Facing legal battles abroad to combat corruption: the Brazilian experience
Types of legal remedies against corruption: criminal, civil and administrative

Cases to apply non-criminal procedures (NCP):
- criminal procedure is not possible (v.g. death)
- criminal procedure is not effective (v.g. immunities)
- proof available is not beyond a reasonable doubt
- compensation for damages caused by corruption
- proprietary claims (v.g. restitution of proceeds of crime owned by the State)
- disgorgement of profits
- sanctions by unjust enrichment

Facing legal battles abroad to combat corruption
<table>
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<th>Source of authority</th>
<th>Possible punishments</th>
<th>Burden of proof</th>
<th>Objectives</th>
<th>Enforcers</th>
<th>Examples of enforcement agencies</th>
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<td>Criminal</td>
<td>Written laws</td>
<td>Beyond a reasonable doubt or intimate conviction</td>
<td>Punish, deter, rehabilitate, restore victim’s position</td>
<td>Prosecutors</td>
<td>- US Department of Justice - UK Serious Fraud Office</td>
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<tr>
<td>Civil</td>
<td>Written laws or case law</td>
<td>Probability, more likely than not to have committed the infraction</td>
<td>Punish, deter, confiscate profits derived from illegal activity, compensate for harm caused</td>
<td>Prosecutors, regulators</td>
<td>- US Securities and Exchange Commission - UK Serious Fraud Office</td>
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<td>Administrative</td>
<td>Written laws or regulations</td>
<td>Highly variable, usually lower than criminal standard</td>
<td>Punish, deter, regulate activities.</td>
<td>Regulators</td>
<td>- US Securities and Exchange Commission - UK Financial Conduct Authority</td>
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</table>
Key concepts in NCP to combat corruption:

- NCP do not replace criminal prosecution
- NCP authorities shall work jointly with criminal authorities
- NCP shall be filed in the more “suitable” jurisdiction (forum shopping)
Facing a legal battle abroad: What type? (article 53 of UNCAC)

- Plaintiff in a civil procedure to establish ownership of proceeds of corruption (art. 53, a)
- Plaintiff in a civil procedure or third party (“parte civile”) in a criminal procedure seeking compensation (art. 53, b)
- Third party in a criminal procedure to seek ownership of confiscated assets (art. 53, c)
Facing legal battles abroad: Who will represent you? Hiring a foreign legal counsel

- how to choose a legal counsel?
- controlling each step of the case
- public procurement rules vs. best lawyers
- alternatives on State legal representation: international cooperation
Facing a legal battle abroad: What if you need cooperation from another State? (article 43 of UNCAC)

- international cooperation on civil and administrative procedures is not mandatory (art. 43, 1)
- exploring possibilities on case-by-case basis
- future developments: Expert’s Meeting on Int Cooperation
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Brazilian experience with legal actions abroad - outcomes

- Jorgina de Freitas case (2001): USD 15 million recovered in US, Channel Islands and Switzerland
- Banestado case (2012): USD 2.3 million recovered in US
- Nicolau dos Santos case (2001 and 2012): USD 7.6 million recovered in US, Switzerland and Bahamas
- Paulo Maluf case (ongoing): USD 28 million in the island of Jersey
- Propinoduto case (ongoing): USD 30 million in Switzerland
- Banestado case (ongoing): USD 8 million in US
Thank you!

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