

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

14 November 2023

This is the executive summary of a civil society parallel report from September 2022 reviewing Brazil's implementation and enforcement of selected articles in 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.¹

Since 2019, legal and institutional anti-corruption frameworks in Brazil have suffered several blows, with political interference in agencies, eroding or limiting the scope of transparency and integrity-related practices and policies, conflicts between branches of government and threats to civil society and the press. In order to overcome these threats, Brazil needs to implement effective whistleblowing protection mechanisms, reinforce budget transparency, especially to parliamentary amendments, strengthen political integrity policies, publish beneficial ownership data, and ensure the independence or autonomy of anti-corruption institutions, with strict accountability and integrity standards.

Assessment of the Review Process

Has the government disclosed information about the country focal point?	Yes	The focal point is in the Special Advisory Office for International Affairs of the Office of the Comptroller General of the Union (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. ²

¹ The report was published on the UNCAC Coalition website in September 2022: <https://uncaccoalition.org/uncaccivilsocietyreportbrazil/>. During the course of 2023, the UNCAC Coalition supported Transparency International Brazil in conducting follow-up activities based on specific recommendation resulting from its parallel report. More information will soon be available here: <https://uncaccoalition.org/uncac-review/cso-review-reports/follow-up-activities/>.

² Available at <https://repositorio.cgu.gov.br/handle/1/34049>, accessed on December 3, 2021.

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	CGU did not disclose the self-assessment checklist, arguing that it is a “preparatory document”, which can only be disclosed after the completion of the process it intends to subsidize, per art. 7, §3, of the Freedom of Information 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 12, 2022.
Was civil society invited to provide input to the official reviewers?	Yes	The civil society meeting during the country visit included representatives from four organizations, including TI Brazil.
Was the private sector invited to provide input to official examiners?	Unknown	
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.

Main Findings and Recommendations (R)

Public Sector Employment

Brazil has a consolidated public service but gaps remain concerning freely nominated positions, which are subject to nepotism, clientelism and embezzlement. Oversight mechanisms, risk assessments, clear hiring standards and selection procedures are needed to tackle this issue.

R: Adopt and improve oversight and integrity mechanisms in the public service, especially those related to asset declarations, conflicts of interest, nepotism and freely nominated positions.

Political Financing

The main source of political financing in Brazil is public funds. The amounts destined for political parties has soared to more than 1 billion USD for the 2022 elections, meaning large sums of public resources have been diverted to campaigns and political parties, not to social

policies. The Superior Electoral Court has strived to increase transparency, accountability and the use of open data, monitoring resources and expenditures during and after elections. However, candidates and political parties continue to skirt expenditure rules, including diversity-promoting legislation. There are also gaps in the use of slush funds (“caixa dois”), which is not considered a crime. The current framework for detecting and prosecuting illegal campaign contributions is dysfunctional, especially because the Electoral Justice is not properly equipped to deal with criminal matters.

R: Revoke the Special Fund for Campaign Financing or approve limitations to the amounts of resources directed to it and to how parties and campaigns can deploy them. Criminalize “caixa dois” and redistribute across jurisdictions cases connected with electoral crimes from the Electoral Justice to the Federal Justice.

Codes of Conduct, Conflicts of Interest and Asset Declarations

The federal government and many subnational governments have adopted codes of conduct, and the Office of the Comptroller General monitors the evolution of asset declarations, which are not, however, public. There is a lack of systematized efforts to prevent and detect conflicts of interest in the legislative and judiciary, and the Federal Administration’s policy on this issue is poorly enforced.

R: Develop systematized efforts to better monitor the evolution of assets and to control conflicts of interests in all branches and levels of government.

Whistleblower Protection

The Office of the Comptroller General offers a reporting platform at the federal level, and recent legislation created minimum standards for protecting whistleblowers. However, there is no robust national program to encourage whistleblowing and to grant protection to whistleblowers in the public sector and private sectors. There is insufficient protection for land and environmental activists.

R: Develop an integrated national program dedicated to corruption reports and to whistleblower protection, including for land and environmental defenders, providing safe channels and publishing updated and transparent data on their efficiency. Ratify the Escazu Agreement.

Public Procurement

Transparency and integrity have increased in past decades, with good access to information through transparency portals. In 2021, a law reforming procurement legislation was approved, inaugurating a National Platform of Public Procurement, and introducing the obligation for companies to have integrity programs to bid for certain contracts, among other advancements. Nevertheless, efforts to advance open data in procurement are lacking, and the complex and heterogenous reality of local governments give rise to substantial corruption risks.

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

Public Finances

Legislation on public finance management is enforced through the Fiscal Responsibility Act. However, the use of parliamentary amendments to the budget as currency for political support violates transparency and integrity standards, raising corruption risks and putting the national budget at the service of parliamentarians' electoral 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 a significant achievement towards increasing social accountability. However, it lacks provisions to grant the necessary independence to authorities at the local levels and more detailed regulation on exceptions to transparency would harmonize the application of the law.

R: Ensure the disclosure of all data of public interest, including environmental, when possible, in open format, and respect deadlines and legal requirements for responses to freedom of information requests.

Independence of the Judiciary

The Judiciary and prosecution services are independent institutions with functional and administrative autonomy, overseen by the National Council of Justice and the National Council of the Public Prosecutor's Offices to increase transparency, efficiency and integrity. The councils, however, lack a robust integrity program, reliable reporting mechanisms and effective sanctions. High-level authorities in the Judiciary and the Public Prosecution have been questioned for lacking independence.

R: Develop stricter accountability mechanisms for judges and prosecutors and approve rules creating a cooling-off period for the nomination to high public offices at the justice system.

Anti-Money Laundering (AML)

There is a comprehensive legal framework, which was last amended in 2012 to expand the scope of predicate crimes, increase procedural efficiency, impose obligations to new entities and expand those that apply to financial and non-financial institutions. Nevertheless, there is a need to regulate AML obligations of political parties and lawyers, and to improve regulation and enforcement of money laundering connected to environmental crimes. Brazil's Financial Intelligence Unit lacks resources to adequately perform its functions, and has suffered attacks to its independence and effectiveness from the Executive and the Judiciary.

R: Enforce rules on the registration of beneficial ownership and make such data transparent. Protect the anti-money laundering system against external interferences and increase its cooperation with law enforcement officials. Leverage the capacities and the experience of anti-corruption and AML institutions to tackle environmental crimes.

Asset Recovery

Brazilian legislation allows other states to pursue asset recovery through national courts, although no concrete case was found. The same applies to the possibility of proactively sharing information with foreign states. However, the institutional framework for international cooperation rests on uncertain legal grounds. Part of the resistance to formalizing the current structure can be attributed to the difficulty in finding an agreement between the Prosecution Services, the Judiciary and the Executive. The main authority on international cooperation is the Department for Asset Recovery and International Cooperation (DRCI), a division within the Ministry of Justice that still lacks adequate resources and staff to perform its duties. It has no statutory footing and it suffers from low institutional independence, being vulnerable to political interference.

R: *Strengthen the DRCI by providing it with more resources and adequate institutional standing. Improve international cooperation regulation and practices, in line with the UNCAC's provisions.*