



UNODC

United Nations Office on Drugs and Crime

United Nations Convention against Corruption

Self-assessment Name: Brazil - First Cycle of Review

Country: Brazil

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Assessor: Roberta Solis Ribeiro

Assessor Position: International Affairs Advisor

Comments:

Completed self-assessment checklists should be sent to:

Corruption and Economic Crime Section
Division for Treaty Affairs
United Nations Office on Drugs and Crime
Vienna International Centre
PO Box 500
1400 Vienna, Austria

Attn: Giovanni Gallo

Telephone: + (43) (1) 26060-5179

Telefax: + (43) (1) 26060-75179

E-mail: uncacselfassessment@unodc.org

A. General information

A. General information

1. General information

Please provide general information on the ratification and status of UNCAC in your country (use the "Use template answer" button in the answer field to see a generic text)

Brazil's legal system

The Federative Republic of Brazil (República Federativa do Brasil) has its capital in Brasilia and it is administratively divided in 26 states and 1 federal district. The states of Brazil are: Acre, Alagoas, Amapa, Amazonas, Bahia, Ceara, Distrito Federal, Espirito Santo, Goias, Maranhao, Mato Grosso, Mato Grosso do Sul, Minas Gerais, Para, Paraiba, Parana, Pernambuco, Piaui, Rio de Janeiro, Rio Grande do Norte, Rio Grande do Sul, Rondonia, Roraima, Santa Catarina, Sao Paulo, Sergipe, Tocantins.

The Brazilian legal system is based on the Civil Law tradition and is grounded in the Federal Constitution, in force since 5 October 1988. The Brazilian suffrage is voluntary between 16 and 18 years of age and over 70; compulsory over 18 and under 70 years of age, excepting the military conscripts who do not vote. According to the Brazilian Constitution, The Executive, the Legislative and the Judiciary branches are independent and harmonic.

The head of the Executive branch is the President of the Republic, who is both the chief of state and the head of government. The President and Vice-president are elected by popular vote for a single four-year term, being allowed to be re-elected once more.

The Legislative branch is bicameral and consists of the Federal Senate (Senado Federal - 81 seats; 3 members from each state and the federal district elected according to the principle of majority to serve eight-year terms; one-third and two-thirds elected every four years, alternately) and the House of Representatives (Câmara dos Deputados - 513 seats; members are elected by proportional representation to serve four-year terms).

The Judiciary branch consists of the Federal Supreme Court (composed of 11 Ministers, who are appointed for life by the president and confirmed by the Senate); the Superior Court of Justice; and 5 Regional Federal Courts (judges are appointed for life). Even though the judges are appointed "for life," they, like all federal employees, have a mandatory retirement at the age of 70.

The judicial branch is organized into federal and state areas. Each state has its Court of Justice, composed of elderly judges and competent for appeals and causes under its original jurisdiction, and local singular courts, divided by themes (e.g., civil claims, criminal courts, bankruptcy claims, etc.) and run each by a single judge. Municipalities do not have their own justice systems, and therefore, depending on the nature of the claim, must resort to state or federal justice systems. The five Regional Federal Courts are responsible for cases of national interest and crimes included in international agreements. The Federal Judges' duties include hearing most disputes in which one of the parties is the Federal Union. Thus, the Federal courts will generally prosecute those crimes of national and international interest, such as terrorism, major crimes against the financial system and cases of corruption involving federal public officials. States Courts would prosecute those cases of more interest to the particular state, such as state or local corruption (involving state or local public officials).

Ratification of the Convention

The Convention was signed on December 9th, 2003, ratified by the National Congress through its Legislative Decree n. 348, of May 18th, 2005 and promulgated by the President of the Republic through the Presidential Decree n. 5.687, of January 31st, 2006.

The Convention and Brazil's legal system

The UN Convention against Corruption has become an integral part of Brazil's domestic law following ratification of the Convention by the National Congress, through the Legislative Decree n. 348, on May 18th, 2005, signature by the President of the Republic, by means of the Presidencial Decree n. 5.687, on January 31st, 2006, and entry into force on February 1st, 2006, publication date of the Presidencial Decree on the Official Gazette, in accordance with Article 68 of the Convention.

The Convention ranks below the Constitution and at the same level of other laws. Accordingly, the provisions of the Convention override, since its entry into force, any other contrary provision in domestic law.

Taking into account the fact that Brazil is a federative republic, being a State formed by "the indissoluble union of the states and municipalities and of the Federal District", as defined by Article 1 of the Federal Constitution, the international treaties or conventions ratified by Brazil also reach the states, municipalities and the Federal District.

Please attach any gap analysis you might have carried out here

III. Criminalization and law enforcement

15. Bribery of national public officials

69. Subparagraph (a) of article 15

Each State Party shall adopt such legislative and other measures as may be necessary to **establish as criminal offences, when committed intentionally:**

(a) The **promise, offering or giving, to a public official, directly or indirectly, of an undue advantage**, for the official himself or herself or another person or entity, **in order that the official act or refrain from acting in the exercise of his or her official duties;**

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

Through analysis of the Brazilian legislation, it is clear that the measure described on Subparagraph (a) of article 15 of UNCAC is defined as a crime under the Brazilian Penal Code, Decree-Law n. 2.848, of December 7th, 1940, in its Article 333, which establishes as **active corruption** the offer or promise of undue advantage to an official in order to convince him to act, fail to act or hold back an official act. That is submitted to a sentence of incarceration from 2 (two) to 12 (twelve) years and a fine.

As for the aspect of the promise, offering or giving being done directly or indirectly, the Superior Court of Justice, on the judgement of the Habeas Corpus 33535/SC, declares that the offense of active corruption can be committed by an interposed party, not requiring necessarily that this third party, through whom an agent offers or promises an undue advantage to a public official, acts in his/her will.

In addition, the Court of Justice of the State of Sao Paulo, on the RT 542/323, corroborates that decision when it says that it does not matter that the offer or promise be made by the corruptor, directly or per interpositam personam.

Also, the Federal Regional Court of the 3rd Region, on the Habeas Corpus 11011, decides that "it is clear that the crime described on Article 333 of the Penal Code is constituted by a simple offer or promise of an undue advantage, and can be committed with the participation of an intermediary, who is in charge of dealing with a public official, answering to a request of the agent".

Not only in the penal field does Brazil comply with the Subparagraph (a) of article 15 of UNCAC. The civil repression counts on Law 8.429, of June 2nd, 1992, which establishes in Subparagraph I, Article 9th:

Article 9th. It constitutes an act of administrative improbity resulting from illicit enrichment to obtain any kind of undue patrimonial advantage owing to the position, mandate, function, job or activity at the entities mentioned in the article 1st of this law and notably:

I - to receive, for oneself or someone else, money, movables or immovables, or any other direct or indirect economic advantage, as commission, percentage, gratification or present from whoever has direct or indirect interest and may be reached or benefited by acts or omissions resulting from the public official's duties;

Another important measure lies on the Bill 3760/2004, which qualifies corruption as a heinous crime and has been at the National Congress since June 9th 2004.

Please attach the text(s)

Active Corruption

Art. 333 - Offer or promise undue advantage to an official in order to convince him to act, fail to act or hold back an official act:

Sentence - incarceration from 2 (two) to 12 (twelve) years and a fine. (Provision included by the Law No. 10.163, of 12.11.2003)

Sole Paragraph - the sentence shall be increased in one third if due to advantage or a promise, the official holds back or omits an official act or does and by doing so breaks his official duty.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

It is also worth mentioning another important measure, which is the Bill 3760/2004. This bill aims at qualifying as heinous crimes those committed against the Public Administration, thus inserting those crimes in the list of Law n. 8.072, of July 25th 1990.

The crimes against the Public Administration for this Bill that relate to the provisions of UNCAC set forth in its Chapter III will be those comprised by: Arts. 312 and 313 (embezzlement); Art. 317 (passive bribery); Art. 319 (prevarication); Art. 325 (breach of secrecy); Art. 332 (trafficking of influence); and Art. 333 (active bribery), all of the Brazilian Penal Code. These crimes will be referred in subsequent items of the checklist.

According to the provisions of Law n. 8.072/1990, heinous crimes have a more strict regimen for the serving of sentences and do not contemplate the possibility of bail.

Please provide examples of cases and attach case law if available

1. Defendant caught in flagrante delicto while handing in the amount of R\$ 3.000,00 to a Military Policeman for not being arrested.
2. Another example relates to a complaint against 19 people, among whom civil and military policemen, who supposedly associated in organized armed crime have explored slot machines, besides the commission of active corruption and crime against popular economy.

Examples attached.

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

Up to date, 46.376.581 (forty-six million, three hundred seventy six thousand, five hundred eighty-one) goods have been seized because of criminal acts, which sums up to R\$ 1.185.502.706,72 (one billion, one hundred eighty-five million, five hundred and two thousand, seven hundred and six reais and seventy-two cents).

Based on the actions carried out by the Federal Police, the number of cases brought on bribery of national public officials, are:

Year	Art. 333
2005	293
2006	275
2007	474
2008	509
2009	929
2010	286

Please describe how such information is collected and analysed

The Brazilian Judiciary Branch comprises 27 State Courts of Justice and 5 Federal Regional Courts, which are competent to process and judge criminal matters. Each Court has its own information system and in most cases there is no integration between those systems and the Superior Courts' information system. Thus, in order to decrease the problem concerning statistical data collection, the National Justice Council (CNJ) issued the Resolution n. 46, as of December 19 2007, through which the Table of Issues, Classes and Proceedings Movements aims at standardizing the language used in all Courts in a first moment. Most of Brazilian Courts have implemented the Table; however, as an attempt to collect data from a single source, the CNJ is working on the implementation of the national electronic process, which might be completed until the end of 2011.

Concerning statistics, the CNJ has created databases to monitor the management of goods which were seized in criminal proceedings, as well as an action control of convicted people for administrative improbity.

The Federal Police Department collects its information from a database developed to gather all information on investigations and other actions carried out by the Department.

Have you ever assessed the effectiveness of the measures adopted to criminalize active bribery of national public officials?

(Y) Yes

As for the Prosecutor General's Office, there is no system to quantitatively assess the effectiveness of the law criminalizing this conduct. However, an empirical assessment can show that the total effectiveness of this criminalization is impaired by some factors inherent to Brazilian penal system, such as:

- a. the possibility of criminal appeal in up to four different level in the judiciary structure, which allows for some acts to reach the Federal Supreme Court (STF).
- b. the possibility of multiple appeals in each level of the judiciary structure;
- c. the understanding of the STF that it is not possible to initiate the enforcement of a criminal conviction before all possible appeals have not been depleted.
- d. the diversity of statute of limitations brought by the Brazilian Penal Code.

However, Brazil has had this provision assessed by the MESICIC - Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

70. Subparagraph (b) of article 15

Each State Party shall adopt such legislative and other measures as may be necessary to **establish as criminal offences, when committed intentionally:**

...

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

The provision under review has been implemented through Article 317 of the Brazilian Penal Code, Decree-Law n. 2.848, of December 7th, 1940, which states that any public official that solicits or receives an undue advantage, for himself or other persons, either directly or indirectly, or accepts the promise of it commits the crime of passive corruption.

Besides the punishment for soliciting or receiving an undue advantage, the Brazilian Penal Code also establishes as criminal offence the act of exacting, forcefully or with the use of violence, an undue advantage even when off-duty or before taking over the position as public official.

Please attach the text(s)

Passive Corruption

Article 317 - Requesting or receiving on his or her own account, directly or indirectly, even where outside the

function or before taking in on, but on account of it, any improper advantage, or accepting the promise of such advantage:

Sentence -incarceration from 1(one) to 8 (eight) years and a fine.

§ 1º - the sentence shall be increased in one third if in consequence of the advantage or the promise, the official holds back or fails to execute any official action or practice and by doing so he/she breaks his official duty.

§ 2º - If the official acts, fails to act or holds back an official action when he gives in the request or influence of a third party, thus breaking his official duty,

Sentence - detention from 3 (three) months to 1 (one) year or a fine.

Exaction

Article 316 - Exact, for oneself or a third party, directly or indirectly, even when off-duty or before taking over the position, but because of it, undue advantage:

Penalty: incarceration from two to eight years and a fine.

Excess of exaction

§ 1st - If the official demands fee or social contribution which he knows or should know better that it is undue or when it is due the official makes its collection in a vexing or grievous way which is not authorized under the law. (Provision included by the Law No. 8.137, of 27.12.1990)

Penalty: incarceration from 3 (three) to 8 (eight) years and a fine. (Provision included by the Law No. 8.137, of 27.12.1990)

§ 2nd - If the official diverts, on his own behalf or a third party, what he has collected unduly for the public coffers:

Penalty: incarceration from two to twelve years and a fine.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of cases and attach case law if available

1. Defendant who was the head of a gang specialized in frauding the National Security.
2. Defendant convicted for receiving undue advantage in return of irregular conduct while acting in the exercise of his/her official duties, besides, supposedly, having received undue advantage in order that another servant speeded the processing of a legal action.

Examples attached.

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

Based on the actions carried out by the Federal Police, considering the cases brought in relation to Article 317 of the Brazilian Penal Code, the figures are:

Year	Art. 317
2005	348
2006	495
2007	656
2008	596
2009	851
2010	409

Relatively to exaction, established under Article 316 of the Brazilian Penal Code, the cases brought present the following figures:

Year	Art. 316
2005	119
2006	107
2007	160
2008	123

2009 135
2010 116

Please describe how such information is collected and analysed

The Federal Police Department collects its information from a database developed to gather all information on investigations and other actions carried out by the Department.

Have you ever assessed the effectiveness of the measures adopted to criminalize passive bribery of national public officials?

(Y) Yes

Brazil has had this provision assessed by the MESICIC - Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

71. Paragraph 1 of article 16

1. Each State Party shall adopt such legislative and other measures as may be necessary to **establish as a criminal offence**, when committed **intentionally**, the **promise, offering or giving to a foreign public official or an official of a public international organization**, directly or indirectly, **of an undue advantage**, for the official himself or herself or another person or entity, **in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.**

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

As a result of Law No. 10,467, of June 11th 2002, Section XI of the Penal Code (Decree-Law No. 2,848 of 7 December 1940) now contains Articles 337-B to 337-D, which appear as Chapter II-A ("Crimes committed by individuals against a foreign public administration").

The Article 337-B complies with the provision of Paragraph 1 of Article 16 by establishing as a crime the active bribery in an international business transaction, meaning the direct or indirect promising, offering or giving of any undue advantage to a foreign public official or to a third person, aiming at having him or her put into practice, omit, or delay any official act relating to an international business transaction.

Thus, the foreign public official, according to Article 337-D of the Brazilian Penal Code (Decree-Law n. 2848/40) is defined as, for penal matters, any person that has any public labor bond with foreign state entities of diplomatic representations, even if he/she is not paid for that or his/her job is temporary. It is also understood as a foreign public official any person that works for an enterprise controlled by a foreign country's public power or for any international public organization.

Concerning the term "intentionally", "felonious intent" is presumed to be required in criminal offences where no other form of mens rea is specified. By law, intention is present by implication and does not need to be made explicit. In the Brazilian Penal Code, the intent is present when the individual wants the result, or when he or she assumes the risk of producing it, which clearly gives similar treatment both to intent (dolus) and to recklessness/negligence.

As for an undue advantage, any of material nature such as money or goods, and other advantages such as moral or sexual advantages, can be taken as undue advantage. Brazilian jurisprudence and doctrine deem "improper advantage" to be any advantage at all. In this sense, it shall be considered as the essential idea the reward that the official receives or accepts as the price of his or her corruption. Also, if the advantage is not laid down in law, in other words, if the public official has no right to it, the advantage will be deemed to be improper. In a case where the advantage is not expressly permitted or required by the law (of the foreign public official), but is not

prohibited thereby, in case the other elements characterising it as criminal were present, the courts shall consider this to be an undue advantage.

In addition, for the offence to be committed, it is sufficient that the core act of an offer, promise or giving is made regardless of whether the foreign public official acted in return for the bribe. Under the sole paragraph of Article 337-B, it is an aggravated offence if the foreign public official acts in breach of his or her functional duty, as a result of the bribe. The offence will also be committed if the act bears any relationship, even indirectly, with the functions of the public official and it will be no defence that the act was outside the scope of the official's authority. For instance, in the case of a bribe given to a senior government official in order that he or she use his or her office - though acting outside his or her competence - to make another official award a contract to the briber, the briber and the "influencing" official would probably be held to be joint offenders.

Please attach the text(s)

Brazilian Penal Code - Decree-Law n. 2848/40.

Active bribery in an international business transaction

Article 337-B. Promising, offering, or giving, directly or indirectly, any improper advantage to a foreign public official, causing him or her to put into practice, to omit, or to delay any official act relating to an international business transaction.

Penalty - Deprivation of liberty of from 1 (one) year to 8 (eight) years plus a fine.

Sole paragraph. The penalty is increased by 1/3 (one third) if, because of the advantage or promise, the foreign public official actually delays or omits, or puts into practice the official act in breach of his or her functional duty.

Foreign Public Official

Article 337-D. A foreign public official is deemed to be, for the purposes of the law, anyone, even though temporarily or in an unpaid capacity, who holds a position or a public function in state bodies or in diplomatic representations of a foreign country.

Sole paragraph. Anyone who holds a position or function in an organization or enterprise directly or indirectly controlled by the Public Authorities of the foreign country or in international public organizations is deemed to be equivalent to a foreign public official.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

In the scope of the OECD Working Group on Bribery, a study is carried out based on possible cases of bribery in international businesses reported by press, countries or received from other sources. This study is called the Matrix of Ongoing Cases and is confidentially available to members of the WG, representatives of countries signatories to the Convention, for them to take due actions. On this matter, the WG meets every three months and the countries have to bring out updated information on the cases of the Matrix.

As for the Office of the Comptroller General's duty in being in charge of the implementation of the international conventions against corruption in Brazil, its Secretariat of Corruption Prevention and Strategic Information has taken part in this WG. The information on the Matrix is forwarded to the Ministry of Foreign Affairs, the Federal Police and the Office of the Prosecutor General.

In order to foster a better collection and processing of information and investigation, the Office of the Comptroller General (CGU) has elaborated some MLA requests based on the cases identified by the Matrix. These forms have been sent to the countries where the possible cases may have happened by the Department of Asset Recovery and International Cooperation - DRCI, a body in the scope of the Ministry of Justice. Some MLA requests have been responded and four inquiries have been carried out by the Federal Policie. One of such inquiries has been closed and filed for lack of evidences.

Please provide examples of cases and attach case law if available

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

To date, as cases are under investigation, there are no statistics figures for this matter.

Please describe how such information is collected and analysed

Non applicable.

Have you ever assessed the effectiveness of the measures adopted to criminalize active bribery of foreign public officials and officials of public international organizations?

(Y) Yes

Brazil has had this provision assessed by the OECD.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

72. Paragraph 2 of article 16

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to **establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her duties.**

Has your country adopted and implemented the measures described above? (Check one answer)

(P) Yes, in part

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

The adoption by Brazil of the offense of "active corruption in international business transaction" (Penal Code, article 337-B, included in 2002), without creating a corresponding passive type of transnational corruption can lead, at first glance, to the interpretation that the act of soliciting or receiving bribes, if committed by a foreign official, would not be punishable in Brazil.

However, the understanding of the Brazilian government is just the opposite. Despite the overriding rationale of this kind is to make possible the extraterritorial jurisdiction of Brazil to a fact committed abroad against the government of another State, in accordance with our current criminal regime it is perfectly possible to punish an foreign public official (or equivalent, such as an employee of an international organization) who practices passive corruption in Brazilian territory, although no such a case has ever been investigated or processed.

The reason is that, if a foreign public official practices the conduct described in Article 317 of the Criminal Code (bribery) in Brazilian territory, he may be punished by the Brazilian jurisdiction since the concept of a public official adopted in Article 327 makes reference only to the exercise of public function, without reference of the "public" adjective relating to a national administration, foreign, or even supranational administration.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of cases and attach case law if available

If available, please provide information on related legal cases or other processes, including

statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

Please describe how such information is collected and analysed

Not applicable.

Have you ever assessed the effectiveness of the measures adopted to criminalize passive bribery of foreign public officials and officials of public international organizations?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

Which challenges and issues are you facing in (fully) adopting/implementing the provision under review? (Check all the answers that apply and provide an explanation in the "Comments" field)

(ISSUE) Other issues (please specify)

Non Applicable.

Please provide an account of your country's efforts to date to implement the provision under review:

Brazil has cases under investigation still.

Please outline the steps or action (and related timeframe) that domestic or other authorities would need to take to ensure full compliance with the provision under review

Brazil has cases under investigation still.

Which of the following forms of technical assistance, if available, would assist your country in adopting or better implementing the provision under review? (Check all the answers that apply)

(NO) No assistance would be required

Are any of the forms of technical assistance previously mentioned already provided? (Check one answer)

(N) No

73. Article 17

Each State Party shall adopt such legislative and other measures as may be necessary to **establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.**

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

The provision under review has been fully implemented by Brazil both penally and administratively.

The Brazilian Penal Code, Decree-Law n. 2.848/40, through its article 312, provides for the crime of Embezzlement, referring to the appropriation by a public official of money, chattel or valuables, no matter whether public or private, when he or she holds possession of them by using his or her office, for his or her benefit or for the benefit of a third party. Administratively, Brazil relies on articles 9 and 10 of the Law on Administrative

Improbability, Law n. 8.429/92, which point out several conducts which constitute improbity acts.

As for misappropriation, article 315 of the Brazilian Penal Code, defines as a criminal offense the misuse of public monies or incomes.

Besides the crimes of active and passive corruption, under Chapter I - About the offences of public officials against the Public Administration in general, of Title XI of the Brazilian Penal Code, it is important to mention some other misconducts which are typified addressing acts of fraud committed by a public official, as following:

- a. Article 313 - defines embezzlement resulting from another party's mistake;
- b. Article 313-A - establishes as criminal offence the insertion of false data in information systems;
- c. Article 313-B - provides for the crime of non-authorized modification or alteration in information systems;
- d. Article 314 - states that it is crime the loss, evasion or destruction of books or documents;
- e. Article 318 - punishes the facilitation of smuggling or embezzlement;
- f. Article 319 - provides for the crime of prevarication, when a public official delays or does not do an act which he or she is in charge of, or when this act goes against the law, to satisfy personal interest of feeling;
- g. Article 320 - typifies as criminal offence the criminal condescension, when a public official does not blame an inferior who has committed an infraction by virtue of his or her position;
- h. Article 321 - defines as crime the administrative advocacy, which refers to the action conducted by a public official before the public administration, in private interest, using his or her public position;
- i. Article 325 - punishes the breach of official secrecy by a public official by virtue of his or her position, also included the facilitation of it;
- j. Article 326 - establishes as criminal offence the breach of secrecy of a bidding proposal.

Further the provisions concerning the punishment of public officials penally or administratively as seen above, Brazil still has the Law n. 1.079, of April 10, 1950, which defines crimes of responsibility and rules the related judging process.

Crimes of responsibility are political-administrative infractions which lead to the vacancy of the public agent's position, as well as his or her inability to public function exercise for a certain period of time, with no exclusion of criminal prosecution. The crimes defined by this law, even simply attempted, aim at the punishment of political agents, comprising the President of the Republic, Ministers of State, Ministers of the Federal Supreme Court, the Prosecutor-General, Governors and Secretaries of State. For Mayors and Aldermen, the crimes of responsibilities are defined by the Decree-Law n. 201/67.

Please attach the text(s)

Brazilian Penal Code, Decree-Law n. 2.848/40.

Embezzlement

Article 312 - Appropriation, by a public official, of money, valuables or any other chattel, either public or private, entrusted to him or her in the remit of his or her office, or diversion of such assets for him or herself or other third person:

Penalty: incarceration from two to eight years and a fine.

Paragraph 1 - The same penalty shall also be applied if the public official, even not holding possession of money, valuables or goods, take them away or contributes for them to be taken away, for his or her benefit or for the benefit of another person, availing him or herself of the facility his or her position provides.

Involuntary embezzlement

Paragraph 2 - If the public official contributes involuntarily to a third party's crime:

Penalty - incarceration from three months to one year.

Paragraph 3 - In the occurrence of the previous paragraph, if the compensation for damage precedes the unappealable sentence, punishability shall be precluded; if the compensation for damage follows the unappealable sentence, penalty is reduced to half.

Embezzlement before a third party's mistake

Article 313 - Appropriation of money or any other utility which, virtue of his or her position, the public official has received because of a third party's mistake:

Penalty - incarceration from one to four years and a fine.

Law No. 8.429, of June 2, 1992.

Article 9. It constitutes an act of administrative improbity resulting from illicit enrichment to obtain any kind of undue patrimonial advantage owing to the position, mandate, function, job or activity at the entities mentioned in the article 1st of this law and notably:

I - to receive, for oneself or someone else, money, movables or immovables, or any other direct or indirect economic advantage, as commission, percentage, gratification or present from whoever has direct or indirect interest and may be reached or benefited by acts or omissions resulting from the public official's duties;

II - to receive direct or indirect economic advantage to facilitate the acquisition, exchange or rent of a movable or immovable asset or the hiring of services by the entities referred to in the article 1st at a price higher than the market's;

III - to receive direct or indirect economic advantage to facilitate the alienation, exchange or rent of a public asset or the providing of service by a public body at a price which is lower than the market's;

IV - to use, in private construction or service, vehicles, machinery, equipment or material of any nature, which is owned or is at the disposal of any of the bodies mentioned in the article 1st of this law, as well the work by these entities' public officials, employees and hired personnels;

V - to receive direct or indirect economic advantage of any kind to tolerate the exploitation or the perpetration of gambling, practicing or promoting prostitution, drug trafficking, smuggling, usury or any kind of illicit activity or to accept a promise of such advantage;

VI - to receive direct or indirect economic advantage to make a false statement about the measuring or assessment in public constructions or any other service or about the quantity, weight, measure, quality or feature of the merchandise or products provided to any of the entities mentioned in the article 1st of this law;

VII - to acquire for oneself or a third party in the exercise of a mandate, position, job or public office, assets of any nature whose price is unproportioned to the evolution of estate or to the public official's income;

VIII - to take a job, commission or perform a consulting activity for individuals or legal entities whose interests may be prejudiced or benefited by acts or omissions resulting from the attributions of the public agent during the activity;

IX - to receive economic advantage to intermediate the clearance or the investment of public money of any nature;

X - to receive direct or indirect economic advantage to omit an official act, an arrangement or a declaration which he is obliged to;

XI - to incorporate by any means to one's estate assets, income, revenue or funds which pertain to the patrimonial estate of the entities mentioned in the article 1st of this law;

XII - to use to one's own benefit assets, incomes, revenue or funds which pertain to the patrimonial estate of the entities mentioned in the article 1st of this law.

Article 10. Constitutes administrative improbity act that causes injury to the public treasury any action or omission, intentional or negligent conduct, which gives rise to loss of assets, embezzlement, misappropriation, or squandering of property or assets of the entities mentioned in art. 1 of this law, and notably:

I - facilitate or contribute in any way for the integration to private property, whether of a natural or legal person, of assets, income, monies or valuables from the property of the entities mentioned in Article 1 of this law.

II - allow or contribute for a natural or legal person to goods, property, incomes, monies, monies or securities from the property of the entities mentioned in art, 1 of this law, without the legal formalities and regulations applicable to the species;

III - donate to natural or legal person as well as to a depersonalized entity, even for educational purposes or assists, assets, revenues, funds or securities of any assets of the entities mentioned in art. 1 of this law, without the legal formalities and regulations applicable to the case;

IV - enable or facilitate the transfer, exchange or leasing of property of the entities mentioned in art, 1 of this law, or the provision of services by them, at a price below the one practiced by the market;

V - enable or facilitate the purchase, exchange or leasing of goods or services at a price higher than the one practiced by the market;

VI - carry out transactions without compliance with applicable laws and regulations or accept inadequate

collateral or disreputable;

VII - Give administrative grant or tax benefit without compliance with the legal formalities and regulations applicable to the case;

VIII- Thwart the legality of the bidding process or dismiss it unduly;

IX - Order or allow for expenses not authorized by law or regulation;

X - Act negligently in collecting tax or income revenue as well as with regard to the preservation of public assets;

XI - releasing public funds without strict observance of rules or influence in any way for their irregular implementation;

XII - enable, facilitate or contribute for the illicit enrichment of a third party;

XIII - allow for the use, at work or in private service, vehicles, machinery, equipment or material of any nature, being owned or at the disposal of any of the entities mentioned in art. 1 of that law, as well as the work of public servants, employees or outsourced employees hired by such entities.

