civil Society Report
by Transparency International Brazil
An input to the UNCAC Implementation Review Mechanism:
Fourth year of review of UNCAC Chapters II and V

-Executive Summary-

This is the executive summary of a civil society shadow report from May 2022 that reviews Brazil's implementation and enforcement of selected articles of UN Convention against Corruption (UNCAC) Chapters II (Preventive Measures) and V (Asset Recovery). The report was supported by the UNCAC Coalition and is intended as a contribution to the UNCAC peer review process of Brazil covering those two chapters. The full report is available on the UNCAC Coalition's website.

Brazil has made strides in implementing provisions under Chapter II and Chapter V of the UN Convention Against Corruption by consolidating several anti-corruption bodies and creating the National Strategy Against Corruption and Money Laundering (ENCCLA). However, Brazil's legal and institutional anti-corruption frameworks suffer from political interference, eroding the scope of practices and policies; conflicts between branches of government and threats to civil society and the media.

Assessment of the review process

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| Has the government disclosed information about the country focal point? | Yes | The appointed focal point is Ms. Mônica Bulhões e Silva, Federal Auditor of Finance and Control in CGU. |
| Was the review schedule published somewhere? | No | The review schedule was not published, but the Special Division for International Affairs published broad updates in its bimonthly bulletins. |
| Was civil society consulted in the preparation of the self-assessment checklist? | No | |
| Was the self-assessment checklist published online or made available to civil society? | No | In response to a FOIA request, CGU did not disclose the self-assessment checklist under the argument that it is a "preparatory document", which can only be disclosed after the completion of the process it intends to subsidize, as per art. 7, §3, of the FOI Act. |
| Did the government agree to a visit to the country? | Yes | |
| Was a country visit undertaken? | Yes | After being postponed due to Covid-19 restrictions, a country visit took place on May 12th, 2022. |

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| Was civil society invited to provide input to the official reviewers? | Yes | CGU informed that civil society organizations would be invited to meet with official reviewers once there was a new schedule for their visit. In response to a FOIA request, it provided a list of six organizations: Movimento de Combate à Corrupção Eleitoral, Instituto Brasileiro de Governança Corporativa, Transparência Internacional - Brasil, Open Knowledge Brazil and Centro de Estudos em Administração Pública e Governo (Fundação Getúlio Vargas), Associação Contas Abertas. On May 12th, 2022, the civil society meeting during the country visit included representatives from four of those organizations: Movimento de Combate à Corrupção Eleitoral, Instituto Brasileiro de Governança Corporativa, Transparência Internacional - Brasil and Open Knowledge Brazil. |
| Was the private sector invited to provide input to official examiners? | N/A | No information provided. |
| Has the government committed to publishing the full country report? | No | The government published the report for the first review cycle. In response to a FOIA request, CGU informed that the self-assessment checklist will be made public after the conclusion of the review process, “as it happened in the first cycle”. No similar statement was made with regards to the full report, but one might expect that if the same standard is applied, the full report will be published. |

Main findings and Recommendations (R)

Public sector employment

Freely nominated positions are subject to nepotism, embezzlement, logrolling and other irregular practices. The country lacks legal references to fight these practices, which negatively affects the enforcement of anti-corruption standards.

R: Approve rules creating a cooling-off period for the nomination of individuals to public offices; develop oversight and accountability mechanisms on freely nominated individuals in the public service.

Political financing

The Superior Electoral Court strives to increase transparency, accountability and the use of open data, monitoring resources and expenditures during and after elections. However, the use of slush funds by political parties and electoral campaigns remains an issue. The Supreme Court decision that prohibited donations from legal entities created a rush to increase the amount of public funds available to candidates and parties.

R: Revoke the Special Fund for Campaign Financing or approve limitations to the amount of resources and how parties can deploy them.

Codes of conduct, conflicts of interest & asset declarations

The Clean Record Act was enacted to regulate the right to run for office in electoral procedures. The federal government and subnational governments have adopted codes of conduct and the Office of the Comptroller General monitors the evolution of asset declarations for federal civil servants. However, there is still a lack of monitoring conflicts of interest, and the Federal Administration’s policy on this issue is poorly enforced.

