



Federative Republic of Brazil  
Office of the Attorney General of the Union - AGU  
International Department - DPI

# Facing legal battles abroad to combat corruption: the Brazilian experience

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corruption

## 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
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**Forms of Liability in Public Legal Actions: Criminal, Civil and Administrative\* (World Bank)**

	Criminal	Civil	Administrative
<b>Possible punishments</b>	<ul style="list-style-type: none"> <li>- Imprisonment</li> <li>- Fines and other monetary penalties</li> <li>- Asset confiscation and restitution</li> </ul>	<ul style="list-style-type: none"> <li>- Fines and other monetary penalties</li> <li>- Asset confiscation and restitution</li> </ul>	<ul style="list-style-type: none"> <li>- Fines and other monetary penalties</li> <li>- Asset confiscation and restitution</li> <li>- Warnings</li> <li>- Revocations/ suspensions of licenses or permits</li> </ul>
<b>Source of authority</b>	Written laws	Written laws or case law	Written laws or regulations
<b>Burden of proof</b>	Beyond a reasonable doubt or intimate conviction	Probability, more likely than not to have committed the infraction	Highly variable, usually lower than criminal standard
<b>Objectives</b>	Punish, deter, rehabilitate, restore victim's position	Punish, deter, confiscate profits derived from illegal activity, compensate for harm caused	Punish, deter, regulate activities.
<b>Enforcers</b>	Prosecutors	Prosecutors, regulators	Regulators
<b>Examples of enforcement agencies</b>	<ul style="list-style-type: none"> <li>- US Department of Justice</li> <li>- UK Serious Fraud Office</li> </ul>	<ul style="list-style-type: none"> <li>- US Securities and Exchange Commission</li> <li>- UK Serious Fraud Office</li> </ul>	<ul style="list-style-type: none"> <li>- US Securities and Exchange Commission</li> <li>- UK Financial Conduct Authority</li> </ul>



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## 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)
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## Going to face 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)
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## Going to face a legal battle 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
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## Going to face 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 million recovered in US
  - Nicolau dos Santos case (2001 and 2012): USD 9 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
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Thank you!

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