XIV - contract or sign other instrument which has as an object the provision of public services through the associated management without observing the formalities prescribed by law; (Included by Law No. 11,107, 2005)

XV - contract for the sharing of public consortium and without sufficient prior budgetary appropriation or without observing the formalities prescribed by law. (Included by Law No. 11,107, 2005)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of cases and attach case law if available

1. Dismissal of defendant, State of Rondonia's Court of Accounts Counselor, for embezzlement (diversion and misappropriation).
2. Previdenciary misappropriation and embezzlement.

Examples attached.

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

Based on the actions carried out by the Federal Police, the cases brought show the following figures concerning the Article 312 of the Brazilian Penal Code.

Year	Art. 312
2005	1.247
2006	1.291
2007	1.294
2008	1.749
2009	1.373
2010	1.114

Please describe how such information is collected and analysed

The Federal Police Department collects its information from a database developed to gather all information on investigations and other actions carried out by the Department.

Have you ever assessed the effectiveness of the measures adopted to criminalize embezzlement, misappropriation or other diversion of property by a public official?

(Y) Yes

Brazil has had this provision assessed by the MESICIC - Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

The evaluation of the effectiveness of adopted measures to criminalize embezzlement, misappropriation and other diversion by a public official can be made through the great number of res judicata by Brazilian Courts. A better evaluation will be feasible with the completion of information systems integration, as described in item 69.

74. Subparagraph (a) of article 18

Each State Party shall consider adopting such legislative and other measures as may be necessary to **establish as criminal offences, when committed intentionally:**

(a) The **promise, offering or giving to a public official or any other person**, directly or indirectly, **of an undue advantage** in order that the **public official** or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

The provision under review has been implemented through Article 332, of the Brazilian Penal Code, Decree-Law n. 2.484/40, which establishes the crime of trafficking of influence. For this crime, what is considered as basis for the punishment is a simple solicitation, exaction, charge or obtaining of advantages or promise of it, without a need of another result.

Besides establishing as a criminal offense the trafficking of influence by a public official, Brazil also counts on the establishment of the trafficking of influence in international business transactions, through Article 337-C, cited below:

Please attach the text(s)

Brazilian Penal Code, Decree-Law n. 2484/40

Trafficking of influence

Article 332 - To request, demand, charge or obtain for oneself or a third party, advantage or promise of advantage under the pretext of influencing in an act by a public official in the exercise of his duties: (Provision included by the Law No. 9.127 of 1995)

Penalty - incarceration from 2 (two) to 5 (five) years and a fine. (Provision included by the Law No. 9.127 of 1995)

Sole paragraph - the penalty shall be increased in half if the agent claims or hints that the advantage is also destined to the official. (Provision included by the Law No. 9.127 of 1995)

The trafficking of influence in international business transactions

Article 337-C. Requesting, requiring, charging, or obtaining, for oneself or for another person, directly or indirectly, any advantage or promise of advantage in exchange for influencing an act carried out by a foreign public official in the exercise of his or her functions relating to an international business transaction:

Penalty - deprivation of liberty, of from 2 (two) to 5 (five) years, plus a fine.

Sole paragraph. The penalty is increased by half, if the perpetrator alleges or insinuates that the advantage is also intended for a foreign public official

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of cases and attach case law if available

1. Defendant compromised with a third party, having economical profit in return, to take measures at the City Hall of Santo André/SP for payment of an enterprise's credits.

Example attached.

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

Based on the actions carried out by the Federal Police, concerning the cases brought under Article 332 of the Brazilian Penal Code, the figures are:

Year	Art. 332
2005	67
2006	79
2007	71
2008	178
2009	94
2010	57

Please describe how such information is collected and analysed

The Federal Police Department collects its information from a database developed to gather all information on investigations and other actions carried out by the Department.

Have you ever assessed the effectiveness of the measures adopted to criminalize trading in influence?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

75. Subparagraph (b) of article 18

Each State Party shall consider adopting such legislative and other measures as may be necessary to **establish as criminal offences, when committed intentionally:**

...

(b) The **solicitation or acceptance by a public official or any other person**, directly or indirectly, **of an undue advantage** for himself or herself or for another person in order that the **public official** or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

Following the same basis for criminalizing the promising, offering and giving to a public official, as described for Subparagraph (a) of Article 18 (question 74), the provision under review has been implemented through Article 332, of the Brazilian Penal Code, Decree-Law n. 2.484/40, which establishes the crime of trafficking in influence. For this crime, what is considered as basis for the punishment is a simple solicitation, exaction, charge or obtaining of advantages or promise of it, without a need of another result.

Please attach the text(s)

Brazilian Penal Code, Decree-Law n. 2484/40

Trafficking of influence

Article 332 - To request, demand, charge or obtain for oneself or a third party, advantage or promise of advantage under the pretext of influencing in an act by a public official in the exercise of his duties: (Provision included by the Law No. 9.127 of 1995)

Penalty - incarceration from 2 (two) to 5 (five) years and a fine. (Provision included by the Law No. 9.127 of 1995)

Sole paragraph - the penalty shall be increased in half if the agent claims or hints that the advantage is also destined to the official. (Provision included by the Law No. 9.127 of 1995)

Besides establishing as a criminal offense the trafficking of influence by a public official, Brazil also counts on the establishment of the trafficking of influence in international business transactions, through Article 337-C, cited below:

The trafficking of influence in international business transactions

Article 337-C. Requesting, requiring, charging, or obtaining, for oneself or for another person, directly or indirectly, any advantage or promise of advantage in exchange for influencing an act carried out by a foreign public official in the exercise of his or her functions relating to an international business transaction:

Penalty - deprivation of liberty, of from 2 (two) to 5 (five) years, plus a fine.

Sole paragraph. The penalty is increased by half, if the perpetrator alleges or insinuates that the advantage is also intended for a foreign public official

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of cases and attach case law if available

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

Please describe how such information is collected and analysed

Non applicable.

Have you ever assessed the effectiveness of the measures adopted to criminalize trading in influence?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

76. Article 19

Each State Party shall consider adopting such legislative and other measures as may be necessary to **establish**

as a criminal offence, when **committed intentionally**, the **abuse of functions or position**, that is, the performance or failure to perform an act, in violation of laws, by a **public official** in the discharge of his or her functions, **for the purpose of obtaining an undue advantage** for himself or herself or for another person or entity.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

Brazil complies with the criminalization of the abuse of functions or position through various articles of the Brazilian Penal Code, Decree-Law n. 2.848/40, and through Law n. 4.898/65.

Article 319 of the Brazilian Penal Code is used to support the criminalization of a public official for the delaying or not performing, unduly, of any official act, or even the performing an act against the law, in order to satisfy his or her personal interest or feeling.

Also on the Brazilian Penal Code, Article 322 establishes as a criminal offence the act of performing violence, in the exercise of or as an excuse to exercise a public position.

Article 350 provides for the arbitrary exercise or abuse of power, comprising, among others, the irregular conduct of a public official when he or she exercises diligences abusively.

A very important instrument to penalize the abuse of function lies on Law n. 4.898/65, which regulates the right of representation and the process of administrative, civil and criminal liability in the cases of abuse of authority. Through its Article 5, this law provides for who is considered to be an authority, i.e. whoever exercises any public function, whether in the civil or military area, even if this function is temporary or non-paid. Articles 3 and 4 list what may constitute abuse of authority, which includes, among others, any attempt against:

- a. the freedom of locomotion;
- b. the inviolability of the home;
- c. the secrecy of correspondence;
- d. the freedom of thought and creed;
- e. the free exercise of religious service;
- f. the freedom to associating;
- g. the legal rights and guarantees assured for the exercise of voting;
- h. the legal rights and guarantees assured for the professional exercise;
- i. the individual freedom, without legal proceedings or with abuse of power;
- j. the humiliation or constraint which anyone can be submitted to, without legal support;
- k. the honor or property of a natural or legal person, when performed with power abuse or deviation, or without legal competence.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of cases and attach case law if available

1. Defendant, a federal judge, abused function by determining the non-utilization of relevant evidence.
Example attached.

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

Please describe how such information is collected and analysed

Please, refer to item 69 for information on databases of the Federal Police and of the National Justice Council.

Have you ever assessed the effectiveness of the measures adopted to criminalize abuse of functions?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Brazil has had this provision assessed by the MESICIC - Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption.

77. Article 20

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to **establish as a criminal offence, when committed intentionally, illicit enrichment**, that is, a significant increase in the assets of a **public official** that he or she cannot reasonably explain in relation to his or her lawful income.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

Law n. 8.429, of June 2, 1992, also called Law of Administrative Improbability, addresses the sanctions applicable to the public officials in cases of illicit enrichment in the exercise of one's mandate, office, job or position in the direct, indirect or foundational public administration and other matters. Among the acts resulting in illicit enrichment, brought by the Article 9, are the ones below, more specifically VII:

I - to receive, for oneself or someone else, money, movables or immovables, or any other direct or indirect economic advantage, as commission, percentage, gratification or present from whoever has direct or indirect interest and may be reached or benefited by acts or omissions resulting from the public official's duties;

II - to receive direct or indirect economic advantage to facilitate the acquisition, exchange or rent of a movable or immovable asset or the hiring of services by the entities referred to in the article 1st at a price higher than the market's;

III - to receive direct or indirect economic advantage to facilitate the alienation, exchange or rent of a public asset or the providing of service by a public body at a price which is lower than the market's;

VII - to acquire for themselves or others, in the exercise of office, position, employment or public office, assets of any type whose value is disproportionate to the evolution of wealth or income of the public official;

VIII - to take a job, commission or perform a consulting activity for individuals or legal entities whose interests may be prejudiced or benefited by acts or omissions resulting from the attributions of the public agent during the activity;

IX - to receive economic advantage to intermediate the clearance or the investment of public money of any nature;

X - to receive direct or indirect economic advantage to omit an official act, an arrangement or a declaration which he is obliged to.

This law, through its Article 12, establishes that apart from the civil, administrative and criminal penalties, the

public official shall also have as sanctions the forfeiture of the assets and funds illicitly added to his or her estate, integral compensation for damages, if any, loss of the public office, suspension of the political rights from eight to ten years, payment of civil fine of up to three times the amount of the increase of estate and the prohibition to have contracts with the Government or receive benefits or tax incentives or credits, directly or indirectly, even if by means of a legal entity of which it is a major partner for the deadline of ten years.

In addition to that, Brazil also counts on the Decree n. 5.483, of June 30, 2005, which states the property and assets investigation, started by any authority that has any knowledge of well-based news or traces of occurrence of any illicit enrichment hypothesis listed by Law n. 8.429/92.

Please attach the text(s)

Law 8429, as of June 2, 1992.

Article 9th. It constitutes an act of administrative improbity resulting from illicit enrichment to obtain any kind of undue patrimonial advantage owing to the position, mandate, function, job or activity at the entities mentioned in the article 1st of this law and notably:

I - to receive, for oneself or someone else, money, movables or immovables, or any other direct or indirect economic advantage, as commission, percentage, gratification or present from whoever has direct or indirect interest and may be reached or benefited by acts or omissions resulting from the public official's duties;

II - to receive direct or indirect economic advantage to facilitate the acquisition, exchange or rent of a movable or immovable asset or the hiring of services by the entities referred to in the article 1st at a price higher than the market's;

III - to receive direct or indirect economic advantage to facilitate the alienation, exchange or rent of a public asset or the providing of service by a public body at a price which is lower than the market's;

IV - to use, in private construction or service, vehicles, machinery, equipment or material of any nature, which is owned or is at the disposal of any of the bodies mentioned in the article 1st of this law, as well the work by these entities' public officials, employees and hired personnels;

V - to receive direct or indirect economic advantage of any kind to tolerate the exploitation or the perpetration of gambling, practicing or promoting prostitution, drug trafficking, smuggling, usury or any kind of illicit activity or to accept a promise of such advantage;

VI - to receive direct or indirect economic advantage to make a false statement about the measuring or assessment in public constructions or any other service or about the quantity, weight, measure, quality or feature of the merchandise or products provided to any of the entities mentioned in the article 1st of this law;

VII - to acquire for oneself or a third party in the exercise of a mandate, position, job or public office, assets of any nature whose price is unproportioned to the evolution of estate or to the public official's income;

VIII - to take a job, commission or perform a consulting activity for individuals or legal entities whose interests may be prejudiced or benefited by acts or omissions resulting from the attributions of the public agent during the activity;

IX - to receive economic advantage to intermediate the clearance or the investment of public money of any nature;

X - to receive direct or indirect economic advantage to omit an official act, an arrangement or a declaration which he is obliged to;

XI - to incorporate by any means to one's estate assets, income, revenue or funds which pertain to the patrimonial estate of the entities mentioned in the article 1st of this law;

XII - to use to one's own benefit assets, incomes, revenue or funds which pertain to the patrimonial estate of the entities mentioned in the article 1st of this law;

CHAPTER III
The penalties

Article 12. Independently of the criminal, civil and administrative sanctions, provided in a specific law, the individual responsible for the act of improbity is subjected to the following penalties:

I - in case of the article 9th, forfeiture of the assets and funds illicitly added to one's estate, integral compensation for damages, when there is, loss of the public office, suspension of the political rights from eight to ten years, payment of civil fine of up to three times the amount of the increase of estate and the prohibition to have contracts with the Government or receive benefits or tax incentives or credits, directly or indirectly, even if

by means of a legal entity of which it is a major partner for the deadline of ten years;

(...)

Sole Paragraph. In setting the penalties provided by this law the judge will take into account the extent of damage, as well as the profit sheet obtained by the agent.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Criminally speaking, in Brazil, the Federal Executive Branch, through the Office of the Comptroller General (CGU), sent the Bill n. 5.586/2005 to the National Congress; this bill provides for the inclusion, in the Brazilian Penal Code, of an article that typifies the offense of illicit enrichment, referring to when a public official possesses goods and valuables incompatible with his or her incomes, or even when he or she makes use of goods and valuables in a way it becomes clear that they are his or her own.

In addition, by the Article 7 of Decree n. 5.483, of June 30th 2005, the CGU is empowered to analyze, whenever judged necessary, public agents' property and assets evolution, for checking whether it is compatible with the agents' incomes. Once incompatibility is verified, the CGU shall start or demand other authority to initiate a property and assets investigation, which will constitute a confidential and merely investigative procedure, having no punitive aspect. This procedure will be led by a commission composed by two or more career officials, who will conduct it for a period of thirty days (renewable for more 30 days) and whose report will determine the procedure filing or its conversion into a Disciplinary Administrative Procedure (PAD). After the property and assets investigation is concluded, there is immediate information sharing with the Prosecutor General, the Court of Accounts, the CGU, the Federal Revenue and the COAF, for further provisions.

Please provide examples of cases and attach case law if available

1. Case of a Federal Revenue's tax analyst who had incompatible property and assets evolution.

Example attached.

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

Table 1: Statistics of expulsive penalties (resignation, impeachment and dismissal) imposed based on Law n. 8112, 1990 (Law of Civil Servants of the Union) and Law n. 8429, 1992 (number of cases) - please, find it attached.

Please describe how such information is collected and analysed

The information above is collected from databank kept by the National Disciplinary Board, a body within the scope of the Office of the Comptroller General (CGU).

Have you ever assessed the effectiveness of the measures adopted to criminalize illicit enrichment?

(Y) Yes

Brazil has had this provision assessed by the MESICIC - Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

78. Subparagraph (a) of article 21

Each State Party shall consider adopting such legislative and other measures as may be necessary to **establish as criminal offences, when committed intentionally** in the course of economic, financial or commercial activities:

(a) The **promise, offering or giving**, directly or indirectly, **of an undue advantage to any person who directs or works**, in any capacity, **for a private sector entity**, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, **act or refrain from acting**;

Has your country adopted and implemented the measures described above? (Check one answer)

(P) Yes, in part

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

In Brazil, specific legislation typifies active and passive bribery in the public sector; however, norms from different laws, whether from private, commercial or penal law, may be used to address the corruption in the private sector.

At first, it is worth mentioning that Brazil counts on a special type of legal person, whose creation and functioning is provided for in Articles 37 (item XIX) and 173 (Paragraphs 1 and 2) of the Federal Constitution. That legal person is known as private and public joint stock company, or mixed-economy company, which is composed by private and state capital, with the majority of stocks with right to vote belonging to the State. They can be either of public service delivery or economic activity exploitation, being ruled by what is stated by Private Law, but being organized, hiring, among other actions, according to Public Law. An example of that is the Bank of Brasil. In this case, the occurrence of active and passive bribery, as well as bribery of foreign public official, shall be addressed equally to what was informed in questions 69 through 72 of this questionnaire.

Concerning bribery in the private sector specifically, although restrictively in some cases, we should mention:

Law n. 9.279, of May 14 1996, known as Law on Industrial Property, through its Article 195, items IX, similarly to active bribery, provides for the offense of disloyal competition, stating that any agent will commit this crime when he or she gives or promises money or any other utility to a competitor's employee, in order that he or she, in breach of his or her duties, provides the agent with advantage.

The Brazilian Penal Code, Law n. 2848/40, through its Articles 175 and 177, provides for, respectively, business fraud and fraud and abuse in the creation and administration of joint stock companies. The first states that it is an offence to deceive the purchaser or consumer while selling fake or damaged goods as true or in perfect condition, or even when some goods are delivered in the place of other goods. As for Article 177, it comprises offences referring to, among others, the business constitution, fake information on economic status, unauthorized use of social goods and assets, stock selling and buying, false information offered to the Government.

Law n. 8137, of December 27 1990, in its Chapter II - Crimes against Economy and Consume Relations, criminalizes the following conducts, among others: a) abuse of economic power for dominating the market or eliminating competition; b) agreements, adjustments or alliances among bidders; c) monopoly establishment; d) hiding of information concerning produce cost or selling price; e) favoring to a consumer, without a just cause.

Law n. 7492, of June 16 1986, known as the White Collar Law, defines the offences against the national finance system, ruling over finance institutions which exercise third parties' fund raising, negotiation or application, as well as the securities custody, issuance, distribution, negotiation or administration.

Please attach the text(s)

Federal Constitution

Article 37. The direct or indirect public administration of any of the powers of the Union, the States, the Federal District and the municipalities, as well as their foundations, shall obey the principles of lawfulness, impersonality,

morality, publicity, efficiency and also the following:
(...)

XIX - only by means of an specific law shall an autarchy be created and shall a public company, a mixed capital company and a foundation have their creation authorized, it being necessary, in the latter case, a complementary law to define the scope of action;

Article 173. With the exception of the cases set forth in this Constitution, the direct exploitation of an economic activity by the State shall only be allowed whenever needed to the imperative necessities of the national security or to a relevant collective interest, as defined by law.

Paragraph 1 - The law shall establish the juridical estatute of the public company, the mixed capital company and their subsidiaries which explore economic activity of production or trading of goods or rendering of services, with provisions for:

I - their social function and the ways of accounting by the State and society;

II - the compliance with the legislation proper of the private companies, including as regards to civil, commercial, labor and tax rights and duties;

III - bidding and contracting of buildings, services, purchases and sales, with observance to the principles of public administration;

IV - the constitution and functioning of their administrative and fiscal councils, with participation of minor stock holders;

V - the terms, the performance evaluations and the liabilities of the administrators.

Paragraph 2 - The public companies and the mixed-capital companies may not enjoy fiscal privileges which are not extended to companies of the private sector.

Brazilian Penal Code, Law n. 2848/40

Exaction

Article 316 - Exact, for oneself or a third party, directly or indirectly, even when off-duty or before taking over the position, but because of it, undue advantage:

Penalty: incarceration from two to eight years and a fine.

Passive Corruption

Article 317 - Requesting or receiving on his or her own account, directly or indirectly, even where outside the function or before taking in on, but on account of it, any improper advantage, or accepting the promise of such advantage:

Sentence -incarceration from 1(one) to 8 (eight) years and a fine.

§ 1º - the sentence shall be increased in one third if in consequence of the advantage or the promise, the official holds back or fails to execute any official action or practice and by doing so he/she breaks his official duty.

§ 2º - If the official acts, fails to act or holds back an official action when he gives in the request or influence of a third party, thus breaking his official duty,

Sentence - detention from 3 (three) months to 1 (one) year or a fine.

Active Corruption

Art. 333 - Offer or promise undue advantage to an official in order to convince him to act, fail to act or hold back an official act:

Sentence - incarceration from 2 (two) to 12 (twelve) years and a fine. (Provision included by the Law No. 10.163, of 12.11.2003)

Sole Paragraph - the sentence shall be increased in one third if due to advantage or a promise, the official holds back or omits an official act or does and by doing so breaks his official duty.

Active bribery in an international business transaction

Article 337-B. Promising, offering, or giving, directly or indirectly, any improper advantage to a foreign public official, causing him or her to put into practice, to omit, or to delay any official act relating to an international business transaction.

Penalty - incarceration from 1 (one) year to 8 (eight) years and a fine.

Sole paragraph. The penalty is increased by 1/3 (one third) if, because of the advantage or promise, the foreign public official actually delays or omits, or puts into practice the official act in breach of his or her functional duty.

Law n. 9279, March 14 1996

Article 195. Shall commit the crime of disloyal competition anyone who:

(...)

IX - gives or promises money or other utility to a competitor's employee, in order that he or she, in breach of his or her duties, provides him or her with advantage;

Penalty - incarceration from 3 (three) months to 1 (one) year, or a fine.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of cases and attach case law if available

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

Please describe how such information is collected and analysed

Not applicable.

Have you ever assessed the effectiveness of the measures adopted to criminalize bribery in the private sector?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

Which challenges and issues are you facing in (fully) adopting/implementing the provision under review? (Check all the answers that apply and provide an explanation in the "Comments" field)

(ISSUE) Other issues (please specify)

Not applicable.

Please provide an account of your country's efforts to date to implement the provision under review:

Not applicable.

Please outline the steps or action (and related timeframe) that domestic or other authorities would need to take to ensure full compliance with the provision under review

Not applicable.

Which of the following forms of technical assistance, if available, would assist your country in adopting or better implementing the provision under review? (Check all the answers that apply)

(OTHER) Other assistance (please specify)

Not applicable

Are any of the forms of technical assistance previously mentioned already provided? (Check one answer)

(N) No

79. Subparagraph (b) of article 21

Each State Party shall consider adopting such legislative and other measures as may be necessary to **establish as criminal offences, when committed intentionally** in the course of economic, financial or commercial activities:

...

(b) The **solicitation or acceptance**, directly or indirectly, **of an undue advantage by any person who directs or works**, in any capacity, **for a private sector entity**, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, **act or refrain from acting**.

Has your country adopted and implemented the measures described above? (Check one answer)

(P) Yes, in part

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

The partial compliance with the provision stated by Subparagraph (b) of Article 21 is detailed in question 78, referring to Subparagraph (a) of Article 21, with the exception of what relates to Law n. 9279/96. Article 195, item X sets forth that anyone who receives money or other utility, or accepts the promise of payment or reward for, in breach of his or her duties, and provides a competitor's employee with advantage, commits the crime of disloyal competition.

Please attach the text(s)

Federal Constitution

Article 37. The direct or indirect public administration of any of the powers of the Union, the States, the Federal District and the municipalities, as well as their foundations, shall obey the principles of lawfulness, impersonality, morality, publicity, efficiency and also the following:
(...)

XIX - only by means of an specific law shall an autarchy be created and shall a public company, a mixed capital company and a foundation have their creation authorized, it being necessary, in the latter case, a complementary law to define the scope of action;

Article 173. With the exception of the cases set forth in this Constitution, the direct exploitation of an economic activity by the State shall only be allowed whenever needed to the imperative necessities of the national security or to a relevant collective interest, as defined by law.

Paragraph 1 - The law shall establish the juridical estatute of the public company, the mixed capital company and their subsidiaries which explore economic activity of production or trading of goods or rendering of services, with provisions for:

I - their social function and the ways of accounting by the State and society;

II - the compliance with the legislation proper of the private companies, including as regards to civil, commercial, labor and tax rights and duties;

III - bidding and contracting of buildings, services, purchases and sales, with observance to the principles of public administration;

IV - the constitution and functioning of their administrative and fiscal councils, with participation of minor stock holders;

V - the terms, the performance evaluations and the liabilities of the administrators.

Paragraph 2 - The public companies and the mixed-capital companies may not enjoy fiscal privileges which are not extended to companies of the private sector.

Brazilian Penal Code, Law n. 2848/40

Exaction

Article 316 - Exact, for oneself or a third party, directly or indirectly, even when off-duty or before taking over the position, but because of it, undue advantage:

Penalty: incarceration from two to eight years and a fine.

Passive Corruption

Article 317 - Requesting or receiving on his or her own account, directly or indirectly, even where outside the function or before taking in on, but on account of it, any improper advantage, or accepting the promise of such advantage:

Sentence -incarceration from 1(one) to 8 (eight) years and a fine.

§ 1º - the sentence shall be increased in one third if in consequence of the advantage or the promise, the official holds back or fails to execute any official action or practice and by doing so he/she breaks his official duty.

§ 2º - If the official acts, fails to act or holds back an official action when he gives in the request or influence of a third party, thus breaking his official duty,

Sentence - detention from 3 (three) months to 1 (one) year or a fine.

Active Corruption

Art. 333 - Offer or promise undue advantage to an official in order to convince him to act, fail to act or hold back an official act:

Sentence - incarceration from 2 (two) to 12 (twelve) years and a fine. (Provision included by the Law No. 10.163, of 12.11.2003)

Sole Paragraph - the sentence shall be increased in one third if due to advantage or a promise, the official holds back or omits an official act or does and by doing so breaks his official duty.

Active bribery in an international business transaction

Article 337-B. Promising, offering, or giving, directly or indirectly, any improper advantage to a foreign public official, causing him or her to put into practice, to omit, or to delay any official act relating to an international business transaction.

Penalty - incarceration from 1 (one) year to 8 (eight) years and a fine.

Sole paragraph. The penalty is increased by 1/3 (one third) if, because of the advantage or promise, the foreign public official actually delays or omits, or puts into practice the official act in breach of his or her functional duty.

Law n. 9279, March 14 1996

Article 195. Shall commit the crime of disloyal competition anyone who:

(...)

X - receives money or other utility, or accepts the promise of payment or reward for, in breach of his or her duties, provides a competitor's employee with advantage;

Penalty - incarceration from 3 (three) months to 1 (one) year, or a fine.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of cases and attach case law if available

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

Please describe how such information is collected and analysed

Not applicable.

Have you ever assessed the effectiveness of the measures adopted to criminalize bribery in the private sector?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

Which challenges and issues are you facing in (fully) adopting/implementing the provision under review?

(Check all the answers that apply and provide an explanation in the "Comments" field)

(ISSUE) Other issues (please specify)

Not applicable.

Please provide an account of your country's efforts to date to implement the provision under review:

Not applicable.

Please outline the steps or action (and related timeframe) that domestic or other authorities would need to take to ensure full compliance with the provision under review

Not applicable.

Which of the following forms of technical assistance, if available, would assist your country in adopting or better implementing the provision under review? (Check all the answers that apply)

(OTHER) Other assistance (please specify)

Not applicable.

Are any of the forms of technical assistance previously mentioned already provided? (Check one answer)

(N) No

80. Article 22

Each State Party shall consider adopting such legislative and other measures as may be necessary to **establish as a criminal offence**, when **committed intentionally** in the course of economic, financial or commercial activities, **embezzlement by a person who directs or works**, in any capacity, **in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position**.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

The provision under review has been implemented through the Brazilian Penal Code, on its whole Chapters V - Embezzlement and VI - Larceny and other Frauds, of Title II - Crimes against Public Property.

Chapter V of Title II brings general provision for the criminalization of embezzlement, which is applicable to cases happened in the private sector, as well as in a person's private life. This Chapter comprises Articles 168 to 170, which includes as criminal offence, among other types, the embezzlement of social security contributions.

Chapter VI comprises Articles 171 through 179, with special attention to Article 177, which provides for the criminalization of types of frauds and abuse in the management of joint stock companies.

Please attach the text(s)

Embezzlement

Article 168 - ownership of movable things of others, that has possession or ownership:
Penalty - imprisonment from one to four years and a fine.

Increased penalty

§ 1 - The penalty is increased by one third, when the agent received the thing:
I - on deposit required;

II - as a guardian, trustee, receiver, liquidator, administrator, executor or trustee judiciary;
III - by virtue of occupation, employment or occupation.

