

Puerto Rico: Civil Society Report by Centro de Gobernanza Pública y Corporativa

An input to the UNCAC Implementation Review Mechanism of the USA:
Third year of review of UNCAC Chapters II and V

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This is the executive summary of a civil society parallel report reviewing Puerto Rico'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 the USA covering those two chapters. The full report is currently being finalized and will be published on the UNCAC Coalition's website.¹

Provisions for the prevention of corruption have largely been implemented into the legal framework in Puerto Rico, but the integration of asset recovery provisions are still largely pending. Overall, implementation in practice is lacking. The criminalization and sanctioning of corruption, and widespread impunity represent major challenges, and recent hurricanes, earthquakes and the pandemic have slowed down the fight against corruption.

Assessment of the Review Process

Puerto Rico is a territory of the USA, whose second cycle review is nearly completed, with the publication of its country report still pending, in line with the USA's commitment to the UNCAC Coalition's Transparency Pledge.² The USA does not take Puerto Rico into consideration sufficiently in its implementation of international conventions. While the USA's 1st review cycle country report³ mentions Puerto Rico superficially, it does not provide sufficient information on the its compliance with the Convention.

Main Findings and Recommendations (R)

Preventive Anti-Corruption Policies and Practices

Puerto Rico's 2018 Anti-Corruption Code⁴ consolidated the Government's public policy on corruption, previously scattered across multiple laws. While it regulates protection of those

¹ UNCAC Coalition, Civil Society Parallel Reports, <https://uncaccoalition.org/uncacparallelreportpuertorico/> and <https://uncaccoalition.org/uncac-review/cso-review-reports/>.

² <https://uncaccoalition.org/uncac-review/transparency-pledge/>.

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https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2013_11_19_USA_Final_Country_Report.pdf.

⁴ <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Corrupci%C3%B3n/2-2018.pdf>.

who report acts of corruption, and aims to increase interagency cooperation; many areas still need to be strengthened.

R: Amend the Anti-Corruption Code to strengthen the protection for whistleblowers, reparation for damages caused by corruption, the management of conflicts of interest, measures to address impunity and the asset recovery framework; and promote greater enforcement.

Anti-Corruption Bodies

The Anti-Corruption Code created the Group for the Prevention and Eradication of Corruption⁵ to promote the cooperation of all state and federal government agencies involved in the fight against corruption, improve the government's ability to receive information and complaints about possible corruption offenses and strengthen processes to prevent impunity. However, important institutions in the fight against corruption are left out of this group.

R: Improve inter-agency anti-corruption work, and review the bodies' appointment of directors, ensuring their independence.

Public sector employment

Act Number 8. of 2017 standardizes entry into the public service at all levels of government on a merit basis and created the Office of Administration and Transformation of Human Resources of the Government of Puerto Rico. In practice, however, staff recruitment processes have remained in the hands of each public agency.

R: Increase transparency and eliminate arbitrary hiring to avoid political patronage.

Political financing

The Electoral Code of 2011 has been applied equally and without distinction between political parties; however, it requires substantive review to ensure effective enforcement. The issues arising from Political Action Committees (PAC) campaign financing and the US Supreme Court's decision regarding Citizens United,⁶ which impacts Puerto Rico, make it difficult to identify the persons or entities that contribute amounts above the allowed limits.

R: Amend the Electoral Code to strengthen integrity in the electoral processes and improve the oversight of political parties and verification mechanisms. Strengthen oversight of PACs.

Codes of conduct, conflicts of interest and asset declarations

The ethics law of 2012⁷ created the Office of Government Ethics (OEG) to oversee the ethical performance of public servants of the Executive Branch. All candidates for elective office and nominated by the governor must file asset and interest declarations before entering and after

⁵ <https://precopr.com/>.

⁶ Brennan Center for Justice (2019), Citizens United explained, <https://www.brennancenter.org/our-work/research-reports/citizens-united-explained?ref=indi.ca>.

⁷ <https://bvirtualogp.pr.gov/ogp/Bvirtual/LeyesOrganicas/Pages/1-2012.aspx>.

leaving public office, and are required to take ethics training. The OEG monitors these declarations for inconsistencies, a summary of which is published on its website,⁸ and refers suspicious cases to the appropriate entity. Only in exceptional cases can full asset declarations be requested.

R: Strengthen oversight of compliance with ethical standards for public servants, contractors and service providers, and oversight of conflicts of interest.

Whistleblower protection

Article 1 of the Anti-Corruption Code declares strengthening whistleblower protection a priority. However, the lack of protocols and redundant processes for receiving and processing complaints, and absence of a record of persons who have requested whistleblower protection under current regulations, is evidence of the need to update this legislation.

R: Ensure the effective implementation of the whistleblower protection framework, strengthen complaint mechanisms to ensure follow-up, anonymity and effectiveness of protection.