R: Develop efforts to monitor the evolution of assets and to control conflicts of interests; encourage states and municipalities to adopt subnational codes of conduct and measures against conflicts of interest.

Whistleblower protection

Brazil has no centralized system for the collection of corruption reports, but the Office of the Comptroller General offers a platform regarding cases in the federal administration. Law No. 13,608/2018 fosters the adoption of reporting mechanisms, but enforcement remains insufficient. Brazil has failed to implement a coordinated national system to support whistleblowing and protect whistleblowers.

R: Develop a national program dedicated to corruption reports and to the protection of whistleblowers, publishing updated and transparent data on their efficiency.

Public procurement

In 2021 Brazil approved Law No. 14,133/2021, promoting reform on procurement legislation, creating the National Platform of Public Procurement and the role of “procurement officer”, introducing the obligation that companies have compliance and integrity programs to bid for contracts, and several other measures. Nevertheless, a lack of effort to advance open data in procurement is notable.

R: Adopt measures to advance in open data for public procurement at all levels and branches of government and strengthen civil society oversight.

Public finances

Legislation on the management of public finances has been generally enforced since the Fiscal Responsibility Act, and the Federal Court of Accounts has built important expertise in this area. In 2021, it was revealed that the government was using a ‘secret budget’ to grant support in the legislative. In exchange for the power to define the use of resources, members of Congress would vote within the government’s interests.

R: Improve transparency and auditing practices over the approval and execution of parliamentary amendments to the Budget.

Access to information and participation of society

The Access to Information Act was an important achievement for civil society and the media, improving social oversight of government bodies. However, it still does not grant independence to access to information authorities or regulates exceptions to publicity.

R: Ensure the disclosure of all data of public interest in open format, and respect deadlines and legal requirements for FOI request responses; revert measures undertaken by the current administration that reduced civil society participation.

Independence in the judiciary

In Brazil, both the judiciary and prosecution services are independent institutions with functional and administrative autonomy. They are overseen by specific bodies – the National Council of Justice (CNJ) and the National Council of the Public Prosecutor’s Offices (CNMP). The councils still lack a robust integrity program, reliable reporting mechanisms and effective sanctions. High-level authorities have been questioned about connections with politicians and weak independence.

R: Develop stricter accountability mechanisms for judges and prosecutors at the CNJ and CNMP.

Private sector transparency

The approval of the Clean Company Act led to the conclusion of leniency agreements, the imposition of sanctions and the adoption of integrity programs. Nevertheless, it has raised doubts regarding the ability of enforcement agencies to implement the law due to their uncertain scope of powers and lack of coordination. Brazil lacks effective measures to promote beneficial ownership transparency.

R: Enforce rules on the registration of beneficial ownership and grant the transparency of data; encourage the development of safe reporting channels and whistleblower protection measures in the private sector.

Anti-money laundering

Law No. 9,613/1998 created a comprehensive legal framework and the Council for the Control of Financial Activities (COAF). The law was amended in 2012 to expand the scope of predicate crimes, impose and expand obligations to financial and non-financial institutions. The regulation of anti-money laundering obligations of political parties and law firms is still a challenge. The COAF lacks the resources to perform its functions and has suffered attacks to its independence.

R: Leverage the capacities of anti-corruption and anti-money laundering institutions to tackle environmental crimes; protect the anti-money laundering system against external interference and increase its integration with anti-corruption bodies.

Asset recovery

Brazilian legislation allows other states to pursue the recovery of assets through national courts, and to share information with foreign states. The country's authority on international cooperation is the Department for Asset Recovery and International Cooperation (DRCI). Although responsible for advances during the Car Wash investigations, it lacks adequate resources and staff and has low institutional independence.

R: Improve institutional knowledge and practice on confiscation tools, international cooperation and other issues that can help develop Brazil's asset recovery system.