Embezzlement of social security (including the Law No. 9983, 2000)
<https://www.planalto.gov.br/ccivil_03/LEIS/L9983.htm>

Article 168-A. Failure to pass the social security contributions collected from taxpayers, and within a legal or conventional (Included by Law No. 9983, 2000) <https://www.planalto.gov.br/ccivil_03/LEIS/L9983.htm>
Penalty - 2 (two) to 5 (five) years and fine. (Included by Law No. 9983, 2000)
<https://www.planalto.gov.br/ccivil_03/LEIS/L9983.htm>

§ 1 In the same penalties who fail to: (Included by Law No. 9983, 2000)
<https://www.planalto.gov.br/ccivil_03/LEIS/L9983.htm>

I - to collect, within legal contribution or other amount allocated to social security has been deducted from payment for the insured to third parties or collected from the public (including by Law No. 9983, 2000) <https://www.planalto.gov.br/ccivil_03/LEIS/L9983.htm>

II - to collect contributions due to social security that have integrated non-cash expenses or costs relating to the sale of products or services; (Included by Law No. 9983, 2000) <https://www.planalto.gov.br/ccivil_03/LEIS/L9983.htm>

III - to pay the insured benefit because, when their assessments or values have already been reimbursed by social security to the company. (Included by Law No. 9983, 2000)
<https://www.planalto.gov.br/ccivil_03/LEIS/L9983.htm>

§ 2 is extinguished punishable if the perpetrator has spontaneously declared, confess and pay the contributions, amounts or values and providing the information due to social security, as defined by law or regulation before the start of inspections. (Included by Law No. 9983, 2000) <https://www.planalto.gov.br/ccivil_03/LEIS/L9983.htm>

§ 3 is provided to the judge not to apply the penalty or impose a fine only if the agent is primary and of good report, provided that: (Included by Law No. 9983, 2000) <https://www.planalto.gov.br/ccivil_03/LEIS/L9983.htm>

I - have promoted the onset of action after tax and before offered to the complaint, the payment of social welfare contributions, including attachments, or (Included by Law No. 9983, 2000) <https://www.planalto.gov.br/ccivil_03/LEIS/L9983.htm>

II - the value of contributions due, including attachments, is equal to or less than that provided by social security, administratively, as the minimum for the filing of their executions. (Included by Law No. 9983, 2000)
<https://www.planalto.gov.br/ccivil_03/LEIS/L9983.htm>

Embezzlement of something regarded by error, fortuitous event or force of nature

Article 169 - Appropriating someone of something strange coming to power by his error, fortuitous event or force of nature:

Penalty - detention of one month to one year or a fine.

Sole paragraph - The same penalty:

Embezzlement of treasure

I - who finds treasure in building others and appropriates, in whole or in part, you are entitled to share the building owner;

Embezzlement of thing found

II - who thinks something strange and lost it appropriates, in whole or in part, failing to restore to the rightful owner or possessor or handing it to the competent authority within the period of 15 (fifteen) days.

Article 170 - In the crimes described in this chapter shall apply the provisions of art. 155, § 2.

FRAUD AND OTHERS

Larceny

Article 171 - Obtaining for himself or for others, illegal advantage to the detriment of others, inducing or keeping someone in error, by artifice, trick, or any other fraudulent means:

Penalty - imprisonment from one to five years and fine.

§ 1 - If the criminal is primary, and is of little value the injury, the judge may impose a penalty pursuant to art. 155, § 2.

§ 2 - The same penalties on anyone who:

Disposition of things of others as their own

I - sell, barter, give in payment, hire or guarantee things of others as their own;

Fraudulent sale or encumbrance of its own thing

II - sell, barter, or gives in payment guarantee inalienable own thing, recording of liens or litigation, or promised to sell the property to a third party through payment in installments, silencing of any of these circumstances;

Spoofing pledge

III - defraud through the sale by the creditor without consent or otherwise guarantee the pawn, when he has committed the possession of the object;

Fraud in the delivery of a thing

IV - defrauds substance, quality or quantity of something that must be handed to anyone;

Fraud to receive compensation or insurance value

V - destroy, in whole or in part, or hides its own thing, or injure the body or health, or exacerbates the consequences of injury or illness, in order to be compensation or insurance value;

Fraud in the payment by check

VI - issuing checks without sufficient provision of funds held by the drawee, or frustrates you the payment.
§ 3 - The penalty is increased by one third if the crime is committed at the expense of public-law or popular economy institute, welfare or charity.

Duplicate simulated

Article 172 - Issue invoices, duplicate or bill of sale that does not correspond to the merchandise sold in quantity or quality, or the service provided. (Writing amended by Law No. 8137 of 12.27.1990)

<https://www.planalto.gov.br/ccivil_03/LEIS/L8137.htm>

Penalty - detention of 2 (two) to 4 (four) years and fine. (Writing amended by Law No. 8137 of 12.27.1990)

<https://www.planalto.gov.br/ccivil_03/LEIS/L8137.htm>

Sole Paragraph. The same penalties incurred by those who falsify or tamper with the books of the Registry of Duplicates. (Included by Law No. 5474., 1968) <https://www.planalto.gov.br/ccivil_03/LEIS/L5474.htm>

Abuse of the unable

Article 173 - Abuse, in yourself or others' interest, need, passion or inexperience of a minor, or the sale or unsoundness of mind of others, inducing them to practice any act likely to produce legal effect, against himself or a third party:

Penalty - imprisonment from two to six years and a fine.

Inducement to speculation

Article 174 - Abuse in yourself or others, or the inexperience of simplicity or mental inferiority of others, inducing him to play or practice of betting or speculation in securities or commodities, knowing or having reason to know that the transaction is ruinous :

Penalty - imprisonment from one to three years and fine.

Fraud in Trade

Article 175 - Cheating, in the exercise of commercial activity, the purchaser or consumer;

I - selling, as true or perfect counterfeit merchandise or damaged;

II - delivering a commodity for another:

Penalty - detention from six months to two years or a fine.

§ 1 - Change in work which is commissioned the quality or weight of metal or replace in the same case, real stone by false or otherwise of lesser value, sell fake rock for real, sell, such as precious metal or other Quality:

Penalty - imprisonment from one to five years and fine.

§ 2 - The provisions of art. 155, § 2.

Other fraud

Article 176 - Taking meals in restaurants, stay at a hotel or make use of means of transport not afford to make payment:

Penalty - imprisonment of fifteen days to two months or a fine.

Sole paragraph - only take place through representation, and the judge may, under the circumstances no longer apply the penalty.

Fraud and abuse in the founding or management of a corporation

Article 177 - Promoting the establishment of a corporation, doing, in the prospectus or in a communication to the public or to the assembly, false statement about the constitution of society, or fraudulently concealing the fact relating thereto:

Penalty - imprisonment from one to four years and a fine, if the fact no crime against the popular economy.

§ 1 - the same penalty if the fact no crime against the public economy: (See Law No. 1521 of 1951)

<https://www.planalto.gov.br/ccivil_03/LEIS/L1521.htm>

I - the director, manager or supervisor of a corporation which, in the prospectus, report, opinion, review or disclosure to the public or to the assembly, make false statement about the economic conditions of society, or

fraudulently concealed, in whole or in part, a fact against them;
II - the director, manager or supervisor who promotes, by any deception, false quotation of shares or other securities of the company;
III - the director or manager who takes loan to the company or uses, for yourself or a third party, property or social assets without prior approval of the General Assembly;
IV - the director or manager who buys or sells on behalf of the company, shares issued by it, except when the law allows;
V - the director or manager who, as a guarantee of social credit accepted as security or collateral in shares of the company;
VI - the director or manager who, in the absence of balance, in disagreement with this, on a balance sheet or false, fictitious distribute profits or dividends;
VII - the director, manager or supervisor who, through an intermediary, or colluded with shareholder approval of the account can or opinion;
VIII - the liquidator, in the case of ns. I, II, III, IV, V and VII;
IX - the representative of the foreign corporation, authorized to operate in the country, which practices the acts mentioned in nn. I and II, or give false information to the Government.
§ 2 - The penalty of imprisonment of six months to two years and a fine, a stockholder in order to gain advantage for themselves or others, negotiates the vote in the general assembly.

Irregular issue of the warehouse receipt or "warrant"

Article 178 - Issue the warehouse receipt or warrant, in violation of legal provisions:
Penalty - imprisonment from one to four years and a fine.

Fraud to execution

Article 179 - Cheating execution, alienating, dodging, destroying or damaging property, debts or simulated:
Penalty - detention from six months to two years or a fine.
Sole paragraph - only take place upon complaint.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of cases and attach case law if available

1. Misappropriation of National Securities contributions.
Example attached.

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

Please describe how such information is collected and analysed

Non applicable.

Have you ever assessed the effectiveness of the measures adopted to criminalize embezzlement of property in the private sector?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

81. Subparagraph 1 (a) (i) of article 23

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such

legislative and other measures as may be necessary to **establish as criminal offences, when committed intentionally**:

(a) (i) The **conversion or transfer of property, knowing that such property is the proceeds of crime**, for the **purpose of concealing or disguising the illicit origin** of the **property** or of **helping any person** who is **involved in the commission of the predicate offence to evade the legal consequences** of his or her action;

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

To comply with this provision, Brazil counts on a specific law devoted to criminalizing money laundering, which is the Law n. 9.613, of March 3, 1998.

The Article 1 of this Law gives a definition of money laundering crime and lists the proceeding crimes, including those against Federal and Foreign Public Administration.

Concerning the provision for Subparagraph 1 (a) (i) of Article 23, this law states through Paragraph 1 of Article 1 that shall be sentenced to incarceration anyone that converts assets, rights or valuables into licit assets; acquires, receives, exchanges, trades, gives or receives as guarantee, keeps, stores, moves, or transfers any such assets, rights and valuables; or imports or exports goods at prices that do not correspond to their true value, in an attempt of concealing or disguising the true nature, origin, location, disposition, movement, or ownership of those assets, rights and valuables that result directly or indirectly from the crimes described in the same article.

This shall also apply to anyone who, through economic or financial activity, makes use of any assets, rights and valuables that he/she knows are derived from the crimes referred to in this article; knowingly takes part in any group, association, or office set up for the principal or secondary purpose of committing crimes referred to in this Law. It is worth mentioning that the attempts at committing any of the crimes referred to in this Law are also punishable.

Brazil has ratified the 1988 Vienna Convention (1991) and the Palermo Convention (2004). Money laundering is criminalized on the basis of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and the 2000 UN Convention against Transnational Organized Crime (the Palermo Convention). Federal law 11.343/06 criminalizes narcotic and drug trafficking.

One should note that, under article 18 of the Brazilian Penal Code, any person shall be punished for the commission of a crime if she or he wanted to produce the result (direct *dolus*) or if she or he took the risk to produce it (eventual *dolus*). This provision of the Penal Code also applies to the conduct of ML. Also, article 29 of Brazilian Penal Code establishes that anyone who concurs for the commission of a crime should respond for the correspondent penalties to the extent of its own culpability. This provision covers the ancillary offences of money laundering.

Therefore, the offence of money laundering in the Brazilian penal law system meets the requisites of the Palermo and the Vienna Convention, as the physical and material elements of the offence are contained in Article 1 of Law n. 9.613/98.

Article 91 of the Penal Code establishes as an effect of conviction the loss in favor of the Union, except the right of the victim or a third party in good faith, of: a) the instruments of crime, consisting of things from the manufacture, sale, use, transport or possession is actually illegal and; b) the proceeds of crime or any property or value that is received from the agent with the practice of the criminal activity.

In addition to the provisions set forth in the Criminal Code, the Brazilian AML Law also establishes that a guilty sentence entails the forfeiture, in favor of the Union, of any assets, rights and valuables resulting from any of the crimes referred to in this Law, due provision being made for safeguarding the rights of a victim or a third party in good faith.

Moreover, Law No. 9.613/98, brought forth specific regulation on the penalty of confiscation. The expression "assets, rights and valuables objects of crime", used in the subsection I of the article 7 of this law provides a comprehensive characteristic to the legal provision. Hence, the word "object" means in its legal significance "anything on which a right, an action or an obligation falls". Moreover, the referred to word in its ordinary meaning means both "reason, cause" and "intention, design, aim". It is noticed that for the purposes of the Money Laundering Law, the assets, rights and valuables related to the illicit act by any means - either by the action of the agents or by motivation, or else by the objective to be achieved - must be the aim of the penalty of confiscation. Thus in Brazil the confiscation penalty related to the crime of money laundering includes: i) products or proceeds of crime; ii) instruments effectively or presumably used for the perpetration of the crime, and iii) products, proceeds or instrumentalities which have ultimately been transferred to third parties.

Article 1 of the Act 9.613 refers to the laundered property in a broadly manner extending it to "assets, rights and

valuables resulting from" the predicate crimes, with no limits with regards to their value. This provision is broad enough to cover property of any kind that directly or indirectly represent the proceeds of crime.

In addition to the statutes described above, one more can refer to an offense that may be related to money laundering: fencing. fencing is present in Article 180 of the Brazilian Penal Code and described, in general, as the act of acquiring, receiving, transporting, carrying or hiding in one's or other's, something you know to be proceeds of crime, or to influence third parties in good faith, to acquire, receive or hide.

Please attach the text(s)

LAW No. 9613, OF MARCH 3, 1998

This law addresses the crimes of money laundering or concealment of assets, rights, and valuables; the measures designed to prevent the misuse of the financial system for illicit actions as described in this law; it creates the Council for Financial Activities Control (COAF); and addresses other matters.

THE PRESIDENT OF THE REPUBLIC

I hereby state that the National Congress has decreed and I sign the following Law:

Chapter I

Crimes of money laundering or concealment of assets, rights, and valuables

Section 1

To conceal or disguise the true nature, origin, location, disposition, movement, or ownership of assets, rights and valuables that result directly or indirectly from the following crimes:

- I. Illicit trafficking in narcotic substances or similar drugs;
- II. Terrorism;
- III. Smuggling or trafficking in weapons, munitions or materials used for their production;
- IV. Extortion through kidnapping;
- V. Acts against the public administration, including direct or indirect demands, on behalf of oneself or others, of benefits, as a condition or price for the performance or the omission of any administrative act;
- VI. Acts against the national financial system;
- VII. Acts committed by a criminal organization.

Sentence: incarceration (1) for a period of 3 (three) to 10 (ten) years and a fine.

Paragraph 1 The same punishment shall apply to anyone who, in order to conceal or disguise the use of the assets, rights and valuables resulting from the crimes set forth in this article:

- I. Converts them into licit assets;
- II. Acquires, receives, exchanges, trades, gives or receives as guarantee, keeps, stores, moves, or transfers any such assets, rights and valuables;
- III. Imports or exports goods at prices that do not correspond to their true value;

Paragraph 2 The same penalty also applies to anyone who:

- I. Through economic or financial activity, makes use of any assets, rights and valuables that he/she knows are derived from the crimes referred to in this article;
- II. Knowingly takes part in any group, association, or office set up for the principal or secondary purpose of committing crimes referred to in this Law.

Paragraph 3 The attempts at committing any of the crimes referred to in this Law are punishable in accordance with the provisions set forth in article 14, sole paragraph, of the Criminal Code.

Paragraph 4 The sentence shall be increased by one to two-thirds, in any of the instances contemplated in items I to VI of this article when the crime follows a constant pattern or is committed by a criminal organization.

Paragraph 5 In the event that the accused or his/her accomplice, freely agrees to cooperate with the authorities by providing information that lead to the detection of a crime and the identification of those responsible for it, or

to the discovery of assets, rights and valuables that were the object of the crime, the sentence may be reduced by one or two-thirds. The accused may also be allowed to start serving it in an open system of imprisonment(2). The judge may also decide whether to apply the penalty or substitute it for the restriction of rights.

Brazilian Penal Code, Decree-Law n. 2848/40.

Fencing

Section 180 - Purchasing, receiving, transporting, carrying or hide in yourself or others, something you know to be proceeds of crime, or to affect the third, in good faith, acquires, receives or hides: (Text as determined by Law No. 9426 of 1996)

Penalty - imprisonment from one to four years and a fine. (Writing amended by Law No. 9426 of 1996)

Receiving qualified (Writing amended by Law No. 9426 of 1996)

§ 1 - Acquire, receive, transport, carrying, concealing, storing, disassembling, assembling, reassembling, sell, expose for sale, or otherwise use on yourself or others, in the exercise of any trade or business, thing you should know to be proceeds of crime: (Text as determined by Law No. 9426 of 1996)

Penalty - imprisonment from three to eight years and a fine. (Writing amended by Law No. 9426 of 1996)

§ 2 - whether commercial activity for purposes of the preceding paragraph, any form of irregular or illegal trade, including the year in residence. (Writing amended by Law No. 9426 of 1996)

§ 3 - Acquiring or receiving anything which by its nature or by the disparity between value and price, or condition of the person who offers, it must be assumed obtained through criminal: (Writing amended by Law No. 9426 of 1996)

Penalty - detention of one month to one year or fine or both penalties. (Writing amended by Law No. 9426 of 1996)

§ 4 - The fencing shall be punishable, even if unknown or exempt from punishment the perpetrator of that came from the thing. (Writing amended by Law No. 9426 of 1996)

§ 5 - In case of § 3, if the criminal is primary, the judge may, taking into account the circumstances, fail to apply the penalty. On receiving fraudulent apply the provisions of § 2 of art. 155. (Included by Law No. 9426 of 1996)

§ 6 - In the case of property and facilities belonging to the federal, state, county, utility company or public service company of mixed economy, the penalty under the heading of this article is twofold. (Included by Law No. 9426 of 1996)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

It is important to notice that it has been tabled before Congress a proposal to reform the AML Law (Bill nº 3.443, of 2008) in order to, among other initiatives, enlarge the list of predicate offences. Once approved, the reform will settle as predicate offences any offence under Brazilian Law.

The Bill nº 3.443 has already been approved by the Federal Senate and is now under consideration of the House of Representatives (Câmara dos Deputados). This Bill has been recently included in a National list as priority reform to the Presidents of the three Federal Branches of Power (Pacto Republicano).

Please, find the text of the Bill attached.

Please provide examples of cases and attach case law if available

Please, find below an example of ruling by the Supreme Federal Court on the matter:

"[...] CHAPTER VI OF THE CHARGE, MONEY LAUNDERING. CONCEALING AND DISGUIISING OF ORIGIN, MOVEMENT, LOCATION AND OWNERSHIP OF ASSETS. RECEIVING OF THOUSANDS OF REAIS IN CASH. USE OF

AN INTERPOSED PERSON. CHARACTERIZATION OF THE ACT. MERE TERMINATION OF PREDICATE OFFENCE. DISMISSAL. INDEPENDENT CRIMES. EXISTENCE OF EVIDENCE OF THE IDENTITY OF THE PERPETRATORS AND MATERIALITY. RECEIVED CHARGES. 1. It is dismissed the claims that the origin and the destination of the figures received by the defendants have not been concealed and that this receiving would feature mere termination of the crime of passive corruption. The defendants received large amounts in cash, in some cases millions of reais, without any formal registry in the accounts or any bank operations. In many cases, they used people who are not known publicly and companies owned by some of the defendants, apparently devoted to the perpetration of the money laundering crime, which have become responsible for receiving the figures destined to the purchase of political support. With this, they managed to conceal the movement, location and ownership of the large amounts of cash, and also conceal the origin of such funds, considering the several interposed individuals who were between the alleged corruptors and the final destination of the funds. 3. The characterization of the crime of money laundering, which is independent in relation to the predicate offence, is incompatible, in the case under analysis, with the understanding that there has been mere termination of the predicate offence of passive corruption. 4. The existence of several testimonies and documents in the records which provide the prosecution with a fair cause, bringing forth evidence of the identity of the perpetrators and materiality against the defendants. 5. Charge received against 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st and 32nd defendants." (Inq. 2245, Reporter Ministry Joaquim Barbosa, Full Plenary, judgment: 28.08.2007. Justice Gazette 09.11.2007)

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

The Federal Prosecution Service provides the following statistics regarding Suspicious Activity Reports - SARs received from the Brazilian UIF (COAF), as well as other *notitia criminis* received from different sources (Customs, Central Bank, etc.), and the consequent preliminary investigations. These statistics are published in GTLD's website (Federal Prosecution Service's Working Group on Money Laundering and Financial Crimes), <<http://gtld.pgr.mpf.gov.br>>, under the link "Estatísticas".

MONEY LAUNDERING INVESTIGATIONS

(Suspicious Activity Reports and other notitia criminis received and Preliminary Inquiries within the Federal Prosecution Services)

Year	Suspicious	Activity	Reports	Preliminary	Inquiries
2004	3502352005324195200637020420074892862008347294				

Please describe how such information is collected and analysed

When the Prosecutor receives a report from the UIF, he may open a preliminary investigation in order to gather more information or evidence. After the preliminary investigation, the Prosecutor may send the case to the Federal Police, to open a criminal investigation, or he may go directly to prosecution. Other possibility, when a Prosecutor receives a SAR or a *notitia criminis*, is to dismiss it, when it has absolutely no evidence that support the beginning of an investigation.

Therefore, the numbers provided above do not represent the absence of action, when the number of preliminary inquiries is lower than the number of UIF Reports and other *notitia criminis* received. In the Brazilian system, the Prosecutor must always act: after analyzing the case, he/her may either dismiss it, with a formal act (administrative or judicial) or open a preliminary investigation (administrative), or send it to the Federal Police for a criminal investigation (*inquérito policial*), and prosecute the case (*ação penal*).

The Federal Prosecution Service has a Working Group specialized in money laundering and financial crimes. The Group is formed by experienced Federal Prosecutors, all over the country, who give information and support to every Prosecutor which has an investigation or a prosecution about money laundering.

The Group represents the Federal Public Prosecution Services in national and international events about money laundering, such as the National Strategy on Money Laundering (ENCCLA - Estratégia Nacional de Combate à Corrupção e à Lavagem de Dinheiro) and the FATF/GAFI Plenary Meetings.

To increase the support to the Prosecutors, as well as to give general information for the public, the GTLD Working Group maintains a website under the address <<http://gtld.pgr.mpf.gov.br>>, where relevant information and exchange of data and help are provided

Have you ever assessed the effectiveness of the measures adopted to criminalize money-laundering?

(Y) Yes

Brazil has had this provision assessed by FATF-GAFI.

Please outline (or, if available, attach) the results of such an assessment including methods, tools

and resources utilized:

82. Subparagraph 1 (a) (ii) of article 23

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to **establish as criminal offences, when committed intentionally:**

...

(ii) The **concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;**

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

The provision under review has been implemented through Article 1 of Law n. 9.613/98, which states that concealing or disguising the true nature, origin, location, disposition, movement, or ownership of assets, rights and valuables that result directly or indirectly from crimes such as illicit trafficking in narcotic substances or similar drugs, terrorism, acts against the public administration, including direct or indirect demands, on behalf of oneself or others, of benefits, as a condition or price for the performance or the omission of any administrative act, acts against the national financial system, conversion of illicit assets, rights or valuables into licit.

According to Paragraph 2 of the same article, anyone can be punished if, through economic or financial activity, makes use of any assets, rights and valuables that he/she knows are derived from the crimes referred to in this article.

Please attach the text(s)

LAW No. 9613, OF MARCH 3, 1998

This law addresses the crimes of money laundering or concealment of assets, rights, and valuables; the measures designed to prevent the misuse of the financial system for illicit actions as described in this law; it creates the Council for Financial Activities Control (COAF); and addresses other matters.

THE PRESIDENT OF THE REPUBLIC

I hereby state that the National Congress has decreed and I sign the following Law:

Chapter I

Crimes of money laundering or concealment of assets, rights, and valuables

Section 1

Article1. To conceal or disguise the true nature, origin, location, disposition, movement, or ownership of assets, rights and valuables that result directly or indirectly from the following crimes:

- I. Illicit trafficking in narcotic substances or similar drugs;
- II. Terrorism;
- III. Smuggling or trafficking in weapons, munitions or materials used for their production;
- IV. Extortion through kidnapping;
- V. Acts against the public administration, including direct or indirect demands, on behalf of oneself or others, of benefits, as a condition or price for the performance or the omission of any administrative act;

VI. Acts against the national financial system;

VII. Acts committed by a criminal organization.

Sentence: incarceration (1) for a period of 3 (three) to 10 (ten) years and a fine.

(...)

Paragraph 2 The same penalty also applies to anyone who:

I. Through economic or financial activity, makes use of any assets, rights and valuables that he/she knows are derived from the crimes referred to in this article;

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please refer back to Bill of Law PL 3343/08 attached as answer to question 81, above.

Please provide examples of cases and attach case law if available

1 - Example of concealment attached.

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

Please see answer to Subparagraph 1 (a) (i) of Article 23 (question 81), above.

Please describe how such information is collected and analysed

Please see answer to Subparagraph 1 (a) (i) of Article 23 (question 81), above.

Have you ever assessed the effectiveness of the measures adopted to criminalize money-laundering?

(Y) Yes

Brazil has had this provision assessed by FATF-GAFI.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

83. Subparagraph 1 (b) (i) of article 23

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to **establish as criminal offences, when committed intentionally:**

...

(b) Subject to the basic concepts of its legal system:

(i) **The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;**

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

For this provision, the Article 1 and its Paragraphs 1 and 2 comply with what is required for criminalizing the acquisition, possession or use of property known as to be proceeds of crime, with better detail being item II of Paragraph 1, which refers to the acquisition, concealment, negotiation, giving or receiving as guarantee, keeping, storage, moving or transfer of illicit assets, rights or valuables; and item I of Paragraph 2, which refers to the use of assets, rights and valuables known as of being proceeds of crime.

Please attach the text(s)

LAW No. 9613, OF MARCH 3, 1998

This law addresses the crimes of money laundering or concealment of assets, rights, and valuables; the measures designed to prevent the misuse of the financial system for illicit actions as described in this law; it creates the Council for Financial Activities Control (COAF); and addresses other matters.

THE PRESIDENT OF THE REPUBLIC

I hereby state that the National Congress has decreed and I sign the following Law:

Chapter I

Crimes of money laundering or concealment of assets, rights, and valuables

Article 1 To conceal or disguise the true nature, origin, location, disposition, movement, or ownership of assets, rights and valuables that result directly or indirectly from the following crimes:

- I. Illicit trafficking in narcotic substances or similar drugs;
- II. Terrorism;
- III. Smuggling or trafficking in weapons, munitions or materials used for their production;
- IV. Extortion through kidnapping;
- V. Acts against the public administration, including direct or indirect demands, on behalf of oneself or others, of benefits, as a condition or price for the performance or the omission of any administrative act;
- VI. Acts against the national financial system;
- VII. Acts committed by a criminal organization.

Sentence: incarceration (1) for a period of 3 (three) to 10 (ten) years and a fine.

Paragraph 1 The same punishment shall apply to anyone who, in order to conceal or disguise the use of the assets, rights and valuables resulting from the crimes set forth in this article:

- I. Converts them into licit assets;
- II. Acquires, receives, exchanges, trades, gives or receives as guarantee, keeps, stores, moves, or transfers any such assets, rights and valuables;
- III. Imports or exports goods at prices that do not correspond to their true value;

Paragraph 2 The same penalty also applies to anyone who:

- I. Through economic or financial activity, makes use of any assets, rights and valuables that he/she knows are derived from the crimes referred to in this article;
- II. Knowingly takes part in any group, association, or office set up for the principal or secondary purpose of committing crimes referred to in this Law.

Paragraph 3 The attempts at committing any of the crimes referred to in this Law are punishable in accordance with the provisions set forth in article 14, sole paragraph, of the Criminal Code.

Paragraph 4 The sentence shall be increased by one to two-thirds, in any of the instances contemplated in items I to VI of this article when the crime follows a constant pattern or is committed by a criminal organization.

Paragraph 5 In the event that the accused or his/her accomplice, freely agrees to cooperate with the authorities by providing information that lead to the detection of a crime and the identification of those responsible for it, or to the discovery of assets, rights and valuables that were the object of the crime, the sentence may be reduced by one or two-thirds. The accused may also be allowed to start serving it in an open system of imprisonment(2). The judge may also decide whether to apply the penalty or substitute it for the restriction of rights.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please refer back to Bill of Law PL 3343/08 attached as answer to Subparagraph 1 (a) (i) of Article 23 (question 81), above.

Please provide examples of cases and attach case law if available

Please see answer to Subparagraph 1 (a) (i) of Article 23 (question 81), above.

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

Please see answer to Subparagraph 1 (a) (i) of Article 23 (question 81), above.

Please describe how such information is collected and analysed

Please see answer to Subparagraph 1 (a) (i) of Article 23 (question 81), above.

Have you ever assessed the effectiveness of the measures adopted to criminalize money-laundering?

(Y) Yes

Brazil has had this provision assessed by FATF-GAFI.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

84. Subparagraph 1 (b) (ii) of article 23

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to **establish as criminal offences, when committed intentionally:**

...

(b) Subject to the basic concepts of its legal system:

...

(ii) **Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established** in accordance with this article.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

The provision under review has been implemented through items I and II of Paragraph 2, Article 1, of Law n. 9.613/98, which states that anyone can be punished when using, in economic or finance activity, assets, rights or valuables known as of being proceeds of crime and participating in group, association or business knowing that the main or second purpose of its functioning is the commission of crime covered by this law. The attempt is also punishable, considering what is set forth in the Sole Paragraph of Article 14 of the Brazilian Penal Code, Decree-Law n. 2848/40, which punishes the attempt with the correspondent penalty of the consumed crime, decreasing one to two thirds of it.