Public procurement

The Public Procurement Act of 2019⁹ and creation of the General Services Administration to oversee all government procurement were an important step forward. However, the questioning of awards and lack of transparency in procurement processes, especially with the private sector, continue to be a cause of grave concern. The unjustified increase of direct awards of contracts without open tenders in times of hurricane, earthquake and pandemic crises has been a constant.

R: Reduce direct awards of contracts and adopt international standards of transparency and open contracting, optimizing the use of digital tools for tracking, oversight and monitoring of public procurement processes.

Management of public finances

In 2016, in the midst of a financial crisis, the US Congress enacted the Puerto Rico Oversight, Management and Economic Stability (PROMESA) Act,¹⁰ establishing a Fiscal Control Board to restructure the territories' debt. Puerto Rico's legislature has since been compelled to submit fiscal plans and budgets to the Board, which continue to be questioned and rejected. This is a setback in the country's governance, making its lack of powers as a territory of the United States evident.

R: Strengthen the coordination of agencies involved in budget formulation and management, focusing on transparency and accountability. Ensure spaces for discussion and participation of society in the design of the budget and definition of

⁸ <https://www.eticapr.net/informes-financieros/>.

⁹ <https://bvirtualogp.pr.gov/ogp/Bvirtual/LeyesOrganicas/pdf/73-2019.pdf>.

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<https://www.govtrack.us/congress/bills/114/s2328/summary#:~:text=The%20Puerto%20Rico%20Oversight%2C%20Management%2C%20and%20Economic%20Stability,order%20to%20combat%20the%20Puerto%20Rican%20government-debt%20crisis>.

public finance management priorities. Ensure sufficient budget for institutions involved in anti-corruption measures.

Judiciary and Public Prosecutor's Office

The Department of Justice is in charge of the administration of justice, the appointment of judges and notaries, penal institutions, and appeals. Employees of the judicial branch are also required to submit asset declarations. However, trust in the judiciary is low.

R: Effectively combat impunity, apply effective sanctions, and adopt international best practices to institutionalize appointment processes for judges, prosecutors and attorneys general to guarantee judicial independence.

Access to information and civil society participation

While Puerto Rico passed an Access to Public Information Act¹¹ and Open Data Act¹² in 2019, they do not comply with international standards, are ambiguous and contradictory in terms of their application, especially in municipalities.

Legislation generally does not foresee the engagement of civil society in the development of laws and action plans, and the censorship of investigative journalists and the media continue to be obstacles for citizens to exercise an active role in governmental decision-making, oversee government actions, and raise awareness of poor government practices that facilitate corruption.

R: Amend the two acts in accordance with international best practice standards to ensure effective access to information. Provide society with transparency and open data mechanisms that make true citizen participation in decision-making and governmental oversight viable in practice.

Private sector transparency

The government's regulation of transparency in the private sector is fragmented and vague. The Anti-Corruption Code of 2018 regulates the behavior of the private sector when dealing deals with the public sector, including a requirement to include a certification of due process in every related invoice.

R: Develop regulations to promote the incorporation of anti-bribery and anti-fraud compliance programs in the business sector.

Anti-money laundering

Puerto Rico, as a territory of the USA, has extensive legislation that regulates financial activities. The Financial Crimes Enforcement Network (FinCEN),¹³ a federal agency, analyzes information collected through the Bank Secrecy Act, to detect money laundering. However, weaknesses in the system persist, for example, in addressing money laundering risks, a lack of transparency in the disclosure of sanctions and public official's asset declarations.

¹¹ <https://ogp.pr.gov/Documents/Ley-141-2019.pdf>.

¹² <https://bvirtualogp.pr.gov/ogp/Bvirtual/levesreferencia/PDF/122-2019.pdf>.

¹³ <https://www.fincen.gov/>.

R: Improve the practical application of anti-money laundering legislation. Develop and implement regulations to collect and exchange beneficial ownership information to facilitate the investigation and prosecution of corruption. Establish a publicly accessible database to facilitate the identification of beneficial owners of companies in real time.

Asset recovery

In August 2022, Act No. 76¹⁴ made mandatory the imposition of the restitution penalty in cases of crimes against the treasury and established sanctions and penalties for each corruption offense. Nevertheless, there is no agency in place responsible for the recovery of public funds and resources that have been misappropriated as a result of public corruption, fraud, or other crimes against the State. Likewise, there is no legal mechanism or remedy that allows agencies to recover assets, funds or public resources.

R: Promote adequate implementation of the recently approved legislation on asset recovery. Develop and publish a complete, clear, updated and real register on the administration, disposition, restitution and disposal of assets and goods.

¹⁴ <https://www.lexjuris.com/lexlex/leyes2022/lexl2022076.htm>.