The Penal Code also provides, in its Articles 29 to 31, the figure of the "concerted action". The concerted action, also called concurrence for delinquents (*concursum delinquentium*) or co-delinquency, is defined as the concurrence of two or more persons, knowingly and voluntarily, competing or collaborating in the commission of some criminal offense.

Please attach the text(s)

LAW No. 9613, OF MARCH 3, 1998

This law addresses the crimes of money laundering or concealment of assets, rights, and valuables; the measures designed to prevent the misuse of the financial system for illicit actions as described in this law; it creates the Council for Financial Activities Control (COAF); and addresses other matters.

THE PRESIDENT OF THE REPUBLIC

I hereby state that the National Congress has decreed and I sign the following Law:

Chapter I

Crimes of money laundering or concealment of assets, rights, and valuables

Article 1 To conceal or disguise the true nature, origin, location, disposition, movement, or ownership of assets, rights and valuables that result directly or indirectly from the following crimes:

- I. Illicit trafficking in narcotic substances or similar drugs;
- II. Terrorism;
- III. Smuggling or trafficking in weapons, munitions or materials used for their production;
- IV. Extortion through kidnapping;
- V. Acts against the public administration, including direct or indirect demands, on behalf of oneself or others, of benefits, as a condition or price for the performance or the omission of any administrative act;
- VI. Acts against the national financial system;
- VII. Acts committed by a criminal organization.

Sentence: incarceration (1) for a period of 3 (three) to 10 (ten) years and a fine.

(...)

Paragraph 2 The same penalty also applies to anyone who:

- I. Through economic or financial activity, makes use of any assets, rights and valuables that he/she knows are derived from the crimes referred to in this article;
- II. Knowingly takes part in any group, association, or office set up for the principal or secondary purpose of committing crimes referred to in this Law.

Paragraph 3 The attempts at committing any of the crimes referred to in this Law are punishable in accordance with the provisions set forth in article 14, sole paragraph, of the Criminal Code.

Paragraph 4 The sentence shall be increased by one to two-thirds, in any of the instances contemplated in items I to VI of this article when the crime follows a constant pattern or is committed by a criminal organization.

Paragraph 5 In the event that the accused or his/her accomplice, freely agrees to cooperate with the authorities

by providing information that lead to the detection of a crime and the identification of those responsible for it, or to the discovery of assets, rights and valuables that were the object of the crime, the sentence may be reduced by one or two-thirds. The accused may also be allowed to start serving it in an open system of imprisonment(2). The judge may also decide whether to apply the penalty or substitute it for the restriction of rights.

Brazilian Penal Code, Decree-Law n. 2848/40

TITLE IV

CONCOURSE OF PEOPLE

Common rules to custodial sentences

Section 29 - Who, however, contributes to crime concerns in sentencing this comminated, the extent of their culpability. (Writing amended by Law No. 7209 of 07.11.1984)

§ 1 - If participation is minor, the penalty can be reduced by one sixth to one third. (Writing amended by Law No. 7209 of 07.11.1984)

§ 2 - If any of the competitors wanted to participate in less serious crime, you will be prosecuted to the this, the penalty shall be increased by half if it was likely the result worse. (Writing amended by Law No. 7209 of 07.11.1984)

Circumstances of no communication

Section 30 - Do not communicate the circumstances and conditions of a personal nature, except when elementary crime. (Writing amended by Law No. 7209 of 7.11.1984)

Cases of no punishment

31 - The setting, the determination and the aid or instigation, unless otherwise noted, are not punishable if the crime is not enough at least to be tried. (Writing amended by Law No. 7209 of 07.11.1984)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please refer back to Bill of Law PL 3343/08 attached as answer to Subparagraph 1 (a) (i) of Article 23 (question 81), above.

Please provide examples of cases and attach case law if available

1. Example of concerted action attached.

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

Please see answer to Subparagraph 1 (a) (i) of Article 23 (question 81), above.

Please describe how such information is collected and analysed

Please see answer to Subparagraph 1 (a) (i) of Article 23 (question 81), above.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Brazil has had this provision assessed by FATF-GAFI.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

85. Subparagraph 2 (a) of article 23

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the **widest range of predicate offences;**

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

Article 1 of Law n. 9613 provides a wide range of broad predicate offenses.

Under Article 2, II, of the AML Law, conviction of a predicate offence is not necessary to prosecute someone for the crime of money laundering. The judicial proceedings and sentencing of the crimes referred to in this Law are not dependent on the judicial proceedings and sentencing applicable to predicate offences referred to in this Law, even if these crimes were committed abroad.

The process of seizure shall take place in the form prescribed in articles 125 to 144 of Decree-Law No 3689 of October 3, 1941 - Criminal Procedure Code. According to Article 4 of Law 9.613, a seizure order can be obtained by presenting evidence that those assets constitute the object of one of the predicate crime. On the other side, Paragraph 2 and 3, of Article 4, determine that the liberation of seized or detained assets, rights and valuables can only be obtained after the lawfulness of their origin has been established and after the accused presents him/herself personally to the judge. Those dispositions allow the prosecution, upon demonstrating indicia of criminality, to shift the burden of proof to the defendant to establish the legitimate origin of the property.

Brazilian AML Law identifies predicate offences generically, not by length of penalty, but by class of offences. For the Brazilian AML Law, predicate offences are illicit trafficking of drugs and narcotic substances; terrorism and terrorism financing; smuggling or trafficking of weapons, ammunition and supplies for its production; kidnapping for extortion; all crimes committed against Public Administration, including those committed against foreign Public Administration, financial crimes, all crimes committed by organized crime, and crimes committed by an individual against foreign public administration.

a) All the predicate offences are considered serious offences - they are "crimes", as opposed to "misdemeanours". Under Brazilian legislation, according to Decree No. 3914/41, a crime, as opposed to a contravention, which should be understood as a misdemeanor, shall be punished with reclusion or detention.

b) They are punishable by a maximum penalty of:

- 15 years (illicit trafficking of drugs and narcotic substances);
 - 10 years for terrorism (article 20 of federal law 7.170/83) and 8 years for terrorism financing (article 24, federal law 7.170/1983);
 - 8 years for smuggling or trafficking of weapons, ammunition and supplies for its production (article 18, federal law 10.826/2003)
 - 15 years for extortion committed by kidnapping (article 159 of Penal Code);
 - from 1 month to 12 years for the range of crimes committed against Public Administration, including those committed against foreign Public Administration.
- for all crimes committed by organized crime, the penalty is that of the crime committed, plus the penalty of three years because the crime was committed by a group (art. 288 of the Penal Code).

c) They are punished by a minimum penalty of:

- 5 years (illicit trafficking of drugs and narcotic substances);
- 3 years for terrorism (article 20 of federal law 7.170/1983) and 2 years for the financing of terrorism (article 24 of federal law 7.170/1983);
- 4 years for smuggling or trafficking of weapons, ammunition and supplies for its production (article 18, federal law 10.826/2003);
- 8 years for extortion committed by kidnapping (article 159 of Penal Code);

- from 15 days to 3 years for the range of crimes committed against Public Administration, including those committed against foreign Public Administration financial crimes;
- for all crimes committed by organized crime, the penalty is that of the crime committed, plus the minimum penalty of one year because the crime was committed by a group (art. 288 of the Penal Code).

Therefore, the listed predicate offences are the most serious and the most common offences that lead to the crime of money laundering. Three specific kinds of predicate offences ("Acts against the national financial system", "Acts against the public administration and "Acts committed by a criminal organization") comprise a vast array of crimes. Crimes against the public administration, which are set under articles 312 to 361 of the Brazilian Penal Code, cover more than 40 crimes, including exaction, prevarication, trafficking of influence, corruption of foreign public official in international business transaction, fraud in legal proceedings, abuse of power, graft, betrayal of trust, smuggling and the evasion of social security contributions, etc. Also Law 8.666/93 which regulate public biddings and contracts, establishes other types of crimes against the public administration.

Crimes against the financial system, as provided in Law 7492/86, sets more than 20 offences against Brazilian financial system such as capital flight, violation of the secrecy of an operation carried out or a service provided by a financial institution or a member of the securities distribution system known to the person by reason of his/her office. On the other hand, acts committed by a criminal organization can comprise almost any type of crime as a predicate offence, including fraud, homicide, robbery and others. Thus the inclusion of those categories of crimes significantly expands the scope of coverage.

It is important to note that it has been sent to the National Congress a proposal to reform the AML Law (Bill nº 3.443, of 2008) in order to, among other initiatives, enlarge the list of predicate offences. Once approved, the reform will settle as predicate offences any offence under Brazilian Law, as referred to in Subparagraph 1 (a) (i) of Article 23 (question 81), above.

Please attach the text(s)

LAW No. 9613, OF MARCH 3, 1998

This law addresses the crimes of money laundering or concealment of assets, rights, and valuables; the measures designed to prevent the misuse of the financial system for illicit actions as described in this law; it creates the Council for Financial Activities Control (COAF); and addresses other matters.

THE PRESIDENT OF THE REPUBLIC

I hereby state that the National Congress has decreed and I sign the following Law:

Chapter I

Crimes of money laundering or concealment of assets, rights, and valuables

Article 1 To conceal or disguise the true nature, origin, location, disposition, movement, or ownership of assets, rights and valuables that result directly or indirectly from the following crimes:

- I. Illicit trafficking in narcotic substances or similar drugs;
- II. Terrorism;
- III. Smuggling or trafficking in weapons, munitions or materials used for their production;
- IV. Extortion through kidnapping;
- V. Acts against the public administration, including direct or indirect demands, on behalf of oneself or others, of benefits, as a condition or price for the performance or the omission of any administrative act;
- VI. Acts against the national financial system;
- VII. Acts committed by a criminal organization.

Sentence: incarceration (1) for a period of 3 (three) to 10 (ten) years and a fine.

Paragraph 1 The same punishment shall apply to anyone who, in order to conceal or disguise the use of the assets, rights and valuables resulting from the crimes set forth in this article:

- I. Converts them into licit assets;
- II. Acquires, receives, exchanges, trades, gives or receives as guarantee, keeps, stores, moves, or transfers any such assets, rights and valuables;
- III. Imports or exports goods at prices that do not correspond to their true value;

Paragraph 2 The same penalty also applies to anyone who:

I. Through economic or financial activity, makes use of any assets, rights and valuables that he/she knows are derived from the crimes referred to in this article;

II. Knowingly takes part in any group, association, or office set up for the principal or secondary purpose of committing crimes referred to in this Law.

Paragraph 3 The attempts at committing any of the crimes referred to in this Law are punishable in accordance with the provisions set forth in article 14, sole paragraph, of the Criminal Code.

Paragraph 4 The sentence shall be increased by one to two-thirds, in any of the instances contemplated in items I to VI of this article when the crime follows a constant pattern or is committed by a criminal organization.

Paragraph 5 In the event that the accused or his/her accomplice, freely agrees to cooperate with the authorities by providing information that lead to the detection of a crime and the identification of those responsible for it, or to the discovery of assets, rights and valuables that were the object of the crime, the sentence may be reduced by one or two-thirds. The accused may also be allowed to start serving it in an open system of imprisonment. The judge may also decide whether to apply the penalty or substitute it for the restriction of rights.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please refer back to Bill of Law PL 3343/08 attached as answer to Subparagraph 1 (a) (i) of Article 23 (question 81), above.

Please provide examples of cases and attach case law if available

Please see answer to Subparagraph 1 (a) (i) of Article 23 (question 81), above.

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

Please see answer to Subparagraph 1 (a) (i) of Article 23 (question 81), above.

Please describe how such information is collected and analysed

Please see answer to Subparagraph 1 (a) (i) of Article 23 (question 81), above.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Brazil has had this provision assessed by FATF-GAFI.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

86. Subparagraph 2 (b) of article 23

2. For purposes of implementing or applying paragraph 1 of this article:

...

(b) Each State Party shall include as **predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;**

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

The list of predicate offences brought by the Law 9.613, of March 3, 1998 comprises offences established in accordance with UNCAC. Most of the predicate offences described in this law are broad, which can comprise other offences stated by the Convention.

For instance, bribery of a domestic public official is a "crime against the Public Administration" and the offence of bribery of a foreign public official under Article 337-B of the Penal Code falls within the chapter of "crimes committed by individuals against a Foreign Public Administration". which are predicate offences described in Article 1 of Law 9.613/98, as posted in the following question.

Please attach the text(s)

LAW No. 9613, OF MARCH 3, 1998

This law addresses the crimes of money laundering or concealment of assets, rights, and valuables; the measures designed to prevent the misuse of the financial system for illicit actions as described in this law; it creates the Council for Financial Activities Control (COAF); and addresses other matters.

THE PRESIDENT OF THE REPUBLIC

I hereby state that the National Congress has decreed and I sign the following Law:

Chapter I

Crimes of money laundering or concealment of assets, rights, and valuables

Article 1 To conceal or disguise the true nature, origin, location, disposition, movement, or ownership of assets, rights and valuables that result directly or indirectly from the following crimes:

- I. Illicit trafficking in narcotic substances or similar drugs;
- II. Terrorism;
- III. Smuggling or trafficking in weapons, munitions or materials used for their production;
- IV. Extortion through kidnapping;

V. Acts against the public administration, including direct or indirect demands, on behalf of oneself or others, of benefits, as a condition or price for the performance or the omission of any administrative act;

VI. Acts against the national financial system;

VII. Acts committed by a criminal organization.

Sentence: incarceration (1) for a period of 3 (three) to 10 (ten) years and a fine.

Paragraph 1 The same punishment shall apply to anyone who, in order to conceal or disguise the use of the assets, rights and valuables resulting from the crimes set forth in this article:

- I. Converts them into licit assets;
- II. Acquires, receives, exchanges, trades, gives or receives as guarantee, keeps, stores, moves, or transfers any such assets, rights and valuables;
- III. Imports or exports goods at prices that do not correspond to their true value;

Paragraph 2 The same penalty also applies to anyone who:

I. Through economic or financial activity, makes use of any assets, rights and valuables that he/she knows are derived from the crimes referred to in this article;

II. Knowingly takes part in any group, association, or office set up for the principal or secondary purpose of committing crimes referred to in this Law.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please refer back to Bill of Law PL 3343/08 attached as answer to Subparagraph 1 (a) (i) of Article 23 (question 81), above.

Please provide examples of cases and attach case law if available

1. Example of predicate offence attached.

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

Please describe how such information is collected and analysed

Please see answer to Subparagraph 1 (a) (i) of Article 23 (question 81), above.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

This provision has been assessed by the Organization for Economic Cooperation and Development.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

87. Subparagraph 2 (c) of article 23

2. For purposes of implementing or applying paragraph 1 of this article:

...

(c) For the purposes of subparagraph (b) above, **predicate offences** shall include offences **committed both within and outside the jurisdiction of the State Party in question**. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

According to Article 2 of Law 9613/98, the judicial proceedings and sentencing of the crimes referred to in this law: II- are not dependent on the judicial proceedings and sentencing applicable to predicate offences referred to

in Article 1, even if these offences were committed abroad.

Furthermore, crimes perpetrated abroad that, by treaty or convention, Brazil has been bound to suppress, might be subject to the Brazilian laws. Article 7 of the Brazilian Criminal Code establishes the conditions under which the Brazilian law can be applied, in the following terms:

“§ 2 - In cases of the subsection II, the application of the Brazilian law depends on the concomitance of the following conditions:

- a) the agent enters into the national territory
- b) the fact must be liable to prosecution in the country where it has been perpetrated
- c) the crime must be included among those for which the Brazilian law authorizes extradition
- d) the agent has not been acquitted abroad nor has served time there;
- e) the agent has not been pardoned abroad or, for any other reason, the liability to prosecution has not been extinguished, pursuant to the most favorable law.”

Article 8 of the Brazilian AML Law provides that a judge will freeze and seize the proceeds of money laundering whose predicate offences were committed in another country. However, it should be pointed that in the hypothesis where the proceeds of crime are derived from a conduct that occurred in another country, which is not an offence in that other country, even though it constitutes a predicate offence in Brazil, there would be not an offence of money laundering.

Another important issue concerns legal persons: although Brazil does not have criminal liability for legal persons, the offence of money laundering can still be prosecuted where the predicate offence is committed abroad by a legal person.

According to Brazilian law, the offence of money laundering extends to a person who commits both the predicate crime and money laundering. Article 1 of federal law 9.613/98 makes no difference regarding the person who committed the predicate offence, and the fundamental principles of Brazilian domestic law make no restriction to punish the so called self laundering. Besides, item II of Article 2 of AML Law establishes that the judicial proceedings and sentencing of the crimes referred to in the Law are not dependent on the judicial proceedings and sentencing applicable to prior crimes referred to in the previous article, even if these crimes were committed abroad.

Also, article 69 of Brazilian Criminal Code determines that “when one, by means of more than one action or omission, commits two or more crimes, identical or not, the custodial sentences shall cumulate. In case of cumulative penalties of prison and custody, the latter shall be executed before the former.”

In this sense, our Supreme Court has already decided that the money laundering activities do not constitute the mere termination of the predicate offence.

In the hypothesis where the proceeds of crime are derived from conduct that occurred in another country, which is not an offence in that other country but which would have constituted a predicate offence had it occurred domestically, there will not be the offence of money laundering. If the act, which corresponds to a predicate offence in Brazil, is not considered an offence abroad, the origin of the assets, rights or valuables is not illicit. Therefore, if the assets, rights or valuables are introduced in Brazil, there will not be a crime. However, it is not necessary that the foreign country criminalizes that offence with the same nomen iuris. The dual criminality principle in Brazil is interpreted in a broad manner. In other words, it is sufficient that the conduct criminalized on the other country fulfills the legal description of the crime in Brazilian law.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please refer back to Bill of Law PL 3343/08 attached as answer to Subparagraph 1 (a) (i) of Article 23 (question 81), above.

Please provide examples of cases and attach case law if available

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

Please describe how such information is collected and analysed

Not applicable.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Brazil has had this provision assessed by FATF-GAFI.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

88. Subparagraph 2 (d) of article 23

2. For purposes of implementing or applying paragraph 1 of this article:

...

(d) Each State Party shall **furnish copies of its laws that give effect to this article** and of any subsequent changes to such laws or a description thereof to the **Secretary-General of the United Nations**;

Has your country furnished copies of its laws to the Secretary-General of the United Nations as prescribed above? (Check one answer)

(N) No

Please, find it attached.

Please provide the requisite information here

LAW No. 9613, OF MARCH 3, 1998

This law addresses the crimes of money laundering or concealment of assets, rights, and valuables; the measures designed to prevent the misuse of the financial system for illicit actions as described in this law; it creates the Council for Financial Activities Control (COAF); and addresses other matters.

THE PRESIDENT OF THE REPUBLIC

I hereby state that the National Congress has decreed and I sign the following Law:

Chapter I

Crimes of money laundering or concealment of assets, rights, and valuables

Article 1 To conceal or disguise the true nature, origin, location, disposition, movement, or ownership of assets, rights and valuables that result directly or indirectly from the following crimes:

- I. Illicit trafficking in narcotic substances or similar drugs;
- II. Terrorism;
- III. Smuggling or trafficking in weapons, munitions or materials used for their production;
- IV. Extortion through kidnapping;
- V. Acts against the public administration, including direct or indirect demands, on behalf of oneself or others, of benefits, as a condition or price for the performance or the omission of any administrative act;
- VI. Acts against the national financial system;
- VII. Acts committed by a criminal organization.

Sentence: incarceration (1) for a period of 3 (three) to 10 (ten) years and a fine.

Paragraph 1 The same punishment shall apply to anyone who, in order to conceal or disguise the use of the assets, rights and valuables resulting from the crimes set forth in this article:

- I. Converts them into licit assets;
- II. Acquires, receives, exchanges, trades, gives or receives as guarantee, keeps, stores, moves, or transfers any such assets, rights and valuables;
- III. Imports or exports goods at prices that do not correspond to their true value;

Paragraph 2 The same penalty also applies to anyone who:

- I. Through economic or financial activity, makes use of any assets, rights and valuables that he/she knows are derived from the crimes referred to in this article;
- II. Knowingly takes part in any group, association, or office set up for the principal or secondary purpose of committing crimes referred to in this Law.

Paragraph 3 The attempts at committing any of the crimes referred to in this Law are punishable in accordance with the provisions set forth in article 14, sole paragraph, of the Criminal Code.

Paragraph 4 The sentence shall be increased by one to two-thirds, in any of the instances contemplated in items I to VI of this article when the crime follows a constant pattern or is committed by a criminal organization.

Paragraph 5 In the event that the accused or his/her accomplice, freely agrees to cooperate with the authorities by providing information that lead to the detection of a crime and the identification of those responsible for it, or to the discovery of assets, rights and valuables that were the object of the crime, the sentence may be reduced by one or two-thirds. The accused may also be allowed to start serving it in an open system of imprisonment(2). The judge may also decide whether to apply the penalty or substitute it for the restriction of rights.

Chapter II

Special Procedural Provisions

Article 2 The judicial proceedings and sentencing of the crimes referred to in this Law:

- I. Shall be subject to the same provisions that apply to crimes punishable by extended incarceration, and that are under the jurisdiction of a an order court;
- II. Are not dependent on the judicial proceedings and sentencing applicable to antecedent crimes referred to in the previous article, even if these crimes were committed abroad;
- III. Shall be subject to federal court jurisdiction in the following instances:
 - a) In the event of crimes against the financial system and the economic-financial order or detrimental to assets, services or interests of the Union or any of its autarchic entities or government companies(3);
 - b) In the event the antecedent crime is subject to federal court jurisdiction.

Paragraph 1 The charge shall include sufficient indications of the existence of the antecedent crime. The criminal acts referred to in this Law shall be punishable even when the offender in the antecedent crime is unknown or exempt from punishment.

Paragraph 2 The provisions of section 366 of the Criminal Procedure Code shall not apply to the judicial process pertaining to the crimes referred to in this Law.

Article 3 The crimes referred to in this Law shall not be subject to bail or temporary release, and, in the event of a conviction, the judge shall accordingly decide if the defendant may be released pending appeal.

Article 4 During investigations or judicial proceedings, upon request made by the prosecutor or the competent police authority, after consulting the prosecutor within twenty-four hours, and with sufficient evidence, the judge may order the seizure or detention of assets, rights and valuables that constitute the object of the crimes referred to in this Law, and belong to or are registered under the defendant's name. This process shall take place in the form provided for in sections 125 to 144 of Decree-Law No. 3689 of October 3, 1941 - Criminal Procedure Code.

Paragraph 1 The provisional measures referred to in this section shall be suspended if the criminal lawsuit is not initiated within a period of 120 (one hundred and twenty) days, counted from the date the judicial proceedings are concluded.

Paragraph 2 The judge shall order the liberation of seized or detained assets, rights and valuables after the legality of their origin has been established.

Paragraph 3 No request for the liberation of any assets, rights, and valuables shall be accepted without the

presence of the accused. The judge may order that action be taken in order to preserve any assets, rights or valuables in the instances referred to in Sec. 366 of the Criminal Procedure Code.

Paragraph 4 In the event that the immediate implementation of the preventive measures referred to herein may compromise the investigations, the judge-upon consultation with the prosecutor-may issue an order suspending an arrest warrant or the seizure or detention of assets, rights or valuables.

Article 5 Whenever the circumstances justify it, the judge, upon consultation with the prosecutor, shall appoint a receiver-a qualified person to manage the assets, rights or valuables that were seized or detained, and this manager shall execute a deed of undertaking (4).

Article 6 The receiver:

I. Shall be entitled to receive remuneration for his services, which shall be paid with proceeds of the assets under his/her management;

II. Acting in response to a court order, shall provide periodic information on the status of the assets under his/her management as well as explanations and details about investment and reinvestment operations he/she may have executed;

Sole paragraph The actions pertaining to the management of the assets seized or detained shall be communicated to the prosecutor, who may file any request before the court that he deems appropriate.

Chapter III

The effects of a guilty verdict

Article 7 In addition to the results set forth in the Criminal Code, a guilty sentence entails the following:

I. The forfeiture, in favor of the Union, of any assets, rights and valuables resulting from any of the crimes referred to in this Law, due provision being made for safeguarding the rights of a victim or those of a third party in good faith;

II. The suspension of the right to hold positions of any nature in the public service, positions as directors, members of management councils(5) or managers of any of the legal entities referred to in Sec. 9, for a period equal to double the imprisonment term stipulated by the judicial sentence;

Chapter IV

Assets, rights or valuables resulting from crimes committed abroad

Article 8 In the event that there is an international treaty or convention dealing with the matters referred to in this Law and upon request of a competent foreign authority, the judge shall order the seizure or detention of assets, rights and valuables resulting from the crimes referred to in section 1 and committed abroad.

Paragraph 1 These provisions shall also apply, regardless of the existence of an international treaty or convention, provided the government of the foreign country in question undertakes to grant reciprocity of treatment to Brazil.

Paragraph 2 In the absence of an international treaty or convention, the assets, rights or valuables seized or detained upon request of a competent foreign authority or the proceeds resulting from their detention shall be evenly divided between the requesting State and Brazil, safeguarding the rights of victims or third parties in good faith.

Chapter V

Legal Entities subject to this Law

Article 9 The obligations set forth in sections 10 and 11 hereof shall apply to any legal entity that engages on a permanent or temporary basis, as a principal or secondary activity, together or separately, in any of the following activities:

I. Receiving, acting as brokers and investing third parties' funds, in national or foreign currency;

II. Purchase and sale of foreign currency or gold as a financial asset;

III. Acting as securities custodian, issuer, distributor, clearer, negotiator, broker, or manager;

Sole paragraph The same obligations shall apply to the following:

I. Stock, commodities, and futures exchanges;

II. Insurance companies, insurance brokers, and institutions involved with private pension plans or social

security;

III. Payment or credit card administrators and consórcios (consumer funds commonly held and managed for the acquisition of consumer goods);

IV. Administrators or companies that use cards or any other electronic, magnetic or similar means, that allow the transferal of funds;

V. Companies that engage in leasing and factoring;

VI. Companies that distribute any kind of property (including cash, real estate, and goods) or the rendering of services, or give discounts for their acquisition by means of lotteries or other similar methods;

VII. Branches or representatives of foreign entities that engage in any of the activities referred to in this section, which take place in Brazil, even if occasionally;

VIII. All other legal entities engaged in the performance of activities that are dependent upon an authorization from the agencies that regulate the stock, exchange, financial, and insurance markets;

IX. Any and all national or foreign individuals or entities, who operate in Brazil in the capacity of agents, managers, representatives or proxies, commission agents, or who represent in any other way the interests of foreign legal entities that engage in any of the activities set forth in this section;

X. Legal entities that engage in activities pertaining to real estate, including the promotion, purchase and sale of properties;

XI. Individuals or legal entities that engage in the commerce of jewelry, precious stones and metals, objects of art, and antiques.

Chapter VI

Customer Identification and Record-Keeping

Article 10 The legal entities referred to in Section 9 hereof shall:

I. Identify their customers and maintain an updated record in compliance with the provisions set forth by the competent authorities;

II. Keep an up-to-date record of all transactions, in national and foreign currency, involving securities, bonds, credit instruments, metals, or any asset that may be converted into cash, and that exceeds an amount set forth by the competent authorities and in accordance with the requirements they may issue;

III. Comply with notices sent by the Council established under Section 14 hereof, within the time period stipulated by the competent judicial authority. The judicial proceedings pertaining to such matters shall be conducted in a confidential manner.

Paragraph 1 In the event that the customer is a legal entity, the identification mentioned in item I of this Section shall include the individuals who are legally authorized to represent it, as well as its owners.

Paragraph 2 The reference files and records mentioned in items I and II of this Section shall be kept during a minimum period of five years, counted from the date the account is closed or the date the transaction is concluded. The competent authorities may decide, at their own discretion, to extend this period of time.

Paragraph 3 The registration under item II of this Section shall also be made whenever an individual or legal entity, or their associates execute, during the same calendar month, transactions with the same individual, legal entity, conglomerate or group that exceed, in the aggregate, the limit set forth by the competent authorities.

Chapter VII

Reports of Financial Transactions

Article 11 The legal entities referred to in Section 9 hereof:

I. Shall pay special attention to any transaction that, in view of the provisions set forth by the competent authorities, may represent serious indications of the crimes referred to in this law, or that may be related to them;

II. Shall inform the competent authorities, within a period of twenty-four hours, and abstain from advising their customers of this action, of:

a) Any and all transactions listed in item II of Section 10 that entail an amount that exceeds the limits, terms, and conditions set forth by the competent authorities for this purpose;

b) The proposal or the execution of a transaction referred to in item I of this section.

Paragraph 1 The competent authorities referred to in item I hereof shall establish a list of transactions that could characterize the kind of operations contemplated herein, considering their basic features, the parties and amounts involved, the implementation, the means of execution, or the lack of economic or legal justification.

Paragraph 2 Information imparted in good faith, pursuant to the provisions set forth in this Section, shall not generate any civil or administrative liability.

Paragraph 3 The individuals or legal entities that are not subject to a specific control or regulator agency, shall provide the information referred to in this Section to the Council for Financial Activities Control (COAF), in the form provided for by the Council.

Chapter VIII

Administrative Liability

Article 12 The legal entities referred to in Section 9, as well as the managers of legal entities who fail to comply with the provisions set forth in sections 10 and 11 shall be subject to the sanctions hereinafter. The competent authorities shall apply, together or separately, the following sanctions:

- I. A warning;
- II. A monetary fine of an indefinite amount, ranging from one percent to double the amount of the transaction; or up to two hundred percent of the profits derived or presumably obtained as a result of the transaction; or a fine of up to R\$200,000.00 (two hundred thousand Reals);
- III. A temporary prohibition on holding any position in the management of the legal entities referred to in the sole paragraph in section 9, for a period of up to 10 (ten) years;
- IV. Cancellation of the authorization to operate;

Paragraph 1 The warning sanction shall be applied in the event of failure to comply with the provisions set forth in items I and II of Section 10.

Paragraph 2 A fine shall be applied whenever any of the legal entities mentioned in Section 9, acting negligently or harmfully:

- I. Fails to correct the irregularities which gave cause to the issuance of the warning, within the time period set forth by the competent authorities;
- II. Fails to carry out the identification or the registration referred to in items I and II of Section 10;
- III. Fails to comply, within the stipulated time period, with the requirements set forth in item III of Section 10;
- IV. Disregards the prohibition or fails to provide the information pursuant to the provisions set forth in section 11.

Paragraph 3 The penalty of temporary suspension of activities shall be applied to those responsible for serious violations of the provisions of this Law or whenever there is a specific and duly ascertained recurrence of previous transgressions that were punished with the application of a fine.

Paragraph 4 The penalty of cancellation of the authorization to operate shall be applied in instances of specific recurrence of transgressions that were previously punished with the application of the penalty set forth in item III of the initial portion of this Section.

Article 13 The procedure for the application of the sanctions set forth in this Chapter shall be regulated by a decree that shall ensure the right of rebuttal and ample rights of defense to the parties concerned.

Chapter IX

Council for Financial Activities Control

Article 14 The Council for Financial Activities Control (COAF) is hereby instituted, under the jurisdiction of the Ministry of Finance, for the purpose of regulating, applying administrative sanctions, receiving pertinent information, examining and identifying any suspicious occurrence of illicit activities set forth in this Law. The actions of COAF shall not conflict with the jurisdiction of other agencies.

Paragraph 1 COAF shall be the agency responsible for issuing the instructions set forth in Section 10 to the legal entities specified in section 9 that are not subject to any specific regulatory or surveillance agency. In these cases, COAF shall also be responsible for defining the entities and applying the sanctions set forth in Section 12.

Paragraph 2 COAF shall also be responsible for coordinating and advancing suggestions for the adoption of

systems of cooperation and exchange of information designed to enable rapid and efficient responses in the struggle against the practice of concealment or disguise of assets, rights and valuables.

Article 15 COAF shall notify the competent authorities whenever it finds evidence of the existence of crimes defined in this Law, of clear indications of the occurrence of such crimes, or of any other illicit activity, so as to enable such authorities to take the appropriate measures.

Article 16 The members of COAF shall be civil servants of outstanding reputation and capability, named by act of the Minister of Finance and chosen among the career personnel of the Central Bank of Brazil, the Securities and Exchange Commission, the Superintendence of Private Insurance, the General Attorney Office for the National Treasury, the Secretariat of Federal Revenue, the Brazilian Agency of Intelligence, the Federal Police Department, and the Ministry of Foreign Affairs. In the last three cases, the Ministers having jurisdiction over each such entity shall nominate the members.

Paragraph 1 The Chairperson of the Council shall be appointed by the President of the Republic, acting on a recommendation of the Minister of Finance.

Paragraph 2 The decisions of COAF regarding the application of administrative sanctions may be appealed to the Minister of Finance.

Article 17 COAF's internal organization and mode of operation shall be set forth in bylaws to be approved by a decree of the Executive Branch.

Article 18 This Law shall become effective on the date of its publication.

Brasilia, March 3, 1998, the 177th year of Independence and the 110th year of the Republic.

89. Subparagraph 2 (e) of article 23

2. For purposes of implementing or applying paragraph 1 of this article:

...

(e) If required by fundamental principles of the domestic law of a State Party, it **may be provided** that the **offences** set forth in paragraph 1 of this article **do not apply to the persons who committed the predicate offence**.

Do fundamental principles of your domestic law require that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

Most has been informed in question n. 87, of article 23 - Laundering of proceeds of crime. In addition, money laundering, as any other offence in Brazil, applies to natural persons. Paragraph 1 and 2 of AML Act provide further clarification when using the term "anyone". Money laundering is a willful offence in Brazil, where there are three possible forms of dolus: direct, necessary or eventual. Brazilian money laundering law requires only dolus directus, which means the person that hold the criminal conduct had the intention of acting and wanted the result (article 18, I of Penal Code). But eventual willfulness is also possible, when the person had the intention of acting and assumed that the result was possible for his conduct (article 18, I, last part, Penal Code). Eventual intention requires the prosecution only to prove, by the circumstances related to the conduct, that the accused assumed the risk that the assets, rights or valuables might be proceeds of an illicit activity. There is no need to prove any specific intention with the conduct, as it would be necessary for the second form of willfulness.

The intentional element of the offence of money laundering - called dolus - may be inferred from objective factual circumstances. According to article 157 of the Code of Penal Procedure, the judge may freely appreciate the evidences to reach his conclusion and rule the case. Article 239 also establishes that it is considered evidence a notorious and proven circumstance which, referring to the fact, may lead inductively to come to the conclusion that there is or are other circumstances.

If money laundering was committed by a legal person, or on its benefit, all natural persons that could decide on the criminal conduct have criminal liability and are punishable, such as Presidents, directors, financial directors, accountants, etc. The Civil Code states in Article 50 that in case of abuse of the legal person, characterized for

the deviation of purpose, or the patrimonial confusion, the judge may consider that the private assets of the administrators or partners of the legal entity will be liable for the illicit acts of the legal person. In addition, Paragraph 1 of Article 2 of Law nº 9.613/98 states that "the charge shall include sufficient indications of the existence of the predicate offence. The criminal acts referred to in this Law shall be punishable even when the offender in the predicate offence is unknown or exempt from punishment."

Paragraphs 1 and 2 of Article 1 of Law nº 9.613/98 describe the ancillary offences to the offence of money laundering:

Paragraph 1. The same punishment shall apply to anyone who, in order to conceal or disguise the use of the assets, rights and valuables resulting from the crimes set forth in this article: I. Converts them into illicit assets
II. Acquires, receives, exchanges, trades, gives or receives as guarantee, keeps, stores, moves, or transfers any such assets, rights and valuables;
III. Imports or exports goods at prices that do not correspond to their true value.

Paragraph 2. The same penalty also applies to anyone who:

I. Through economic or financial activity makes use of any assets, rights and valuables that he/she knows are derived from the crimes referred to in this article;
II. Knowingly takes part in any group, association, or office set up for the principal or secondary purpose of committing crimes referred to in this Law.

Paragraph 3 of Article 1 of Law nº 9.613/98 states that any attempt to commit any of the crimes referred to in this Law are punishable in accordance with the provisions set forth in article 14, sole paragraph, of the Criminal Code ("the attempt to commit a crime is punishable with the same penalty of the consummated offence, reduced by one to two-thirds")."

Besides, as stated before, article 30 of Brazilian Penal Code establishes that anyone who concurs for the commission of a crime should respond for the correspondent penalties to the extent of its own culpability. This provision covers the ancillary offences of money laundering.

Bill of Law nº 3443/2008, which will modify Law nº 9.613/98, adapts the above mentioned paragraphs, so that they do not mention specific predicate offences, but they state that the assets, rights and valuables may result from any offence.

Furthermore, according to its article 12, the Brazilian Criminal Code is also applicable to offences established in federal laws. Article 29 of Penal Code provides that "Whoever, in any way, concurs for the crime will be punished by the same penalties, in accordance with his culpability". The term "concurr" is broad enough to cover the conduct of assisting, aiding and abetting and the penalty will be individualized according to the participation of the accused person.

Additionally, Brazil has criminalized the conduct of real favoring, which also considers an offence "to provide a criminal, except in cases of co-perpetration or receiving, with assistance to turn the proceeds of crime safe".

And article 286 of Penal Code criminalizes the conduct of openly inciting someone to commit a crime. All those offences, and the combination of laws can cover the conducts of conspiracy to commit, attempt, aiding and abetting, facilitating and counseling the commission, as proper or ancillary offences of money laundering.

When it comes to money laundering and other economic or financial offences, however, apart from the legal liability of their managers, legal persons are to suffer civil and administrative consequences for their conduct, according to article 173, paragraph 5 from Federal Constitution (Brazil's Fundamental Law).

Moreover, according to the AML Law, legal persons as well as their managers that fail to comply with the provisions set forth in the Law shall be subject to the following sanctions which can be applied together or separately: i) warning; ii) fine; iii) temporary prohibition on holding any management position in other legal entities; and iv) cancellation of the authorization to operate.

Also, Law nº 8.429/92 states that legal persons and third parties that abet or aid the act of administrative improbity or benefit, directly or indirectly, from it, are subject to civil liability. Therefore, in case of offences against the public administration and money laundering of the illicit assets, legal entities involved are punishable with civil penalties.

Civil and administrative sanctions are always possible for legal persons, in parallel with the criminal liability of its managers and directors.

Natural persons who commit a money laundering offence are punishable with a minimum from 3 (three) to 10 (ten) year imprisonment, plus a fine. The conviction will also represent the loss of all the goods, rights or values that have been laundered. The same sanction is applicable for offences of Paragraph 1 and 2 of Article 1. If the money laundering offence follows a constant pattern or is committed by a criminal organization the sentence shall be increased by one to two-thirds. As mentioned before, attempted is punished with the penalty corresponding to the consummated crime, diminished of one to two-thirds.

According to the money laundering law, there is also the penalty of being prohibited to occupy or maintain a public function or to be forbidden to be director, member of board of administration or manager from legal

persons that operate in the financial sector, for the double of the amount of time of imprisonment imposed. Under article 92, I, of the Penal Code, the loss of position, public function or term of office may apply to convicted natural persons. This additional sanction is not automatic, but must be specifically pronounced by the court, and can only be ordered where an imprisonment sentence of one year or more is ordered.

Legal persons involved in money laundering offences may be administrative liable according to money laundering law (article 12 and 13, federal law 9.613/98). Penalties range from warning, fines, temporary closing, until prohibition for the operation.

Civil liability is possible according to federal law 8.429/1992, when the legal person acts against public administration or against public property.

With support of the theory of the 'disregard of legal entity' (article 50 of the Civil Code) private property of the associates and managers of a legal person may respond for the illicit acts committed.

Law 8666, of June 21, 1993, allows for the exclusion from public tenders of legal persons found guilty of certain types of conduct related to public tenders. Article 88 of the Law provides for the exclusion from the public procurement process of companies which (i) have been convicted of tax fraud; (ii) have committed illicit acts with a view to thwarting the objectives of the bidding process; and (iii) have demonstrated they are unfit to enter into a contract with the Public Administration as a result of illicit acts committed.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please refer back to Bill of Law PL 3343/08 attached as answer to Subparagraph 1 (a) (i) of Article 23 (question 81), above.

Please provide examples of cases and attach case law if available

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

Please describe how such information is collected and analysed

Not applicable.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Brazil has had this provision assessed by FATF-GAFI.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

90. Article 24

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to **establish as a criminal offence**, when **committed intentionally** after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the **concealment or continued retention of property** when the person involved **knows that such property is the result of any of the offences established in accordance**

with this Convention.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

Law 9.613/98, in its Article 1, item II of Paragraph 1 and items I and II of Paragraph 2, states that anyone who, in order to conceal or disguise the use of the assets, rights and valuables resulting from the crimes listed in that article, shall be penalized if he or she acquires, receives, exchanges, trades, gives or receives as guarantee, keeps, stores, moves, or transfers any such assets, rights and valuables; through economic or financial activity, makes use of any assets, rights and valuables that he/she knows are derived from the crimes listed in that article; and knowingly takes part in any group, association, or office set up for the principal or secondary purpose of committing crimes referred to in this Law.

The Brazilian Penal Code, Decree-Law n. 2848/40, also provides for the criminalization of the offence described in Article 24 of UNCAC. This Decree-Law devotes the whole Chapter VII - Receiving Stolen Property, stating in its Article 180 that anyone commits a receiving stolen property offence when he or she acquires, receives, transports, conducts or conceals, for his or her benefit or the benefit of a third party, anything known to be proceeds of crime, or influence a third party in good faith to acquire, receive or conceal that thing. This article also refers to any economic activity used in order to launder the proceeds of crime.

Similarly, Article 349, of the Brazilian Penal Code, provides for the crime of facilitation, which refers to an assistance provided to an offender with a view to securing the proceeds of a crime.

Please attach the text(s)

Brazilian Penal Code, Decree-Law n. 2848/40.

Receiving Stole Goods

Article 180 - acquire, receive, transport, conduct or conceal, for one own's benefit or the benefit of a third party, anything known to be proceeds of crime, or influence a third party in good faith to acquire, receive or conceal that thing.

Penalty - incarceration from 1 (one) to 4(four) years and a fine.

Facilitation

Article 349 - Provide an offender, except in the cases of concerted action or of receiving of stolen goods, assistance with a view to securing the proceeds of the crime.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of cases and attach case law if available

1. Case law on sale of court ruling.

Example attached.

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

Please describe how such information is collected and analysed

Please, refer to item 69 for information on databases of the Federal Police and of the National Justice Council.

Have you ever assessed the effectiveness of the measures adopted to criminalize the concealment or continued retention of property knowing that such property is the result of any of the offences established in accordance with the Convention?

(Y) Yes

Brazil has had this provision assessed by the MESICIC - Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

91. Subparagraph (a) of article 25

Each State Party shall adopt such legislative and other measures as may be necessary to establish as **criminal offences, when committed intentionally:**

(a) The **use of physical force, threats or intimidation** or the **promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence** in a proceeding in relation to the commission of offences established in accordance with this Convention;

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

There are two related offences:- the first is the crime of false testimony or false auditing, which is provided for in art. 343 of the Brazilian Penal Code, Decree-Law n. 2848/40, which refers to the giving, offering, or promising of money or any other advantage to a witness, translator or interpreter in order to persuade him to make a false statement, deny or omit the truth in testimonials, audits, calculations, translations or interpretations; and the second one is the crime of Coercion in the course of the proceedings, which is provided for in art. 344 of the Brazilian Penal Code, which relates to using violence or serious threat for the purpose of favoring one's own interest or that of others against an authority, a party or any person working or called in to intervene in judicial, police or administrative proceedings or in arbitration.

Just to mention, the false testimony, set forth in Article 342 of the Brazilian Penal Code, which refers to any false affirmation, or undisclosed of the truth by a witness, expert, accountant, translator or interpreter in judicial or administrative proceedings, police investigations or before judge, has as penalty the incarceration from one to three years and a fine, which can be increased to a sixth or a third, in case the offence is committed in return for bribery or by means to obtain proof for producing effect in penal proceedings, or in civil proceedings where direct or indirect public administration is a party.

Please attach the text(s)

Brazilian Penal Code, Decree-Law n. 2848/40

Article 342. Providing false affirmation, or denying or undisclosed the truth as witness, expert, accountant, translator or interpreter in judicial or administrative proceedings, police investigations or before a judge. Penalty - incarceration from 1 (one) to 3 (three) years, and a fine.

Paragraph 1. Penalties are increased to a sixth or a third, if the crime is committed in return for bribery or if committed by means of obtaining proof aimed at producing effect on penal proceedings, or on civil proceedings when the direct or indirect public administration is a party.

Article 343. Giving, offering, or promising money or any other advantage to a witness, translator or interpreter in order to persuade him to make a false statement, deny or omit the truth in testimonials, audits, calculations, translations or interpretations.

Penalty - incarceration from 3 (three) to 4 (four) years, and a fine

Article 344. Using violence or serious threat for the purpose of favoring one's own interest or that of others against an authority, a party or any person working or called in to intervene in judicial, police or administrative proceedings or in arbitration.

Penalty - incarceration from 1 (one) to 4 (four) years, and a fine, besides the penalty for the violence.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Not applicable.

Please provide examples of cases and attach case law if available

1. Commission of false testimony - Penal Code Article 342.

Example attached.

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

Please describe how such information is collected and analysed

Please, refer to item 69 for information on databases of the Federal Police and of the National Justice Council.

Have you ever assessed the effectiveness of the measures adopted to criminalize obstruction of justice?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

92. Subparagraph (b) of article 25

Each State Party shall adopt such legislative and other measures as may be necessary to establish as **criminal offences, when committed intentionally**:

...

(b) The use of **physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official** in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of **public official**.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

For the criminalization of the obstruction of justice, Brazil makes no difference whether the offender is an ordinary person or a justice or law enforcement official, meaning that what is applicable for Subparagraph (a) serves well for Subparagraph (b).

There is also provision in the Brazilian Penal Code for the offense known as "coercion in the course of the process". This criminal classification provides for penalties of imprisonment from one to four years and a fine in addition to the penalty corresponding to violence, for those who use violence or serious threats in order to promote its own interests or foreign, against authority, part, or any other person who works or is called to intervene in court proceedings, law enforcement or administrative or arbitration.

Please attach the text(s)

Brazilian Penal Code, Decree-Law n. 2848/40

Coercion during the process

Article 344 - Use of violence or serious threat, in order to promote its own interests or foreign, against authority, part, or any other person who works or is called to intervene in court proceedings, law enforcement or administrative or arbitration:

Penalty - imprisonment from one to four years and a fine in addition to the penalty corresponding to violence.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of cases and attach case law if available

1. Example of coercion and threat by a defendant who would have threatened to kill the victim's son if the testimony given to police authority were reaffirmed before the judge.

Example attached.

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

Please describe how such information is collected and analysed

Please, refer to item 69 for information on databases of the Federal Police and of the National Justice Council.

Have you ever assessed the effectiveness of the measures adopted to criminalize obstruction of justice?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

93. Paragraph 1 of article 26

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Chapter 2 of Law 8.884/94 (violations against the economic order), establishes infractions for which legal persons may be punished civil and administratively. In addition, Chapter 3 of the same law establishes the civil and administrative penalties, such as payment of fines, prohibition of contracting with Public Administration and participation in public biddings, patent breach of the convicted person's products, among others.

Law 8.666/93 (public procurement procedures and administrative contracts), in its Chapter IV - Administrative Penalties and Legal Protection, provides for civil and administrative measures for legal persons for crimes as fraude such as fine, suspension or ineligibility for contracting with Public Administration.

Law 8.429/92 (administrative misconduct), in its Chapter III - Penalties, provides for civil and administrative measures for legal persons for crimes as fraude and misappropriation such as fine, compensation, suspension for contracting with Public Administration.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

The Office of the Comptroller General (CGU) prepared a Draft Bill in cooperation with the Ministry of Justice establishing the direct liability of legal persons for acts of corruption committed against the National and Foreign Public Administration - Annex 9. The Draft Bill has been submitted to Congress, by President Luis Inácio Lula da Silva, on the 8th of February 2010.

The proposal fills a major gap identified in the Brazilian system regarding the liability of legal persons for illicit acts committed against the National Public Administration in the three branches of government - Executive, Legislative and Judicial - and at every level of the Federation (Union, states, Federal District and municipalities), in particular acts of corruption and fraud in public procurement procedures and contracts executed with the Public Administration.

The Bill establishes a comprehensive system to suppress acts of corruption committed by enterprises in Brazil and abroad by providing for administrative and civil mechanisms to establish liability and a uniform system throughout the country, with a view to strengthening the fight against corruption in accordance with the unique features of the Brazilian federal system.

By establishing the direct liability of legal persons, the proposed law moves beyond the narrow discussion of individual culpability of agents in the commission of violations. Under the legislation, legal persons are held liable upon a showing of the facts, the resulting consequences of such facts and the causal connection between them. In this way, the proposed law effectively removes the evidentiary difficulties of demonstrating the necessary subjective elements, including the intent to cause damage, a common feature of the general and subjective procedures required to establish the liability of natural persons, particularly in the criminal sphere.

Further, a decision was made to establish the administrative and civil liability of legal persons for acts of corruption. The liability of legal persons in the administrative sphere is not unprecedented in the Brazilian legal system.

Laws 8884 of 1994 (violations against the economic order), 8666 of 1993 (public procurement procedures and administrative contracts) and 8429 of 1992 (administrative misconduct), all designed to suppress violations committed by legal persons, have yielded positive results.

Moreover, the decision was driven by a recognition that the administrative sphere has traditionally proved more expeditious and effective in suppressing misappropriations arising from public contracts and public procurement procedures, while demonstrating a greater capacity of response vis-à-vis the public.

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If available, please provide information on cases involving the participation of legal persons in offences established by this Convention (statistics, types of cases, outcome). Please provide per annum figures since the year 2003 (or further back, if available)

Have you ever assessed the effectiveness of the measures adopted to establish liability of legal persons?

(Y) Yes

Brazil has had this provision assessed by FATF-GAFI and the OECD.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

94. Paragraph 2 of article 26

2. Subject to the legal principles of the State Party, the **liability of legal persons may be criminal, civil or administrative.**

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s) and specify the type of liability of legal persons established in your country

Please cite the text(s)

As informed in the answer to Paragraph 1 of Article 26 (question 93), Laws 8884 of 1994 (violations against the economic order), 8666 of 1993 (public procurement procedures and administrative contracts) and 8429 of 1992 (administrative misconduct), provide for measures used to suppress violations committed by legal persons. The penalties civil and administratively applied to legal persons in Brazil range from the payment of a fine to the ineligibility to contract with the Public Administration.

A range of instructional and dissuasive sanctions are applied, including fines, the mandatory publication of the sanction judgment in a major media outlet operating in the area in which the violation took place and connected to the enterprise's business segment, or, in the absence of a specialized outlet, in a national media outlet, and the prohibition on receiving government incentives and entering into contracts with the Public Administration.

Additionally, legal persons are subject to an array of civil sanctions intended to serve as a complement to the applicable administrative sanctions. These more severe penalties are imposed following thorough review and scrutiny by the Courts and may include the mandatory dissolution of a legal person constituted or employed to facilitate or promote illicit acts and the forfeiture of assets, rights and securities arising from direct or indirect advantages or benefits obtained through the commission of violations, while ensuring that the rights of all damaged parties or third parties of good faith are properly safeguarded.

The responsibility for establishing the administrative liability of legal persons for acts of national and foreign bribery falls to each body and entity in the three branches of government (Executive, Legislative and Judicial) at every level of the Federation (Union, states, Federal District and municipalities).

In respect to civil liability, the Public Prosecutor's Office may, in addition to the competent federative bodies, adjudicate actions against legal persons, with a view to supplementing the administrative sanctions applied by the

public entity through the imposition of more severe penalties, including dissolution. Further, in the event a public entity fails through an act of omission to establish the administrative liability of a legal person the Public Prosecutor's Office may file a civil liability action against the legal person and petition the Courts to apply the administrative and civil sanctions corresponding to the infraction.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

The legal control of administrative acts that cause property or moral damage to the State, made by the judiciary, has historically sought more efficiency. Based on this premise, the National Council of Justice (CNJ), through Resolution No. 44, November 20, 2007, conceived the National Register of Convicts for Administrative Improbability.

Having all Brazil's information concentrated in a single database, it is possible to provide adjudications with more effectiveness, especially in regard to reimbursement of amounts to the treasury, compliance with civil fines and prohibition from contracting with the Public Administration.

The information gathered on agents convicted of acts of administrative improbity in a single database represents an important instrument for achieving social control of the acts of the Administration and demonstrates the proactive role of CNJ. The new database is available at http://www.cnj.jus.br/index.php?option=com_content&view=article&id=10497&Itemid=1146 World and counts on 3,202 registers.

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If available, please provide information (statistics, types of cases, outcome) on related court or other cases, including administrative or other disciplinary actions. Please provide per annum figures since the year 2003 (or further back, if available)

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Brazil has had this provision assessed by FATF-GAFI.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

95. Paragraph 3 of article 26

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Under domestic criminal law, legal persons are only punished for environmental crimes. As for corruption, the current state of the law in Brazil centres on the culpability of the natural person within a legal entity, rather than the legal entity itself. Under legal theory in Brazil, a legal person is considered to have an "abstract, intangible and unreal existence" and therefore it has no capacity for criminal liability. Accordingly, it is considered that the will of a legal person is determined by the natural persons who run or manage it, and therefore it is only natural persons that have the capacity for criminal liability.

Article 173, paragraph 5 of the Federal Constitution states that: "the law, without prejudice to the individual liability of the officers of the corporation, will establish the latter's liability subjecting it to penalties appropriate to their nature, in respect of acts committed against the economic and financial order and against the popular economy."

For instance, Article 12 of Law. 8.429/92, establishes that the individual responsible for the act of improbity is subjected to the penalties, independently of the criminal, civil and administrative sanctions, provided in a specific law. The crime committed by the individual shall have its correlation with the crimes stated by the Brazilian Penal Code under Title XI - Crimes against Public Administration, with criminal penalties ranging from deprivation of liberty to incarceration and fine.

Also, the Bill 6.826/10 is currently in the House of Representatives, which deals with administrative and civil liability of legal persons for the practice of acts against the public administration (domestic or foreign). The purpose of matter is to provide that the entity answer objectively, in the administrative and civil law, by committing acts of corruption in his interest or benefit, against the Government, even if the act performed did not provide her advantage or that effective possible advantage does not accrue directly or exclusively.

Subject to the provisions of the Bill all societies and the business simple societies, personified or not, regardless of form of organization or corporate structure, and any foundations, associations, organizations or persons, or foreign companies that have headquarters or branch representation in the Brazilian territory, consisting of fact or law, even temporarily.

Please attach the text(s)

Federal Constitution

Article 173. With the exception of the cases set forth in this Constitution, the direct exploitation of an economic activity by the State shall only be allowed whenever needed to the imperative necessities of the national security or to a relevant collective interest, as defined by law.
(...)

Paragraph 5 - The law shall, without prejudice to the individual liability of the managing officers of a legal entity, establish the liability of the latter, subjecting it to punishments compatible with its nature, for acts performed against the economic and financial order and against the citizens' monies.

Law n. 8.429/92

Article 12. Independently of the criminal, civil and administrative sanctions, provided in a specific law, the individual responsible for the act of improbity is subjected to the following penalties: (...)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review, including recent cases where both natural and legal persons were liable

Please provide any available statistics of such cases. Please provide per annum figures since the year 2003 (or further back, if available)

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Brazil has had this provision assessed by FATF-GAFI and the OECD.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

96. Paragraph 4 of article 26

4. Each State Party shall, in particular, **ensure that legal persons held liable** in accordance with this article **are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions**, including monetary sanctions.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Under domestic criminal law and national jurisprudence, the assets, rights and securities of organizations arising from criminal activities may be frozen, seized and confiscated, including any objects used or intended for use in the criminal act. This applies additionally to objects acquired as a result of the criminal act or, further, assets of equivalent value. Under Brazilian law, assets may be confiscated in the absence of a criminal conviction. Where assets are used to commit an illicit act or conceal proceeds of crime, the respective legal persons may be subject to the definition of product/instrument of crime or third-party owner of illicit property. In other words, the provisions set forth in article 91, subsection II, lines a and b, of the Brazilian Penal Code and article 7, subsection I, of Law 9613/98 shall also be applied to legal persons, which include forfeiture, confiscation, fines, ineligibility to contract with Public Administration, among others.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of cases and attach case law if available

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

Relatively to the administrative liability, the Federal Government of Brazil created the Registry of Ineligible and Suspended Companies (Cadastro de Empresas Inidôneas e Suspensas - CEIS), which posts a list on the Internet with data on enterprises punished for irregularities in tenders, tax frauds or non-compliance with contracts with the Public Administration, so as to prevent them from withholding this information for entering into a contract with a public agency.

The CEIS, which can be accessed through the Transparency Portal (www.portaldatransparencia.gov.br), is an initiative of the CGU which gathers, in a single database, constantly updated information provided by Brazilian federal, state and municipal institutions on suppliers that committed irregularities. It makes it easier for public managers to identify corrupt enterprises that failed to provide sound services to the society and enables other companies to avoid business relations with these enterprises once they become aware of their illegal practices.

To date, the CEIS counts on 3.568 acts of suspension and ineligibility.

Please describe how such information is collected and analysed

Several states and municipalities hold a list of suspended or ineligible enterprises; some of them allow for consultation by the enterprises' National Registry of Legal Persons (CNPJ - Cadastro Nacional de Pessoas Jurídicas). The CEIS gather the data and convert them to a more accessible way, indicating the following fields:

- The CNPJ;
- Corporate name (real or assumed)
- Initial and final dates of sanction;
- Body responsible for the sanction
- Source of information.

Have you ever assessed the effectiveness of the measures adopted to ensure that legal persons held liable in accordance with this article are subject to criminal or non-criminal sanctions?

(Y) Yes

Brazil has had this provision assessed by FATF-GAFI and the OECD.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

97. Paragraph 1 of article 27

1. Each State Party shall adopt such legislative and other measures as may be necessary to **establish as a criminal offence**, in accordance with its domestic law, **participation in any capacity** such as an accomplice, assistant or instigator **in an offence established in accordance with this Convention**.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

As for the Brazilian Penal Code, through its Article 29, anyone that has any kind of participation for a crime to be committed shall be penalized according to his or her level of liability.

Please attach the text(s)

Brazilian Penal Code, Decree-Law n. 2848/40.

Common rules to the freedom-restricting sentences

Article 29 - he who in any way concurs for a crime is liable to the sanctions set forth for this crime to the extent of his culpability. (Provision set forth by the Law No. 7.209 of 11.7.1984)

§1st - If the participation is of lesser importance, the sentence shall be decreased from one sixth to one third (Provision set forth by the Law No. 7.209 of 11.7.1984)

§ 2nd - If any of the perpetrators wanted to take part in the less serious crime, he shall be imputed this crime's sentence, which shall be increased in half if the more serious outcome could be predicted. (Provision set forth by the Law No. 7.209 of 11.7.1984)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of cases and attach case law if available

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

Please describe how such information is collected and analysed

Non applicable.

Have you ever assessed the effectiveness of the measures adopted to criminalize participation in an offence established in accordance with the Convention?

(Y) Yes

Brazil has had this provision assessed by the OAS - MESICIC and the OECD.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

98. Paragraph 2 of article 27

2. Each State Party may adopt such legislative and other measures as may be necessary to **establish as a criminal offence**, in accordance with its domestic law, **any attempt to commit an offence established in accordance with this Convention**.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

The provision under review has been implemented through the Article 14, of the Brazilian Penal Code, which defines what is a committed crime, as well as an attempt to it and provides for its penalty.

Please attach the text(s)

Brazilian Penal Code, Decree-Law 2848/40.

Article 14 - The crime is said to be committed

I - Committed, when it involves all the elements of its legal definition;

Attempt

II - attempted, when the performance is begun, but it is not carried out through circumstances foreign to the wishes of the offender.

Penalty for attempt

Sole paragraph - Except where provided to the contrary, an attempt is punishable with the penalty corresponding to that of the committed crime, reduced by from one to two thirds.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable

if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of cases and attach case law if available

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

Please describe how such information is collected and analysed

Non applicable.

Have you ever assessed the effectiveness of the measures adopted to criminalize the attempt to commit an offence established in accordance with the Convention?

(Y) Yes

Brazil has had this provision assessed by the OAS - MESICIC and the OECD.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

99. Paragraph 3 of article 27

3. Each State Party may adopt such legislative and other measures as may be necessary to **establish as a criminal offence**, in accordance with its domestic law, the **preparation for an offence established in accordance with this Convention**.

Has your country adopted and implemented the measures described above? (Check one answer)

(P) Yes, in part

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

The Brazilian Penal Code states, in its Articles 15 (voluntary waiver and effective regret) and 16 (later regret), general rules for punishing the preparation for an offence, which are applicable not only to offences provided for by the Code but also to those offences defined in other specific laws.

Relatively to the preparation for an offence, it is not common by law to criminalize the "offence of intention", as some jurists would refer to. In this case, Article 31 of the Brazilian Penal Code would serve to acquit someone, provided that it establishes the non-criminality of the adjustment, determination or incitation and the assistance, except when stated the contrary, if the crime is not even attempted.

However, it is important to mention that Article 286 of the Brazilian Penal Code establishes a penalty of three to six months imprisonment for the public incitation for the commission of a crime. In addition, Article 288 refer to the association of more than three people, in an organized group or gang, with the purpose of committing crimes. This way, the preparation introduced in Paragraph 3 of Article 27 would be established as a criminal offence.

Please attach the text(s)

Brazilian Penal Code, Decree-Law n. 2848/40.

Voluntary waiver and effective regret

Article 15. The agent who, voluntarily, gives up pursuing the execution or prevents the outcomes to occur, is liable only for acts already committed.

Later regret

Article 16. In crimes committed without violence or serious threat to the person, the damage repaired or the thing restored, until complaint or grievance is received, by a voluntary act of the agent, the penalty shall be reduced by one to two thirds.

Incitation to crime

Article 286 - Publically incite the perpetration of crime.

Penalty - from three to six months imprisonment, and a fine.

Organized Group or Gang

Article 288 - Association of more than three people, in a group or gang, in order to perpetrate crimes:

Penalty: incarceration for a period of 1 (one) to 3 (three) years.

Sole paragraph - The penalty shall be doubled if the organization or gang is armed.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of cases and attach case law if available

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

Please describe how such information is collected and analysed

Non applicable.

Have you ever assessed the effectiveness of the measures adopted to criminalize the preparation for an offence established in accordance with this Convention?

(Y) Yes

Brazil has had this provision assessed by the OAS -MESICIC and the OECD.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Which challenges and issues are you facing in (fully) adopting/implementing the provision under review? (Check all the answers that apply and provide an explanation in the "Comments" field)

(ISSUE) Other issues (please specify)

Non applicable.

Please provide an account of your country's efforts to date to implement the provision under review:

Non applicable.

Please outline the steps or action (and related timeframe) that domestic or other authorities would need to take to ensure full compliance with the provision under review

Non applicable.

Which of the following forms of technical assistance, if available, would assist your country in adopting or better implementing the provision under review? (Check all the answers that apply)

(NO) No assistance would be required

Are any of the forms of technical assistance previously mentioned already provided? (Check one answer)

(N) No

100. Article 28

Knowledge, intent and purpose required as an elements of an offence established in accordance with this Convention **may be inferred from objective factual circumstances.**

In your country's legal system, can knowledge, intent and purpose required as an element of an offence established in accordance with the Convention be inferred from objective factual circumstances? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable law(s), policy(ies), or other measure(s)

Please cite the text(s)

This provision is self-applicable, both in penal and improbity acts. Article 239 of the Criminal Procedure Code refers to known and proved circumstances as evidence that, being related to a fact, leads to the conclusion of another or other circumstances existence. This also indicates that every evidential matter in criminal procedure undergoes analysis of the adopted procedure model type, referring to the definition of investigative and persecutorial functions, as well as of procedural burden determination and distribution to parties.

Under Brazilian law, the principle of free motivated persuasion (also called by some the principle of rational persuasion), based on which the judge is free to form his own opinion on how to decide on any of the existing evidence in the proceedings/lawsuit. At first, there is no prevalence of one kind of evidence over another. The Code of Criminal Procedure states in Article 155, that "the judge will form his/her own views through free evaluation of evidence produced in court contradictory (...)", This way, nothing prevents that, in judging a criminal action, the judge considers that the defendant's knowledge, intention and purpose can be inferred from objective factual circumstances.

Please attach the text(s)

Criminal Procedure Code, Decree-Law n. 3689/41.

Article 155. The judge shall form his/her own views through evaluation of evidence produced in court contradictory, not being able to base his decision exclusively on informative elements collected during investigation, except for the precautionary evidences, not repeatable and anticipated.

Article 239 - It is considered evidence the known and proved circumstance, which, having relation to the fact, authorizes, by induction, to conclude for the existence of another or other circumstances.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of cases and attach case law if available

If available, please provide information on related legal cases or other processes, including statistics on number of investigations, prosecutions and convictions/acquittals. Please provide per annum figures since the year 2003 (or further back, if available)

Please describe how such information is collected and analysed

Non applicable.

Have you ever assessed the effectiveness of the measures adopted for knowledge, intent and purpose to be inferred from objective factual circumstances as prescribed above?

(Y) Yes

Brazil has had this provision assessed by FATF-GAFI.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

101. Article 29

Each State Party shall, where appropriate, **establish** under its domestic law a **long statute of limitations period** in which to commence proceedings for any offence established in accordance with this Convention and establish a **longer statute of limitations period** or provide for the **suspension of the statute of limitations** where the **alleged offender has evaded the administration of justice**.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

The statute of limitations periods in Brazil are established according to the penalty amount for each crime. Thus, with reference to Article 109 of the Brazilian Penal Code, which states statute of limitations period **before** sentence is res judicata, for example, active and passive bribery and embezzlement would have limitations period of twenty years.

By Brazilian legislation, there is no limitation period distinction when the alleged offender has evaded the administration of justice. However, Article 366 of the Criminal Procedure Code determines that the proceedings shall be suspended for the limitations period established for the crime when the offender is proclaimed an outlaw. Only after this period is finished the statute of limitations period is started.

Article 110 of the Brazilian Penal Code provides for the statute of limitations period **after** sentence is res judicata, and Article 111 states when to start the statute of limitations period.

Please attach the text(s)

Brazilian Penal Code, Decree-Law n. 2848/40

Prescription before the sentence is transited in rem judicatum

Article 109 - Prescription before the final sentence is transited in rem judicatum, except as provided for in Paragraphs 1 and 2 of this Code is governed by the maximum penalty of deprivation of liberty provided for the crime, in compliance with:

I - for 20 (twenty) years, if the maximum penalty is greater than 12 (twelve);

II - for 16 (sixteen) years, if the maximum penalty is greater than 8 (eight) years and does not exceed 12 (twelve);

III - for 12 (twelve) years, if the maximum penalty is greater than 4 (four) years and does not exceed 8 (eight);

IV - for 8 (eight) years, if the maximum penalty is greater than 2 (two) years and does not exceed 4 (four);

V - for 4 (four) years, if the maximum penalty equal to 1 (one) year, or, if greater, does not exceed 2 (two);

VI - for 2 (two) years, if the maximum penalty less than 1 (one) year.

Prescription of penalties restricting rights

Sole paragraph - Penalties restricting rights are applied for the same terms as those providing for deprivation of liberty.

Prescription after the final sentence has transited in rem judicatum

Article 110 - Prescription after the final sentence has transited in rem judicatum is governed by the penalty applied and the terms set in the previous article, which will be increased by one third if the offender is recidivistic.

Paragraph 1 - Prescription after the final sentence has transited in rem judicatum for the prosecution, or after its appeal has been denied, is governed by the penalty applied.

Paragraph 2 - The prescription referred to in the previous paragraph may begin on a date before the receipt of the accusation of the complaint.

Beginning of the prescription before the final sentence has transited in rem judicatum

Article 111 - Prescription before the final sentence has transited in rem judicatum, begins running:

I - from the day the crime was committed;

II - in the case of an attempt, on the day the criminal activity ceased;

III - in crimes of occupation, on the day the occupation ceased;

IV - in crimes of bigamy and falsification or alteration of a record in a civil registration office, the date on which the fact became known.

Criminal Procedure Code, Decree-Law n. 3689/41

Article 366 - If the defendant, subpoenaed by edict, does not show up nor hire a lawyer, proceedings and the limitations period will be suspended, the judge being able to determine anticipated production of evidence which is considered urgent and, if that is the case, decree preventive detention, according to what is set forth in Article 312.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If available, please provide information (statistics, types of cases, outcome) on related court or other cases related to instances when you established a longer statute of limitations period or suspended the statute of limitations where an alleged offender had evaded the administration of

justice. Please provide per annum figures since the year 2003 (or further back, if available)

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Brazil has had this provision assessed by the OECD.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

102. Paragraph 1 of article 30

1. Each State Party shall make the **commission of an offence** established in accordance with this Convention **liable to sanctions that take into account the gravity of that offence.**

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the text regarding applicable sanction(s) or other measure(s)

Please cite the text(s)

Under Brazilian Law, enforcement of law takes into account some factors. First, all offences have, under the law that defines them, the setting of a minimum penalty, as well as of a maximum penalty. This can be seen on the legal texts informed in all questions comprised by Chapter III - Criminalization and law enforcement. For instance:

- a. active bribery of national public official - from two to twelve years incarceration and a fine.
- b. passive bribery of national public official - from two to twelve years incarceration and a fine.
- c. active bribery of foreign public official - from two to eight years incarceration and a fine.
- d. embezzlement - from two to twelve years incarceration and a fine.
- e. trading in influence - from two to five years incarceration and a fine.
- f. and so forth.

At the moment of convicting a defendant, the judge shall apply a three-phase method, from which the base penalty derives, necessarily being comprised between those limits. This method is set forth in Article 68 of the Brazilian Penal Code.

To state the base penalty, the judge has to consider what is set forth in Articles 59 and 60 (fine as penalty) of the Brazilian Penal Code. In addition, provided what is set forth in Article 59 of the Brazilian Penal Code, the judge shall establish the penalty, the amount of it, the initial form of deprivation of liberty and an alternate penalty, having as basis the agent's liability, personality, social conduct, antecedents, crime reasons, circumstances and consequences, and the victim's behavior.

By these reasons, Brazilian law provides for the gravity of an offence (which corresponds to circumstances and consequences of the offence).

Please attach the text(s)

Please, also refer back to what was offered as legal texts attached to Articles of Chapter III - Criminalization and law enforcement.

Brazilian Penal Code, Decree-Law n. 2848/40.

Calculation of the sentence

Article 68 - The mandatory sentence shall be ordered in attention to the article 59 of this Code, then the mitigating and aggravating circumstances shall be considered; lastly, the causes for decreasing and increasing. (Provision set forth by the Law No. 7.209 of 11.7.1984)

Sole paragraph - In case of simultaneity of causes for the increase or decrease of the sentence provided in the special part, the judge can limit his judgment to one increase or one decrease, prevailing however the cause

which increases or decreases the sentence more. (Provision set forth by the Law No. 7.209 of 11.7.1984)

Penalty setting

Article 59. the judge, in response to agent's liability, antecedents, social conduct, and personality, crime reasons, circumstances and consequences, and the victim's behavior, shall establish, as much necessary and sufficient to reprimand and prevent the offence:

I - the penalties applicable within the ones imposed;

II - the amount of penalties applicable, within the limits set forth;

III - the initial form of enforcement of the deprivation of liberty penalty;

IV - the substitution of the stated deprivation of liberty penalty for one of another type, if applicable.

Special Criteria for fine application

Article 60. In setting a fine as penalty, the judge shall observe, mainly, the defendant's economic situation. Paragraph 1 - The fine may be increased to the triple, if the judge considers that, by virtue of the defendant's economic situation, it is ineffective, although set at the maximum.

Substitutive Fine

Paragraph 2 - The enforced deprivation of liberty penalty, not higher than 6 (six) months, can be substituted by a fine, since the criteria of numbers II and III of Article 44 of the Brazilian Penal Code are observed.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

**If available, please provide information on criminal and non-
imposed criminal sanctions**

Where applicable, please provide information on the execution of sentences (e.g. time served, amount of money collection, etc.)

Have you ever assessed the effectiveness of the measures adopted to make the commission of an offence established in accordance with the Convention liable to sanctions that take into account the gravity of that offence?

(Y) Yes

Brazil has had this provision assessed by FATF-GAFI and the OECD.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

103. Paragraph 2 of article 30

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate **balance between any immunities or jurisdictional privileges accorded to its public officials** for the performance of their functions and the **possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.**

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s) or rules

Please cite the text(s)

There is no provision under Brazilian law which safeguards immunity to civil servants. Although, the Federal Constitution and the Criminal Procedural Code set forth cases of immunities and jurisdictional privileges. For example, they refer to the President of the Republic's immunities, as well as to other high authorities such as judges, ministers, governors, among others.

However, those cases of immunities and jurisdictional privileges, in general, do not hinder investigation, prosecution and adjudication. What is worth mentioning is that there is a special system of competence for judging certain authorities, which is known as "Function Prerogative Forum" or, to some "privileged forum". Through it, certain investigations and proceedings are not supervised by an ordinary judge, of first degree, but by Courts, according to what the Federal Constitution states:

- a. municipal mayors - Court of Justice (or Federal Regional Court, in case of federal offence) - Article 29, X;
- b. state representatives - idem;
- c. judges of law (state) - Court of Justice;
- d. federal judges, military audit judge, labor judges and members of the Federal Prosecutor General - Federal Regional Court - Article 108, I, a;
- e. state and Federal District's governors, higher judges at Courts of Justice of States and the Federal District, members of the Courts of Accounts of States and the Federal District, members of the Federal Regional Courts, Labor and Electoral Regional Courts, members of the Municipal Councils or Courts of Accounts, and members of the Federal Prosecutor General - Superior Court of Justice - Article 105, I, a;
- f. the president of the Republic, the vice-president of the Republic, members of the National Congress, ministers of the Federal Supreme Court, Prosecutor General, state ministers and Navy, Army and Air Force commanders, members of the Superior Courts, of the Court of Accounts of the Union and permanent diplomatic missions heads - Federal Supreme Court - Article 102, I, b and c.

In these cases, investigation is supervised by a judge of a competent court and, after the charge is provided (with indictment), the suit is adjudicated by the court, according to Articles 1 to 12 of Law n. 8.038, as of May 28, 1990.

Please attach the text(s)

Federal Constitution

Article 85. Those acts of the President of the Republic which attempt on the Federal Constitution and especially on the following, are crimes of malversation:

1. the existence of the Union;
2. the free exercise of the Legislative Power, the Judicial Power, the Public Prosecution and the constitutional Powers of the units of the Federation;
3. the exercise of political, individual and social rights;
4. the internal security of the country;
5. probity in the administration;
6. the budgetary law;
7. compliance with the laws and with court decisions.

Sole paragraph - These crimes shall be defined in a special law, which shall establish the rules of procedure and trial.

Article 86. If charges against the President of the Republic are accepted by two-thirds of the Chamber of Deputies, he shall be submitted to trial before the Supreme Federal Court for common criminal offenses or before the Federal Senate for crimes of malversation.

Paragraph 1 - The President shall be suspended from his functions: I - in common criminal offenses, if the accusation or the complaint is received by the Federal Supreme Court;
II - in the event of crimes of malversation, after the proceeding is instituted by the Federal Senate.

Paragraph 2 - If, after a period of one hundred and eighty days, the trial has not been concluded, the suspension of the President shall cease without prejudice to the normal progress of the proceeding.

Paragraph 3 - In the event of common offenses, the President of the Republic shall not be subject to arrest as long as no sentence is rendered.

Paragraph 4 - During his term of office, the President of the Republic may not be held liable to acts outside the performance of his functions.

Article 102. The Supreme Federal Court is responsible, essentially, for safeguarding the Constitution, and it is within its competence:

1. to institute legal proceeding and trial, in the first instance, of:
 1. direct actions of unconstitutionality of a federal or state law or normative act, and declaratory actions of constitutionality of a federal law or normative act;
 2. in common criminal offenses, the President of the Republic, the Vice-President, the members of the National Congress, its own Justices and the Attorney-General of the Republic;
 3. in common criminal offenses and crimes of malversation, the Ministers of State, except as provided in article 52, I, the members of the Superior Courts, those of the Federal Court of Accounts and the heads of permanent diplomatic missions;
 4. habeas corpus, when the petitioner is any one of the persons referred to in the preceding subitems; the writ of mandamus and habeas data against acts of the President of the Republic, of the Directing Boards of the Chamber of Deputies and of the Federal Senate, of the Federal Court of Accounts, of the Attorney-General of the Republic and of the Supreme Federal Court itself;
 5. litigation between a foreign State or an international organization and the Union, a state, the Federal District or a territory;
 6. disputes and conflicts between the Union and the states, the Union and the Federal District, or between one another, including the respective indirect administration bodies;
 7. extradition requested by a foreign state;
 8. homologation of foreign court decisions and the granting of exequatur to letters rogatory which may be conferred by its internal regulations upon its President;
 9. habeas corpus, when the constraining party or the petitioner is a court, authority or employee whose acts are directly subject to the jurisdiction of the Supreme Federal Court, or in the case of a crime, subject to the same jurisdiction in one sole instance;
 10. criminal review of and rescissory action against its decisions;
 11. claims for the preservation of its powers and guarantee of the authority of its decisions;
 12. enforcement of court decisions in the cases where it has original competence, the delegation of duties to perform procedural acts being allowed;
 13. a suit in which all members of the judicature are directly or indirectly involved, and a suit in which more than half of the members of the court of origin are disqualified or have a direct or indirect interest;
 14. conflicts of powers between the Superior Court of Justice and any other courts, between Superior Courts, or between the latter and any other court;
 15. petitions of provisional remedy in direct actions of unconstitutionality;
 16. writs of injunction, when drawing up of the regulation is the responsibility of the President of the Republic, of the National Congress, of the Chamber of Deputies, of the Federal Senate, of the Directing Boards of one of these legislative houses, of the Federal Court of Accounts, of one of the Superior Courts, or of the Supreme Federal Court itself;
2. to judge on ordinary appeal:
 1. habeas corpus, writs of mandamus, habeas data and writs of injunction decided in a sole instance by the Superior Courts, in the event of a denial;
 2. political crimes;
3. to judge, on extraordinary appeal, cases decided in a sole or last instance, when the decision appealed:
 1. is contrary to a provision of this Constitution;
 2. declares a treaty or a federal law unconstitutional;
 3. considers valid a law or act of a local government contested in the light of this Constitution.

Paragraph 1. A claim of non-compliance with a fundamental precept deriving from this Constitution shall be examined by the Supreme Federal Court, under the terms of the law.

Paragraph 2 - Final decisions on judgments, pronounced by the Supreme Federal Court, in declaratory actions of constitutionality of a federal law or normative act, shall have force against all, as well as a binding effect, as regards the other bodies of the Judicial Power, as well as the Executive Power.

Article 105. The Superior Court of Justice has the competence to:

1. institute legal proceeding and trial, in the first instance, of:
 1. in common crimes, the Governors of the states and of the Federal District, and, in such crimes and in crimes of malversation, the judges of the Courts of Justice of the states and of the Federal District, the members of the Courts of Accounts of the states and of the Federal District, those of the Federal Regional Courts, of the Regional Electoral and Labour Courts, the members of Councils or Courts of Accounts of the municipalities and the members of the Public Prosecution of the Union who act before court;
 2. writs of mandamus and habeas data against an act of a Minister of State or of the Court itself;
 3. habeas corpus, when the constraining party or the petitioner is any of the persons mentioned in subitem a, or

- when the constraining party is a Minister of State, except for the competence of the Electoral Courts;
4. conflicts of competence between any courts, except as provided in article 102, I, o, as well as between a court and the judges not subject to it and between judges subject to different courts;
 5. criminal review of and the rescissory actions against its decisions;
 6. claims for the preservation of its competence and guarantee of the authority of its decisions;
 7. conflicts of duties between administrative and judicial authorities of the Union, or between judicial authorities of one state and administrative authorities of another or of the Federal District, or between those of the latter and those of the Union;
 8. writs of injunction, when the drawing up of a regulation is the responsibility of a federal body, entity, or authority, of the direct or indirect administration X h the exceptional of the cases within the competence of the Supreme Federal Court and of the bodies of the Military Justice, of the Electoral Justice, of the Labour Justice and of the Federal Justice:
2. judge, on ordinary appeal:
 1. habeas corpus decided in a sole or last instance by the Federal Regional Courts or by the courts of the states, of the Federal District and the Territories, in the event of a denial;
 2. writs of mandamus decided in a sole instance by the Federal Regional Courts or by the courts of the states, of the Federal District and the Territories, in the event of a denial;
 3. cases in which the parties are a foreign state or international organization, on the one part, and a municipality or a person residing or domiciled in the country, on the other part;
 3. judge, on special appeal, the cases decided, in a sole or last instance. by the Federal Regional Courts or by the courts of the states, of the Federal District and the Territories, when the decision appealed:
 1. is contrary to a treaty or a federal law, or denies it effectiveness;
 2. considers valid a law or act of a local government contested in the light of a federal law;
 3. confers upon a federal law an interpretation different from that which has been conferred upon it by another court.

Sole paragraph - The Council of Federal Justice shall operate at the Superior Court of Justice, and it shall, under the terms of the law, exercise administrative and budgetary supervision over the Federal Courts of first and second instances.

Article 108. The Federal Regional Courts have the competence to:

1. institute legal proceeding and trial, in the first instance, of:
 1. federal judges within the area of their jurisdiction, including those of the Military and Labour Courts, in common crimes and crimes of malversation, and the members of the Public Prosecution of the Union, except for the competence of the Electoral Courts;
 2. criminal reviews and the rescissory actions against their decisions or decisions of the federal judges of the region;
 3. writs of mandamus and habeas data against an act of the Court itself or of a federal judge;
 4. habeas corpus, when the constraining authority is a federal judge;
 5. conflicts of competence between federal judges subject to the Court:
 2. judge, at the level of appeal, cases decided by federal judges and by state judges in the exercise of the federal competence within the area of their jurisdiction.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Have there been concrete instances where the issue of immunities and/or jurisdictional or other privileges accorded to public officials has arisen and addressed in official documents?

Non applicable.

If there have been any relevant official inquiries or reports, please cite, summarize or attach relevant documents

Non applicable.

Have you ever assessed the effectiveness of the measures adopted to balance immunities or privileges accorded to public officials and the possibility of investigating, prosecuting and adjudicating offences

established in accordance with the Convention?

(Y) Yes

Brazil has had this provision assessed by FATF-GAFI.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

104. Paragraph 3 of article 30

3. Each State Party shall endeavour to ensure that any **discretionary legal powers** under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are **exercised to maximize the effectiveness of law enforcement measures** in respect of those offences and with due regard to the need to deter the commission of such offences.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Brazilian Law does not make use of the so-called "plea bargaining", typical of American law. In Brazil, the Criminal Law generally applies the principles of obligatoriness and the unavailability of prosecution, along with the principle of acting ex officio. In the few cases in which there is some discretion, the parameters required are enough to ensure the effectiveness of criminal prosecution.

The principle of obligatoriness means that prosecutors are compelled to open a criminal case, whenever the facts examined characterize a criminal charge. In other words, the prosecutor is not authorized to exercise an assessment of convenience or opportunity on the subject. The lack of discretion leads to the conclusion that the prosecutor is bound to the bringing of a criminal action, provided that all legal requirements are met.

The unavailability of prosecution is a corollary of the principle of obligatoriness and reflects the idea that prosecutors may not abandon a prosecution already proposed, which means he cannot give up the pursuit of a criminal case. It differs from the principle of obligatoriness in relation to time: while the obligatoriness relates to the opening of a criminal action, the unavailability applies to a case after the filing of the penal lawsuit.

Finally, the principle of acting ex officio, also deriving from the idea of obligatoriness, clarifies the duties of the state authorities (police and prosecutors) to act on its own motion (ex officio) to investigate all crimes brought to their knowledge.

Therefore, in Brazil, cases of corruption are subject to unconditioned public prosecution. For this reason, it is mandatory that the facts must be investigated ex officio by the state authorities (principle of acting ex officio), they must necessarily result in the bringing of a criminal action, provided there is sufficient evidence (principle of obligatoriness), and, finally, the prosecutor is not allowed to give up any ongoing criminal proceedings (principle of unavailability).

Despite these rules, some recent laws loosened these parameters in exceptional and very limited situations. The modifications included especially the following laws:

1) Law No. 9,099 of September 26, 1995, as amended by Law No. 11,313 of June 28, 2006, which deals with crimes of lower offensive potential, the transaction of criminal and probation process;

2) Law No. 9,034 of May 3, 1995, which provides a reward for whistleblowers in cases of criminal organizations.

With respect to the so-called offenses of lower offensive potential, art. 61 of Law No. 9099, 1995, provides that violations of lower offensive potential all the misdemeanors and the crimes for which the law establishes maximum penalty not exceeding 2 (two) years. In these cases, one can promote what is called a "criminal transaction" before the commencement of the criminal action, as provided in art. 76 of this law.

It is worth noting, however, that the crimes committed intentionally related to corruption (embezzlement, active and passive corruption, influence peddling, bribery in international business transaction, etc.) are usually punished with sanctions well over two years to fit this provision. For this reason, corruption is mostly not considered a crime of lower offensive potential and cannot undergo the criminal transaction.

Even the non-intentional conducts subject to criminal transaction are subject to strict criteria laid down in art. 76. Brazilian doctrine tends to classify this type of power to transact as a "mitigated obligatoriness" or a "ruled discretion", since, in fact, the Law not properly confer discretionary powers to prosecutors, but a clear set of rules

that provide a solution that is different from the commencement of a criminal action. If found the objective requirements of the law to enact the transaction, it is possible to apply penalties, such as restricting rights or a fine, and it is not even initiated the correspondent criminal case.

To allow for this transaction, additionally to the characterization of the crime as a violation of lower offensive potential, one must verify the requirements of § 2 of art. 76, that forbids the granting of the transaction if: 1) the author of the offense previously has been convicted to deprivation of liberty, 2) the author has already made a criminal transaction in the previous five years, or 3) there is no indication that the transaction will be necessary and sufficient to the case according to the background, the social conduct or the personality of the agent, as well as the reasons and circumstances of the crime. It is seen, therefore, that the use of that proposal is highly limited to acts of corruption, since the corruption offenses do not usually fall into a lower offensive potential category.

Furthermore, Law No. 9099, 1995, also provides the conditional suspension of the process, which is set out in art. 89. The probation process would be applied after the offering of the complaint by the prosecutor, but only applies to crimes whose minimum sentence (not maximum) is equal to or less than one year. As occurs in the transaction, the main intentional crimes related to corruption are not covered by this standard, since the minimum sentence of most of them is over two years.

Still, the suspension only applies if the accused is not being processed or has not been convicted of another crime, and also if the guiltiness, background, social behavior and personality of the agent as well as the reasons and circumstances of the crime permit the granting of the benefit. Thus, the chances to suspend its proceedings in cases related to corruption are very limited. Additionally, pursuant to art. 89, the suspension does not completely paralyze the process, since it entails the imposition of certain conditions for the accused, including the obligation to repair the damage, a ban from going to certain places and a prohibition to absenting from the county of residence without judicial authorization.

Finally, also regarding the level of discretion granted to the persecutors, it is worth mentioning the reward for whistleblowers, set in some special laws in Brazil, such as the Law of Hideous Crimes (Law No. 8072, 1990), the Law against Criminal Organizations (Law No. 9034, 1995) and the Money Laundering Law (Law No. 9613, 1998). All these acts allow some level of reduction of sentence for the accused, provided there is cooperation with the authorities to furnish information leading to the investigation of criminal offenses and of its perpetrators, or even to the location of properties, rights or values related to the crime.

In such cases, the powers in question cannot be properly classified as discretionary powers, since the conditions for their use are well defined. The amount of penalty reduced or replaced is also sufficiently specified in the legislation. The use of this reward for the whistleblowers could only be used if there is real cooperation by the accused, which represents an important and effective tool for confronting criminal organizations involved in corruption.

Therefore, it appears that in Brazil there is not, in general, discretion in criminal prosecution. The few and limited cases in which there is a regulated discretion, the rules establish proper parameters for its use, in order to maximize the effectiveness of law enforcement and serve as a deterrent to crime.

Please attach the text(s)

PRINCIPLES OF OBLIGATORINESS, UNAVAILABILITY AND ACTING *EX OFFICIO*

DECREE-LAW No. 3,689, OCTOBER 3, 1941. (BRAZILIAN CODE OF CRIMINAL PROCEDURE)

Article 4 The police shall be exercised by police authorities within their respective districts and will involve the investigation of criminal offenses and its authorship.
Sole Paragraph. The competence defined in this Article shall not exclude the administrative authorities, who by law is committed to the same function.

Article 5 In crimes of public prosecution, the police investigation will be initiated:

I - ex officio;

II - on request of the judicial authority or prosecutor, or at the request of the victim or who has quality to represent him.

[...]

Article 17. The police authority cannot file notices of inquiry.

[...]

Article 24. In crimes of public prosecution, it will commence with a complaint by the prosecutor, but will depend, when the law requires, on the request of the Minister of Justice, or on the authorization by victim or one of its representatives.

[...]

Article 27. Anyone of the people can provoke the initiative of the prosecution in cases that fit public action, providing written information about the fact and its authorship, as well as indicating the time, place and the evidences.

Article 28. If the prosecutor, instead of presenting the complaint, require the filing of the police investigation or any piece of information, the judge, disagreeing with the reasons for filing the case, will refer the inquiry or the pieces of information to the Attorney General, and this will provide the complaint, appoint another prosecutor to offer it, or insist on the application filing, which only then is the judge required to attend.

PENAL TRANSACTION AND CONDITIONAL SUSPENSION OF THE PROCEEDINGS

LAW No. 9,099, SEPTEMBER 26, 1995.

Article 61. For the purposes of this Law, the misdemeanors and the crimes for which the law imputes maximum penalty not exceeding 2 (two) years, combined with a fine or not, are considered offenses of lower offensive potential.

[...]

Article 76. In the event of private representation or in the event of public criminal action, not being the case for filing, the prosecutor may propose the immediate implementation of the penalty of restricting rights or fines, which will be specified in the proposal.

§ 1 In the cases of being the fine to only penalty applicable, the judge can reduce it by half.

§ 2 There will be no proposal if it is proved that:

I - the perpetrator has been convicted of a crime to the penalty of imprisonment by a final sentence;

II - the offender has previously received, in the last five years, a restrictive penalty or a fine under this article;

III - the background, social behavior and personality of the agent as well as the reasons and circumstances do not indicate the adoption of the measure as necessary and sufficient.

§ 3 If the proposal is accepted by the author of the offense and by his attorney, it will be submitted to the judge.

§ 4 Welcoming the proposal of the prosecutor accepted by the author of the violation, the judge will apply the fine or the penalty of restriction of rights, which will not count for a relapse, and will be registered just to prevent the same benefit again within five years.

[...]

Article 89. In the event of crimes in which the minimum penalty imputed is one year or less, whether or not covered by this Act, the prosecution, by the offering of the complaint, may propose the suspension of the proceedings from two to four years, provided that the accused is not being prosecuted or has not been convicted

of another crime, provided also the requirements that would authorize the probation (art. 77 of the Criminal Code).

§ 1 If the proposal is accepted by the accused and his attorney, in the presence of the judge, this, receiving the complaint, may suspend the process, subjecting the accused to trial period, under the following conditions:

I - repair the damage, unless it is impossible to do so;

II - prohibition from attending certain places;

III - prohibition from absenting from the county of residence without a permission of the judge;

IV - personal and mandatory attendances at court, every month, to inform and justify the activities.

§ 2 The judge may specify other conditions which shall imposed along with the suspension, provided its appropriateness to the fact and to the personal circumstances of the accused.

§ 3 The suspension will be revoked if, during the period, the offender is subsequently prosecuted for another crime or, unless with good reason, do not repair the damage.

§ 4 The suspension may be revoked if the accused is subsequently processed, during the period, for committing a misdemeanor or breaches any other condition imposed.

§ 5 Completed the period of suspension without revocation, the judge will declare extinct the possibility of imposing a criminal penalty.

§ 6 The statute of limitation will not run during the period of suspension.

§ 7 If the accused does not accept the proposal contained in that article, the proceedings will continue in their later terms.

WHISTLEBLOWER REWARDING

LAW No. 8,072, JULY 25, 1990. (LAW OF HENIOUS CRIMES)

Article 8 [...]

Sole Paragraph. The participant and the associated perpetrator who denounce the group or gang to the authority, allowing its dismantling, will have the penalty reduced by one to two thirds.

LAW No. 9,034, MAY 3, 1995 (LAW AGAINST CRIMINAL ORGANIZATIONS)

Article 6. The penalty for offences committed by criminal organizations shall be reduced by between one and two thirds if the offender's voluntary collaboration leads to the discovery of criminal acts and their perpetrators.

LAW No. 9,613, MARCH 3, 1998 (LAW AGAINST MONEY LAUDERING)

Article 1. [...]

Paragraph 5 In the event that the accused or his/her accomplice, freely agrees to cooperate with the authorities by providing information that lead to the detection of a crime and the identification of those responsible for it, or to the discovery of assets, rights and valuables that were the object of the crime, the sentence may be reduced by one or two-thirds. The accused may also be allowed to start serving it in an open system of imprisonment (2). The judge may also decide whether to

apply the penalty or substitute it for the restriction of rights.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Not applicable.

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

HABEAS CORPUS. CRIMINAL THREATENING. CONDITIONAL PENAL PUBLIC ACTION. REPRESENTATION. WITHDRAWAL AFTER OFFERING THE COMPLAINT. IMPOSSIBILITY. PROSECUTION. DROPPING OF THE CRIMINAL CASE. PRINCIPLE OF OFFICIALITY OR OBLIGATORINESS. REJECTION. SUPERVENING JUDGMENT OF ACQUITTAL. (ART. 386, III, CODE OF CRIMINAL PROCEDURE). LOSS OF THE UTILITY OF THE LAWSUIT. INUTILITY OF A JUDICIAL WARRANT.

- In the event of a conditioned penal public prosecution, once offered the complaint, it is not allowed to the victim to recant the representation made.

- Due to the principle of the officiality or obligatoriness, the prosecution cannot give up the criminal complaint.

- The occurrence of acquittal, stating the fact as atypical (art. 386, III, Code of Criminal Procedure), turns useless this habeas corpus, which sought to achieve the closing of the criminal proceedings for not being a crime.

- Order impaired. (Court of Justice of the Federal District. Habeas corpus nº 20090020074458HBC, Rapporteur: GUSTAVO LUIS DE OLIVEIRA B., 2nd Criminal Division, judged on 09/07/2009, 04/11/2009 DJ p. 190)

If available, please provide information (statistics, types of cases, outcome) on related cases or other processes. Please provide per annum figures since the year 2003 (or further back, if available)

Have you ever assessed the effectiveness of the measures adopted to ensure that discretionary legal powers are exercised to maximize deterrence and effectiveness of law enforcement action?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

105. Paragraph 4 of article 30

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that **conditions imposed** in connection with decisions on release pending trial or appeal **take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.**

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

In general, according to the Brazilian criminal legislation, the defendant will have pretrial liberty. Only in exceptional occasions will he or she be detained preventively. Those hypotheses are set forth in Articles 311 and 312 of the Criminal Procedure Code.

Please attach the text(s)

Criminal Procedure Code, Decree-Law n. 3689/41.

Article 311. At any phase of the police investigation or criminal or the prosecution, preventive detention shall be decreed by the judge, recalling his or her duty, before a request of the Prosecutor General or the plaintiff, or by law enforcement authority's representation.

Article 312. The preventive detention may be decreed as guarantee of public order, economic order, for prosecutorial convenience, or to safeguard criminal law enforcement, when there is evidence of crime existence or sufficient indication of perpetration.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If available, please provide information (statistics, types of cases, outcome) on related cases or other processes. Please provide per annum figures since the year 2003 (or further back, if available)

Have you ever assessed the effectiveness of the measures adopted to ensure that conditions for release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

106. Paragraph 5 of article 30

5. Each State Party shall take into account the **gravity of the offences** concerned when considering the **eventuality of early release or parole of persons convicted** of such offences.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Under Brazilian criminal law, the rule is that defendant will not be imprisoned until his conviction (principle of presumption of innocence). Under specific conditions, it is possible to impose a preventive arrest order in order to secure the presence of the defendant at all criminal proceedings.

Please attach the text(s)

Criminal Procedure Code, Decree-Law n. 3689/41.

Article 311. At any phase of the police investigation or criminal or the prosecution, preventive detention shall be decreed by the judge, recalling his or her duty, before a request of the Prosecutor General or the plaintiff, or by law enforcement authority's representation.

Article 312. The preventive detention may be decreed as guarantee of public order, economic order, for prosecutorial convenience, or to safeguard criminal law enforcement, when there is evidence of crime existence or sufficient indication of perpetration.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If available, please provide information (statistics, types of cases, outcome) on related cases or other processes. Please provide per annum figures since the year 2003 (or further back, if available)

Have you ever assessed the effectiveness of the measures adopted to take into account the gravity of the offences when considering the eventuality of early release or parole of persons convicted of such offences?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

107. Paragraph 6 of article 30

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing **procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned** by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

Has your country established the procedures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable procedure(s) or other measure(s)

Please cite the text(s)

In Brazil, the loss of a public function and political rights suspension only happen if adjudication is res judicata; however, according to what is stated in the Sole Paragraph of Article 20 of Law n. 8429/92, the Law on Administrative Improbability, the public official can be removed, if it is necessary for the prosecutorial proceedings.

The Brazilian Penal Code states in its Article 92 that the loss of the public function or position or elective office can also be effects of the conviction.

Please attach the text(s)

Brazilian Penal Code, Decree-Law n. 2848/40.

General and specific effect

Article 91 - The following are the effects of the sentence:

- I - the obligation to make good the damage caused by the criminal offense becomes certain;
- II - loss, to the Federal Government, except as regards the right of an injured party or a third party in good-faith:
- a) of the instruments of the criminal offense, provided that they consist of things whose manufacture, sale, use, bearing, or detention constitutes an illegal act
- b) of the product of the criminal offense or of any good or security constituting a gain made by the offender from committing the criminal offense.

Article 92 - The following are also the effect of the sentence:

- I - the loss of position, public function, or term of office:
- a) when the penalty of deprivation of liberty for a length of time equal to or greater than one year is applied, in the case of the crimes of abuse of power or breach of duty with regard to the Public Administration ;
- b) when the penalty of deprivation of liberty for a length of time greater than 4 (four) years in other cases.
- II - incapacity to exercise personal power, guardianship or protection, in crime with malicious intent, subject to the penalty of deprivation of liberty, committed against a child, ward, or protected person;
- III - disqualification from driving a motor vehicle, where the latter was used to carry out a crime of malicious intent.
- Sole paragraph - The effects referred to in this article are not automatic, and must be specifically stated in the sentence.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If available, please provide information (statistics, types of cases, outcome) on related cases or other processes. Please provide per annum figures since the year 2003 (or further back, if available)

Have you ever assessed the effectiveness of your country's procedures through which a public official accused of an offence established in accordance with the Convention may be removed, suspended or reassigned?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

108. Subparagraph 7 (a) of article 30

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing **procedures for the disqualification**, by court order or any other appropriate means, for a period of time determined by its domestic law, of **persons convicted of offences established in accordance with this Convention from:**

(a) **Holding public office;**

Has your country established the procedures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable procedure(s) or other measure(s)

Please cite the text(s)

The compliance with this provision finds its partial basis on Law n. 8.429, of June 12 1992, which describes civil sanctions to improbity acts. On Article 12, it is stated that anyone who commits an improbity act is subject to not holding a public office, political rights loss, among others, independently on the criminal, civil or administrative sanctions.

The Federal Constitution, through Articles 14 (Paragraph 9), 15 and 37 (Paragraph 4), also provides for situations of ineligibility and sanctions in case of conviction of offenses, especially for administrative improbity. Article 14 states that a complementary law will establish other cases of ileligibility and limitation periods. That refers to Complementary Law n. 64/90.

Please attach the text(s)

Law n. 8429/92.

Article 12. Independently of the criminal, civil and administrative sanctions, provided in a specific law, the individual responsible for the act of improbity is subjected to the following penalties:

I - in case of the article 9th, forfeiture of the assets and funds illicitly added to one's estate, integral compensation for damages, when there is, loss of the public office, suspension of the political rights from eight to ten years, payment of civil fine of up to three times the amount of the increase of estate and the prohibition to have contracts with the Government or receive benefits or tax incentives or credits, directly or indirectly, even if by means of a legal entity of which it is a major partner for the deadline of ten years.

Federal Constitution

Article 14. The sovereignty of the people shall be exercised by universal suffrage and by the direct and secret voting, with equal value for all, and, according to the law, by means of: (RCA No. 4, 1993; CA No.16, 1997)

I - plebiscite;
II - referendum;
III - people's initiative.
(...)

Paragraph 9. In order to protect the administrative probity, the morality for the exercise of the office, the previous life of the candidate being considered, and the normality and legitimacy of the elections against the influence of the economic power or of the abuse in the holding of office, position or job in the direct or indirect public administration, a supplementary law shall establish other cases of ineligibility and the periods for such ineligibilities to cease.

Article 15. Disfranchisement of political rights is forbidden, the loss or suspension of which rights shall apply only in the event of:

I - cancellation of naturalization by a final and unappealable judgement;
II - absolute civil incapacity;
III - final and unappealable criminal sentence, for as long as its effects last;
IV - refusal to comply with an obligation imposed upon everyone or to render an alternative service, according to article 5, VIII;
V - administrative dishonesty, according to article 37, Paragraph 4.

Article 37. The governmental entities and entities owned by the Government in any of the powers of the Union, the states, the Federal District and the Municipalities shall obey the principles of lawfulness, impersonality, morality, publicity, and efficiency, and also the following: (CA No. 19, 1998; CA No. 20, 1998; CA No. 41, 2003; CA No. 42, 2003; CA No. 47, 2005)

(...)
Paragraph 4. Acts of administrative dishonesty shall result in the suspension of political rights, loss of public function, prohibition to transfer personal property and reimbursement to the Public Treasury, in the manner and grading established by law, without prejudice to the applicable criminal action.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply

with the provision under review:

If available, please provide information (statistics, types of cases, outcome) on related cases or other processes. Please provide per annum figures since the year 2003 (or further back, if available)

Have you ever assessed the effectiveness of your country's procedures for the disqualification from holding public office of persons convicted of offences established in accordance with the Convention?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

109. Subparagraph 7 (b) of article 30

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing **procedures for the disqualification**, by court order or any other appropriate means, for a period of time determined by its domestic law, of **persons convicted of offences established in accordance with this Convention from:**

...

(b) **Holding office in an enterprise owned in whole or in part by the State.**

Has your country established the procedures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable procedure(s) or other measure(s)

Please cite the text(s)

The answer for this provision can be found in question 108 above.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If available, please provide information (statistics, types of cases, outcome) on related cases or other processes. Please provide per annum figures since the year 2003 (or further back, if available)

Have you ever assessed the effectiveness of your country's procedures for the disqualification from holding office in an enterprise owned in whole or in part by the State of persons convicted of offences established in accordance with the Convention?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

110. Paragraph 8 of article 30

8. Paragraph 1 of this article shall be **without prejudice to the exercise of disciplinary powers** by the competent authorities against civil servants.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Based on the promulgation of the Decree n. 5.480, of June 2005, the organization of the disciplinary activities was established as a system, in which the Office of the Comptroller General (CGU) is the core body. The abovementioned law states, as a relevant legal framework, the National Disciplinary Board's (CRG) competence to carry out its achievements as head of the disciplinary system. The CRG is a body within the structure of the CGU, which then has taken on the task of promoting coordination and harmonization of all actions related to prevention and investigation of irregularities in the federal executive branch, by starting, conducting and monitoring disciplinary procedures in that sphere. Since 2003, the CGU has taken on the complex job of investigating public officials' liability at the administrative level, not disregarding the guiding aspect this activity should incorporate.

The disciplinary actions are taken parallelly with civil and/or criminal actions.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and recent related disciplinary cases

Capacity-Building

A central component of the CGU's strategy in this area involves building the capacity of federal personnel to actively participated in administrative disciplinary procedures (processos administrativos disciplinares - PAD), with a view to validating the investigations into alleged irregularities by public officials and the applicable penalties. The Comptroller's Office makes the training materials applied in PAD course programs available to all interested parties over the Internet. Course content consists of lecture notes, flowcharts and simulated exercises involving three hypothetical cases. The material offers a valuable instrument to enhance the federal public service, thus ensuring efficient and expedited investigations of alleged irregularities in the administrative sphere.

Besides that, the CGU counts on a very qualified team of servants to teach Disciplinary Law in-class, aiming at endowing public administration with well-prepared officials to integrate processing commissions.

Disciplinary Coordination Commission

The Disciplinary Coordination Commission, collegial body with advisory functions, aims to promote integration and uniform understanding of agencies and units that integrate the Disciplinary System.

Units of Disciplinary Actions

The installation of Regional Units of the National Disciplinary Board (Nacor) in the states started in 2009, based

on studies of the project feasibility. The creation of the Units occurred because of significant costs faced by the CRG on per diems and air tickets for imperative transportation of servants required to conduct PAD's and disciplinary inspections, as well as the absolute importance of developing a job closer to the occurrence of facts under investigation.

Commission of Administrative Procedures against Suppliers

Considering the firm intention to strictly punish legal persons that participate in fraud schemes against Public Administration in bidding procedures, the CGU created in December 2007, the Commission of Administrative Procedures against Suppliers (CPAF), directly linked to the National Disciplinary Board (CRG). The CPAF was instituted in an attempt to implement efficacy to legal provisions that establish severe administrative penalties for companies that practice illegal acts in order to frustrate the core objectives of bids and contracts. After completion of the due administrative procedure, the company can be declared ineligible to contract with the Public Administration for two years. The list of companies declared ineligible by the CGU or by other public bodies is available on the Internet, on the National Debarment List (CEIS).

Incentive for Creation of Sectional Disciplinary Units

Aware of the importance of sectional units as one of the pillars supporting the Disciplinary System of the Federal Executive Branch, the CRG permanently foster the creation of these disciplinary units among those bodies which, because of the complex activity they are engaged in or by their relevant institutional mission, can no longer ignore holding a specific disciplinary unit.

Simplification of minor damage investigation

In a very welcome initiative in the disciplinary environment, the CGU published the Normative Instruction No. 04 of February 2, 2009, which is an instrument thought to facilitate the simplification of investigation on minor damages or losses within public administration. The NI 04 has enabled the adoption of the Administrative Detailed Term (TCA) for the investigation of loss or damage of small value.

The measure is an alternative to the costly and time-consuming disciplinary procedures, for it opens up the perspective of cutting red tape, saving time and money by allowing that situations which do not constitute the agent's intention of damaging and which involve certain stipulated values are resolved in the scope of the government office. Moreover, the outcome of agile procedures enables that the focus be directed to matters of greater importance and signs of greater damage.

Disciplinary Procedures Management System - CGU-PAD

Software developed in middle 2007, the Disciplinary Procedures Management System (CGU-PAD) aims at the storage and availability, in a quick and safe way, of information on the disciplinary procedures of the Federal Executive Branch. Through CGU-PAD, the agencies are able to control the disciplinary procedures, identify critical points, construct risk maps and establish guidelines for corruption prevention and repression and other administrative infractions.

Have you ever assessed the effectiveness of the measures adopted to regulate the exercise of disciplinary powers against civil servants by competent authorities?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

DISCIPLINARY MEASURES IN NUMBERS (2003 - 2010)

- Administrative Procedures on the Disciplinary System: 35.815
- Servants trained on Disciplinary Law: 7.818
- Expulsive Punishment applied to federal civil servants: 2.802
- Direct monitoring of disciplinary procedures: 7.000
- Monitoring of Federal Police's Special Operations: 188
- Disciplinary Inspection over units of the Disciplinary System: 204
- Direct Initiation of Disciplinary Procedures and Property and Assets Investigation: 428
- Penalties register on the National Debarment List (CEIS): 3.267
- Declaration of Ineligibility of legal persons: 14

111. Paragraph 10 of article 30

10. States Parties shall endeavour to promote the **reintegration into society of persons convicted of offences established in accordance with this Convention.**

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable reintegration programme(s) or measure(s)

Please cite the text(s)

Social reintegration of convicted persons is promoted through the application of alternative sanctions (other than imprisonment), community councils that work in tandem with parole magistrates and through actions such as the Project Fresh Start, designed by the National Council of Justice in an attempt to establish a social network with business and entrepreneurs to hire former detainees. It has been a year since the project was first launched and has so far created more than five thousand posts.

Please attach the text(s)

Brazilian Penal Code, Decree-Law n. 2848/40.

Article 43. The penalties of restriction of rights are:

- I - paying damage to victims;
- II - loss of assets and values;
- IV - service to community or public entities;
- V - temporary suspension of rights;
- VI - weekend arrest.

Article 44. The right restrictive penalties are independent and substitute for the liberty restrictive ones when:

- I - sentence is for deprivation of liberty not exceeding four years and crime is not committed with violence or serious threat to person or, whatever punishment if the crime is *dolus eventualis*;
- II - the defendant is not a felony recidivist;
- III - the guilt, background, social behavior and personality of the offender, as well as the reasons and circumstances indicate that this replacement is sufficient.

(...)

Paragraph 2 - In case of a sentence not exceeding one year, the substitution can be made by a fine or a right restrictive penalty; if more than one year, the deprivation of liberty sentence can be replaced by a right restrictive penalty and a fine or by two right restrictive penalties.

Paragraph 3 - If the offender is a recidivist, the court can apply the substitution, since, in view of previous convictions, the measure is socially advisable and recidivism has not operated because of the same crime.

Paragraph 4 - The right restrictive penalty becomes deprivation of liberty when an unjustifiable breach of the imposed restriction occurs. In calculating the sentence of imprisonment to run, the time spent on right restrictive penalty will be deducted, respecting the balance of at least thirty days in jail or prison.

Law Nº 7.210, of July 11 1984, Law of Imprisonment Enforcement

Article 1 Imprisonment enforcement aims to effect the provisions of criminal sentence or decision and to provide conditions for the harmonious social integration of the convicted and of the intern.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If you collect statistics on recidivism rates, please provide them

Statistics are not yet available but overall analysis shows a significant slump in recidivism rates.

Have you ever assessed the effectiveness of measures established to promote the reintegration into society of persons convicted of offences established in accordance with the Convention?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

112. Subparagraph 1 (a) of article 31

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to **enable confiscation** of:

(a) **Proceeds of crime** derived from offences established in accordance with this Convention or **property the value of which corresponds** to that of such proceeds;

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies) or other measure(s)

Please cite the text(s)

By law, concerning Item II-b of Article 91 of the Brazilian Penal Code, other effects of a conviction are to be considered such as the loss of proceeds of crime or any other goods or values which derived from or that constitutes agent's benefit because of the commission of a crime.

In addition, the Criminal Procedure Code also provides for the measures to freeze and seize the proceeds of crime through its sequence of articles, which goes from Article 125 to Article 143. Specifically on property confiscation, Article 125 and followings describe the procedures for seizure of immovables even if they have been already transferred to a third party, and for that the judge might simply consider the existence of strong evidence of the illicit goods provenance.

During investigations carried out by the Federal Police Department, it is practice to identify and label the investigated person's property, as well as all goods acquired with proceeds of crime, allowing for the freezing of bank assets, besides the seizure and confiscation of movables and immovables, which will serve to provide the compensation for the criminal action.

Law 9613/98 (about money laundering, of which corruption is a predicate offense), article 4, provides that during investigations or judicial proceedings, upon a request made by the prosecutor or a police authority, in this case after hearing the prosecutor within twenty-four hours, having sufficient evidence, the judge may order the seizure or the frozen of assets, rights and valuables that are connected, are the object or are a result of a crime referred to in the Law.

Jurisprudence admits the order for seizure without a hearing with the contrary party (in audita altera parte or ex parte), based on the provision set forth in its article 3, of the Code of Criminal Procedure, by analogy with the rules provided in the articles 797 and 799 of the Code of Civil Procedure.

Please attach the text(s)

Brazilian Penal Code

Article 91 - The following are the effects of the sentence:

I - to make certain the obligation to indemnify the damage caused by crime;
II - loss, to the Federal Government, except as regards the right of an injured party or a third party in good-faith:
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a) of the instruments of the criminal offense, provided that they consist of things whose manufacture, sale, use, bearing, or detention constitutes an illegal act
b) of the product of the criminal offense or of any good or security constituting a gain made by the offender from committing the criminal offense.

Criminal Procedure Code

Article 125. It will be possible the seizing of property, acquired by the accused with the proceeds of the offense, even though they have been transferred to third parties.
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Article 126. For the enactment of the seizing, it is sufficient, the existence of vehement evidence of the illicit origin of the goods.

Article 127. The judge, ex officio, at the request of the prosecutor or the victim, or on behalf of the police authority may order the seizure, in any stage of the process or even before offered to the complaint or grievance.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

The National System of Seized Properties ("Sistema Nacional de Bens Apreendidos - SNBA") was created by the National Justice Council ("Conselho Nacional de Justiça - CNJ") through the resolution 63/2008. The SNBA is an electronic tool that consolidates, in a data base, all the information about seized properties and assets in criminal procedures in all the Country, allowing a better control.
http://www.cnj.jus.br/index.php?option=com_content&view=article&id=7685&Itemid=928

If available, please provide information on the number and types of cases in which proceeds were confiscated. Please provide per annum figures since the year 2003 (or further back, if available)

If available, please provide information on the amount of proceeds of offences established in accordance with this Convention confiscated. Please provide per annum figures since the year 2003 (or further back, if available)

Have you ever assessed the effectiveness of the measures adopted to enable confiscation of proceeds of offences established in accordance with this Convention?

(Y) Yes

Yes, in 2009 the Ministry of Justice financed a study about confiscation and seizing measures in criminal procedures. Available at:
<<http://portal.mj.gov.br/sal/services/DocumentManagement/FileDownload.EZTSvc.asp?DocumentID={91D87425-0C27-46CD-A2A4-D9F0386DA87A}&ServiceInstUID={0831095E-D6E4-49AB-B405-C0708AAE5DB1}>>>
Also, in compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions and Brazil has always received good evaluations in this regard.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

113. Subparagraph 1 (b) of article 31

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to **enable confiscation** of:

...

(b) **Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.**

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies) or other measure(s)

Please cite the text(s)

The answers for question 112 are also valid for question 113, as Brazilian criminal law does not differentiate the treatment of proceeds and instruments of crimes.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If available, please provide information on the amount/types of property, equipment or other instrumentalities confiscated

If available, please provide information on recent cases in which such confiscations took place

Have you ever assessed the effectiveness of the measures adopted to enable confiscation of property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention?

(Y) Yes

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions and Brazil has always received good evaluations in this regard.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

114. Paragraph 2 of article 31

2. Each State Party shall take such measures as may be necessary to **enable the identification, tracing, freezing or seizure** of any item referred to in paragraph 1 of this article for the **purpose of eventual confiscation.**

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies) or other measure(s)

Please cite the text(s)

Measures and general procedures for the purpose of eventual confiscation of proceeds of crime are describe in the Brazilian Penal Code, Decree-Law n. 2848/40, and Criminal Procedure Code, as informed in the answer for questions 112 and 113, above.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If available, please provide information on the cases and amount of money/value of property frozen or seized. Please provide per annum figures since the year 2003 (or further back, if available)

Have you ever assessed the effectiveness of the measures adopted to enable identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article?

(Y) Yes

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions and Brazil has always received good evaluations in this regard.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

115. Paragraph 3 of article 31

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to **regulate the administration** by the competent authorities of **frozen, seized or confiscated property** covered in paragraphs 1 and 2 of this article.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

The National System of Seized Properties ("Sistema Nacional de Bens Apreendidos - SNBA") was created by the National Justice Council ("Conselho Nacional de Justiça - CNJ") through the resolution 63/2008. The SNBA is an electronic tool that consolidates, in a data base, all the information about seized properties and assets in criminal procedures in all the Country, allowing a better control.

Also, if it is the case of great amount of goods, or goods that require specialized management, as stocks, cattle or industrial facilities, the money laundering law provides that the judge shall appoint a qualified manager.

Please attach the text(s)

Law 9613 of 1998

Article 5 When circumstances require, the judge hearing the prosecutor, shall appoint a qualified person to manage the assets, rights or assets seized or detained.

Article 6 The administrator of the goods:

I - will be entitled to a compensation fixed by the judge, who will be paid with the proceeds of the assets of the administration;

II - will provide, by judicial determination, periodic information of the status of the assets under management, as well as explanations and details about investments and reinvestments made.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Please provide any reports or assessments of the administration of frozen, seized or confiscated property

Have you ever assessed the effectiveness of the measures adopted to regulate the administration of frozen, seized or confiscated property?

(Y) Yes

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions and Brazil has always received good evaluations in this regard.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

116. Paragraph 4 of article 31

4. If such **proceeds of crime have been transformed or converted**, in part or in full, into other **property**, such **property shall be liable** to the measures referred to in this article instead of the proceeds.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

The answer to questions 112 and 113 is applicable to question 116, as the legal dispositions cited cover both the goods that are a direct product of offenses, as also the ones that are indirectly derived from them.

Please cite, summarize and attach the applicable policy(ies) or other measure(s)

Please cite the text(s)

Please refer back to answer to questions 112 and 113, above.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable

if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If available, please provide information (statistics, types of cases, outcome) on related cases or other processes. Please provide per annum figures since the year 2003 (or further back, if available)

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions and Brazil has always received good evaluations in this regard.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

117. Paragraph 5 of article 31

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

The answer to question 116 is applicable to question 117, as the legal dispositions cover both the goods that are a direct product of offenses, as also the ones that are indirectly derived.

Please cite, summarize and attach the applicable policy(ies) or other measure(s)

Please cite the text(s)

Measures to freeze and seize any proceeds of crime are presented under questions 112 and 113, above.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If available, please provide information (statistics, types of cases, outcome) on related cases or other processes. Please provide per annum figures since the year 2003 (or further back, if available)

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions and Brazil has always received good evaluations in this regard.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

118. Paragraph 6 of article 31

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies) or other measure(s)

Please cite the text(s)

The answer to question 116 is applicable to question 117, as the legal dispositions covers both the goods that are a direct product of offenses, as also the ones that are indirectly derived, as in this definition are included fruits and incomes.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If available, please provide information (statistics, types of cases, outcome) on related cases or other processes. Please provide per annum figures since the year 2003 (or further back, if available)

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions and Brazil has always received good evaluations in this regard.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

119. Paragraph 7 of article 31

7. For the purpose of this article and article 55 of this Convention, each State Party shall **empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized**. A State Party shall **not decline to act** under the provisions of this paragraph on the **ground of bank secrecy**.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

The Federal Constitution guarantees privacy rights, but courts have the authority to order the seizure of any proceeds of crime. The National Council of Justice has adopted other measures to enforce privacy rights. Among those measures and besides the system mentioned above, judges must immediately inform in a special data bank every order addressed to financial and telecommunication companies to disclose their commercial records, and to the National Traffic Department to made property record availables.

According to Complementary Law N 105, financial records must be made available to courts, and only to them, with breach of secrecy being authorized, when necessary for the investigation of any illicit act at any stage, especially when it refers to crimes such as terrorism, against public administration, against the national financial system, money laundering, among others.

Please attach the text(s)

Complementary Law n. 105 (Please, find full text attached):

Article 1 Financial institutions shall keep the confidentiality of its assets and passive and services provided.

§ 4 The breach of confidentiality may be ordered when necessary to verify the occurrence of any illicit, at any stage of the investigation or judiciary proceeding, and especially in the following crimes:

- I - terrorism;
- II - illicit trafficking of narcotic substances or similar drugs;
- III - smuggling or trafficking in weapons, munitions or materials used for their production;
- IV - Extortion through kidnapping;
- V - against the national financial system;
- VI - against the Public Administration;
- VII - against the tax and social security;
- VIII - money laundering or concealment of assets, rights and values;
- IX - committed by a criminal organization.

Law No. 8429, OF JUNE 2, 1992.

Article 16. Having founded evidence of responsibility, the committee shall represent the public prosecutor or the attorney for the agency that requires the competent court the decree of sequestration of property of the agent or third party who has unlawfully enriched or caused damage to public property.

§ 2 Where appropriate, the request will include research, examination and freezing of assets, bank accounts and investments held by the accused in foreign countries, in accordance with law and international treaties.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Although bank secrecy is protected in Brazil, understood as a result of the constitutional right to privacy protection, courts have the power to determine the access to its data. This is valid for a number of serious crimes (Complementary Law 105, the range is broad enough to contain the UNCAC crimes), and even for non-criminal investigations of corruption, as civil-administrative offense of impropriety (or improbity acts), regulated by Law 8429 of 1992.

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If available, please provide information (statistics, types of cases, outcome) on related cases or other processes. Please provide per annum figures since the year 2003 (or further back, if available)

Have you ever assessed the effectiveness of the measures adopted to order that bank, financial or commercial records be made available to or seized by courts or other competent authorities?

(Y) Yes

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions and Brazil has always received good evaluations in this regard.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

120. Paragraph 8 of article 31

8. States Parties may consider the possibility of **requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime** or other **property** liable to **confiscation**, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies) or other measure(s)

Please cite the text(s)

The measures and procedures for property confiscation have been presented as answer to questions 112 and 113, above. However, we may spot what is established on Article 130 of the Criminal Procedure Code, which refers to two cases in which the seizure can be rejected by a proper action called embargo: a. when the defendant shows the property or goods are not from proceeds of crime; b. when a third party, to whom goods or property have been transferred, shows the goods or property have been acquired in bona fide. In any case, no decision on these embargoes can be made before sentence is res judicata.

Please attach the text(s)

Article 130. The seizing may also be subject to embargoes:
I - by the accused, on the grounds of the goods not having been acquired with proceeds of the offense;
II - by a third party, to whom the goods were onerously transferred, under the basis of having acquired these goods in good faith.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If available, please provide information on recent cases where an offender has been required to demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation

Have you ever assessed the effectiveness of the measures adopted to provide for an offender to demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation?

(Y) Yes

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions and Brazil has always received good evaluations in this regard.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

121. Paragraph 9 of article 31

9. The provisions of this article shall **not be so construed as to prejudice the rights of bona fide third parties.**

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies) or other measure(s)

Please cite the text(s)

According to the same procedures described in answers to questions 112 and 113, above, the rights of bona fide third parties are kept. In case of property confiscation or seizure as established by Article 125 of the Criminal Procedure Code (even when goods or property have been transferred to a third party), that can be impeded if a bona fide third party proves he or she has paid for the goods or property, or that can be extinguished if a bona fide third party proves he or she has provided with a security deposit. Thus, through the sentence *res judicata*, the judge shall determine the goods price setting for a public auction. As for the Sole Paragraph of Article 133, "From the money raised, what is not for payment of the damaged person or the bona fide third party will be collected to the National Treasury".

Please attach the text(s)

Article 130. The seizing may also be subject to embargoes:
I - by the accused, on the grounds of the goods not having been acquired with proceeds of the offense;
II - by a third party, to whom the goods were onerously transferred, under the basis of having acquired these goods in good faith.

Article 131. The seizing will cease:

II - if the third party, to whom the goods have been transferred, provides bail enough to

ensure the application of art. 91, II, b, second part of the Criminal Code;
III - if the defendant is acquitted of the offense by a sentence
res judicata.

Section 133. Res judicata the conviction sentence, the judge will determine the valuation and sale of the seized property at auction public.

Paragraph one. From the money obtained, it will be collected to the National Treasury the part that does not belongs to the victim or to the third party in good faith.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and, if available, information on recent cases where bona fide third parties were involved and their rights were protected

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

122. Paragraph 1 of article 32

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide **effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and**, as appropriate, for **their relatives and other persons close to them.**

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies) or other measure(s)

Please cite the text(s)

Law n. 9807, as of July 13 1999, provides for the protection of victims and witnesses who voluntarily contribute with criminal investigations, through specially organized programs, which comprise actions such as security at home, including control of telecommunications; transfer from residence or temporary accommodation to a location compatible with protection; the preservation of identity, image and data; monthly financial assistance to provide the necessary expenses, where the protected person is unable to develop regular work or has no source of income; among others.

This Law, through its Article 2, Paragraph 2, states that the protection can also be addressed or extended to the spouse or partner, ascendants, descendants and addicts who have regular interaction with the victim or witness, as specifically required in each case.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

The National Victims and Threatened Witnesses' Assistance System comprises the Federal Victims and Threatened Witnesses' Assistance Program, established by Decree n. 3518/00 and state protection programs, and it is managed by the Human Rights Secretariat. The program originated from PROVITA, an idea of the NGO Gabinete de Assessoria Jurídica a Organizações Populares (GAJOP), in the state of Pernambuco, which aimed at social reintegration of people in risky situations, through a confidential manner and counted on the participation of civil society in the construction of a protection solidarity net.

The victims and threatened witnesses' protection programs have their operation and functioning through a structure stated by Law n. 9.807/99: a Deliberative Council, Execution Body, Technical Team and the Protection Solidarity Net. The Deliberative Council is in charge of determining people's entry or exclusion in the program and is composed by representatives from the Judiciary Power, Prosecutor General and public and private institutions related with public security and human rights defense. The Execution Body hires the Technical Team and promotes the articulation with the Protection Solidarity Net. The Technical Team is formed by specialized professionals in charge of social, legal and psychological assistance. Last, the Protection Solidarity Net is a group of civil associations, entities and other NGO's which voluntarily are willing to receive people of the program, providing them with housing and opportunities of social insertion in a place other than their usual residence.

In emergency situations, the victim or witness is temporarily put under police custody, while case screening is being done. Taking the country's continental dimension into account, the System enables for the beneficiaries exchange among the several protection nets. Most important is that all beneficiaries are kept at the Justice, Police and other authorities' disposal for them to be present in person for testimonies. The transfer is always made under police bodyguarding and, depending on the needs, disguise and outwitting techniques are used.

For the entry in the program, by Law n. 9.807/99, some aspects are to be considered, as the risky situation, causality relation, compatible personality and conduct, liberty limitation inexistence and consent of the protected person.

If available, please provide information on the number of witnesses or experts and their relatives or other persons close to them who have required protection and how long they needed it. Please provide per annum figures since the year 2003 (or further back, if available)

Since 1997, 9,530 people have been protected under the different forms established by law. There have been systematic trainings for technical teams, creation and review of the Booklet on Protection Program Procedures, creation of the Human Rights and Protection Net (used by program agents for exchanging information and sharing experiences between national and state programs), among other important actions.

If you have a witness protection programme, how many witnesses or experts and their relatives or persons close to them have entered it? Please provide per annum figures since the year 2003 (or further back, if available)

Informed above.

Do you have an estimated cost per protected person ?

As for costs, the Federal Government has spent R\$ 87,187,699.04, since 1997, with the counter part of states at the amount of R\$ 29,700,606.08. Another important information is the average period a person is under state protection, which is 22 months, and no attempt to any person has ever been registered while they are under protection.

Have you ever assessed the effectiveness of the measures adopted to protect witnesses, experts, their relatives and other persons close to them?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

123. Subparagraph 2 (a) of article 32

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the **physical protection of such persons**, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies) or other measure(s)

Please cite the text(s)

As mentioned before, Law n. 9807/99, establishes rules for the organization and maintenance of special programs which aim at the protection of victims and threatened witnesses, as well as the protection of accused and convicted people who have voluntarily offered good collaboration to police investigation or criminal proceedings. Through its Article 7, this Law states what type of protection may be offered, which includes home security, bodyguard and security on commuting from home for work or testimony, and house moving or temporary housing compatible with the protection, among others.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Please refer back to question 122, above.

If applicable and available, please provide information on the number of witnesses or experts who have received physical protection, type of protection received and cost

Have you ever assessed the effectiveness of the procedures adopted to provide witnesses and experts with physical protection?

(N) No

No assessment has been conducted, but considering that no attempt to any person has ever been registered while they are under protection, we can assume the program is an effective measure.

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

124. Subparagraph 2 (b) of article 32

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

...

(b) Providing **evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons**, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable rule(s), policy(ies) or other measure(s)

Please cite the text(s)

Please refer back to question 122, above.

Please attach the text(s)

Please refer back to question 122, above.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Please refer back to question 122, above.

If applicable and available, please provide information on recent cases in which witnesses or experts have given testimony using video or other communications technology

Have you ever assessed the effectiveness of the measures adopted to permit witnesses and experts to give testimony using video or other communications technology?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

125. Paragraph 3 of article 32

3. States Parties shall consider entering into **agreements or arrangements with other States for the relocation of persons** referred to in paragraph 1 of this article.

Has your country adopted and implemented the measures described above? (Check one answer)

(N) No

Which challenges and issues are you facing in (fully) adopting/implementing the provision under review? (Check all the answers that apply and provide an explanation in the "Comments" field)

(MYSYS) Specificities in our legal system

There is no legal provision for international relocation of persons.

Please provide an account of your country's efforts to date to implement the provision under review:

Non applicable.

Please outline the steps or action (and related timeframe) that domestic or other authorities would need to take to ensure full compliance with the provision under review

Non applicable.

Which of the following forms of technical assistance, if available, would assist your country in adopting or better implementing the provision under review? (Check all the answers that apply)

(NO) No assistance would be required

Are any of the forms of technical assistance previously mentioned already provided? (Check one answer)

(N) No

126. Paragraph 4 of article 32

4. The provisions of this article shall **also apply to victims insofar as they are witnesses.**

In your domestic legal system, do the provisions of this article also apply to victims insofar as they are witnesses? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), arrangement(s), agreement(s) or other measure(s)

Please cite the text(s)

Law n. 9.807/99 makes no distinction in relation to the fact that a victim can also be a witness. Whether the person is under any of those positions, she or he may be subject to protection, if criteria are met. Without prejudice of any other norm, Law n. 9.807/99, through its Articles 13, 14 and 15, also provides for judicial pardon with related criminality extinction, measures to safeguard physical integrity, considering threat and eventual or effective coercion.

Please attach the text(s)

Please see Law n. 9.807/99, attached to question 122, above.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Please refer back to question 122, above.

If you have a protection programme, how many victims have been protected by it and in how many different cases? Please provide per annum figures since the year 2003 (or further back, if

available)

Please refer back to question 122, above.

If applicable and available, please provide information on the number of victims who have received physical protection. Please provide per annum figures since the year 2003 (or further back, if available)

Please refer back to question 122, above.

If applicable and available, please provide information on the number of victims who have been permitted to give testimony in a manner that ensures their safety, such as video or other communications technology. Please provide per annum figures since the year 2003 (or further back, if available)

Please refer back to question 122, above.

If applicable and available, please provide information on the number of victims that have been relocated to other States through arrangements or agreements. Please provide per annum figures since the year 2003 (or further back, if available)

Please refer back to question 122, above.

Have you ever assessed the effectiveness of the measures adopted to protect victims, insofar as they are witnesses?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

127. Paragraph 5 of article 32

5. Each State Party shall, subject to its domestic law, **enable the views and concerns of victims to be presented and considered** at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Please refer back to question 122, above.

Please attach the text(s)

Please refer back to question 122, above.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Please refer back to question 122, above.

If available, please provide information on the number of victims who have presented their views

and concerns at any stage of criminal justice proceedings against offenders. Please provide per annum figures since the year 2003 (or further back, if available)

Please refer back to question 122, above.

Have you ever assessed the effectiveness of the measures adopted to enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

128. Article 33

Each State Party shall consider incorporating into its domestic legal system appropriate measures to **provide protection against any unjustified treatment for any person who reports in good faith** and on reasonable grounds to the competent authorities any **facts concerning offences established in accordance with this Convention**.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Law n. 9807, as of July 13 1999, provides for the protection of victims and witnesses who voluntarily contribute with criminal investigations, through specially organized programs, which comprise actions such security at home, including control of telecommunications; transfer from residence or temporary accommodation to a location compatible with protection; the preservation of identity, image and data; monthly financial assistance to provide the necessary expenses, where the protected person is unable to develop regular work or has no source of income; among others.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Have you ever assessed the effectiveness of the measures adopted to provide protection to reporting persons as prescribed by the provision under review?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

129. Article 34

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to **address consequences of corruption**. In this context, States Parties may consider **corruption a relevant factor in legal proceedings** to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), law(s) or other measure(s):

Please cite the text(s)

Brazil complies with article 34 of the UNCAC.

Article 37 of the Federal Constitution of Brazil sets as mandatory principles of the public administration the legality, impersonality, morality, publicity and efficiency.

In the Brazilian legal system, corruption is a crime, according to articles 317 and 333 of the Penal Code as well as an act of improbity, according to Law 8.429/92.

Law 8666/93, which disciplines public procurement, states in article 49 that the public procurement proceeding must be annulled in case of illegality, which comprehends the occurrence of corruption. Paragraph 2 of that same article sets that the annulment of the public procurement proceeding due to illegality also implicates the annulment of the contract. Articles 77 and 78 of Law 8666/93 state the cases of contract termination. Articles 89 through 99 of Law 8666/93 preview crimes related to public procurement, most of them might happen in concurrence with corruption.

Article 9 of Law 8.429/92 states that getting or receiving any undue pecuniary advantage by reason of holding a position, mandate, role, job or activity in the entities mentioned in art 1 is an administrative misconduct importing illicit enrichment. In this case, the public official might be penalized with the loss of the illicit assets, full compensation of damages, if any, loss of public position, suspension of political rights for eight to ten years, payment of civil fine of up to three times the value of the assets illicitly acquired and prohibition to contract with the government or receive benefits or fiscal or credit incentives for a period of ten years.

Another successful initiative is the National Strategy against Corruption and Money Laundering (ENCCLA). It is a group integrated by public institutions and bodies as well as some corporative entities that discusses initiatives to combat corruption and money laundering. Within those initiatives there are bills, databases, case studies, experiences sharing. Each year the group meets to set out goals that should be accomplished during the next year.

Please attach the text(s)

Federal Constitution

Article 37. The direct or indirect public administration of any of the powers of the Union, the States, the Federal District and the municipalities, as well as their foundations, shall obey the principles of lawfulness, impersonality, morality, publicity, efficiency and also the following:

I - public offices, positions and functions are accessible to all Brazilians who meet the requirements established by law, as well as to foreigners, under the conditions set forth by law;

II - investiture in a public office or position depends on previously passing an entrance examination consisting of tests or tests and presentation of academic and professional credentials, in accordance to the nature and complexity of the office or position, as set forth by law, except for appointment to a commission office declared by law as being of free appointment and discharge;

III - the period of validity of a public entrance examination shall be up to two years, extendable once, for a like period of time;

IV - during the unextendable period established in the public call notice, a person who has passed a public

entrance examination of tests, or of tests and presentation of academic and professional credentials, shall be called with priority over newly approved applicants, to take an office or position in the career;

V - trusting functions, to be exercised exclusively by civil servants taking effective offices, and the commission offices, to be held by civil servants of the career in the cases, under the conditions and observing minimum percentages set forth by law, shall be destined only to attributions of direction, management and assistance;

VI - the right to free union association is guaranteed to civil servants;

VII - the right to strike shall be exercised in the manner and within the limits defined by a specific law;

VIII - the law shall reserve a percentage of public offices and positions for handicapped persons and shall define the criteria for their admittance;

IX - the law shall establish the cases of hiring for a limited period of time to meet a temporary need of exceptional public interest;

X - the remuneration of the civil servants and the subsidy mentioned by paragraph 4 of article 39 shall be determined or altered by specific law, with due regards to the private enterprise in each case, it being assured annual general revision, always on the same date and without distinction of indices;

XI - the remuneration and the subsidy of the holders of public offices, functions and positions in the direct administration, autarchies and foundations, of members of all Powers of the Union, States, Federal District and municipalities, of the holders of elective office and of the other political agents as well as the salaries, pensions and any other kind of financial compensation, whether received cumulatively or not, shall not exceed the monthly subsidy, in legal tender, of the Justices of the Supreme Federal Court, it being the limit, in the case of municipalities, the subsidy of the Mayor, and in the case of the States, the subsidy of the Governor in the scope of the Executive Power, the subsidy of State and Districtal Deputies in the scope of the Legislative Power and the subsidy of the Justices of the Justice Courts, limited to ninety percent plus twenty five hundredths of the monthly subsidy, in legal tender, of the Justices of the Supreme Federal Court, in the scope of the Judiciary Power, this limit being also applicable to the case of the members of Public Prosecution, State Attorneys and State Defenders.

XII - the salaries for offices of the Legislative and Judicial Powers may not be higher than those paid by the Executive Power;

XIII - the linkage or equalization of salaries, for purposes of the remuneration of the personnel in the public services, is forbidden;

XIV - the pecuniary raises received by a civil servant shall not be computed or accumulated for purposes of granting subsequent raises;

XV - the subsidies and salaries of holders of public offices and public positions may not be reduced, except when necessary to comply with the provisions of clauses XI and XIV of this article and of the articles 39, paragraph 4, 150, II, 153, III and 153, paragraph 2, I;

XVI - remunerated accumulation of public offices is forbidden, except in the cases below, provided there is compatibility of working hours, and with observance of clause XI of this article:

a) of two teaching offices;

b) of one teaching office with another technical or scientific office;

c) of two offices or positions exclusive of health professionals, with regulated professions;

XVII - the prohibition to accumulate extends to positions and functions and includes autarchies, foundations, public companies, mixed- capital companies, their affiliates, and societies controlled, directly or indirectly, by the Government;

XVIII - the financial administration and its revenue officers shall, within their spheres of authority and jurisdiction, have the right to precedence over the other administrative sectors, as the law provides;

XIX - only by means of a specific law shall an autarchy be created and shall a public company, a mixed capital company and a foundation have their creation authorized, it being necessary, in the latter case, a complementary law to define the scope of action;

XX - the creation of subsidiaries of the entities mentioned in the preceding clause depends on legislative authorization, in each case, as well as the participation by any of them in a private company;

XXI - with the exception of the cases specified in law, public works, services, purchases and disposals shall be contracted by public bidding proceedings that ensure equal conditions to all bidders, with clauses that establish payment obligations, maintaining the effective conditions of the bid, as the law provides, which shall only allow the requirements of technical and economic qualifications indispensable to guarantee the fulfilling of the obligations;

XXII - the tax administrations of the Union, States, Federal District and municipalities, activities essential to the functioning of the State, exercised by officers in specific careers, shall have priority resources for the execution of their activities and shall have integrated actions, including the sharing of databases and tax information, as provided by law or by convene.

Paragraph 1 - The publicity of the acts, programmes, public works, services and campaigns of Government bodies shall be of educational, informative or social orientation character, and shall not contain names, symbols or images that characterize personal propaganda of Government authorities or employees.

Paragraph 2 - Non-compliance with the provisions of items II and III shall result in the nullity of the act and punishment of the responsible authority, as the law provides.

Paragraph 3 - Complaints relating to the rendering of public services shall be regulated by law.

Paragraph 4 - Acts of administrative dishonesty shall result in the suspension of political rights, loss of public function, prohibition to transfer personal property and reimbursement to the Public Treasury, in the manner and grading established by law, without prejudice to the applicable criminal action.

Paragraph 5 - The law shall establish the limitations for illicit acts, performed by any agent, whether or not a Government employee, which cause losses to the Public Treasury, without prejudice to the respective claims for reimbursement.

Paragraph 6 - Public legal entities and private legal entities rendering public services shall be liable for damages that any of their agents, acting as such, cause to third parties, ensuring the right of recourse against the liable agent in cases of malice or fault.

Paragraph 7 - The law shall provide for the conditions and restriction imposed to the civil servant or public employee with access to classified information.

Paragraph 8 - The management, budgetary and financial autonomy of bodies and entities of direct and indirect administration may be extended by means of a contract, to be firm between their administrators and the Public Power, with the purpose of establishing performance goals for the body or entity, it being incumbent to the law to provide for:

I - the term of the contract;

II - the controls and criteria for evaluation of the performance, rights, duties and accountabilities of the managers;

III - the remuneration of the personnel.

Paragraph 9 - The provisions of Clause XI shall apply to public companies and mixed capital corporations, and their affiliates, which receive remittances from the Union, States, Federal District or municipalities for payment of personnel or general current expenses.

Paragraph 10 - The simultaneous perception of retiring compensations derived from article 40 or articles 42 and 142 with the remuneration of the public office, employment or position is prohibited, excepted the cases of accumulation provided for by this Constitution, the elective offices and the commission offices declared in law as of free appointment and dismissal.

Paragraph 11 - The monies of indemnificatory nature shall not be considered into the remuneratory limits subject of clause XI of this article.

Paragraph 12 - For the purposes of the provisions of clause XI of this article, the States and Federal District shall be allowed to fix, within their jurisdiction, by means of amendments to the respective Constitutions and Organic Law, as sole limit, the monthly subsidy of the Justices of the respective State Court, limited to ninety percentage points plus twenty-five hundredths of percentage points of the monthly subsidy of the Justices of the Supreme Federal Court, this paragraph not being applicable to the subsidies of State Deputies, Districtal Deputies and councilmen.

Brazilian Penal Code

Passive Corruption

Article 317 - Requesting or receiving on his or her own account, directly or indirectly, even where outside the function or before taking in on, but on account of it, any improper advantage, or accepting the promise of such advantage:

Sentence -incarceration from 1(one) to 8 (eight) years and a fine.

§ 1º - the sentence shall be increased in one third if in consequence of the advantage or the promise, the official holds back or fails to execute any official action or practice and by doing so he/she breaks his official duty.

§ 2º - If the official acts, fails to act or holds back an official action when he gives in the request or influence of a third party, thus breaking his official duty,

Sentence - detention from 3 (three) months to 1 (one) year or a fine.

Active Corruption

Art. 333 - Offer or promise undue advantage to an official in order to convince him to act, fail to act or hold back an official act:

Sentence - incarceration from 2 (two) to 12 (twelve) years and a fine. (Provision included by the Law No. 10.163, of 12.11.2003)

Sole Paragraph - the sentence shall be increased in one third if due to advantage or a promise, the official holds back or omits an official act or does and by doing so breaks his official duty.

Law n. 8.666/93

Find attached Portuguese version.

Law n. 8.429/92

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

A good example of successful case of implementation of article 34 refers to the TRT/SP Case. In this case, the contract for the construction of the Regional Court of Labor Law (TRT), at Sao Paulo State, was annulled by the Federal Court of Accounts (TCU) due to deviation of public funds by the administrators of the TRT. Reference: Acórdãos TCU 045/99-Plenário, 298/2000-Plenário and 36/2001-Plenário.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

130. Article 35

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure **that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.**

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Brazil complies with article 35 of the UNCAC.

Article 5, XXXV, of the Federal Constitution of Brazil states that the law shall not exclude from the appreciation of the Judicial Branch any threat or damage to any right a person may be entitled to. That means that the Brazilian legal system protects the interests of every person who has suffered damages, including those caused by corruption.

The Civil Code (Law 10.406/2002) also states that any person who intentionally or by negligence violates other's rights and causes him/her damages, commits an illicit act (article 186).

The Penal Code (Decree-Law 2848/40) sets in its article 91, I, that the condemnation for a crime implicates the compensation of the damages suffered. As said before, corruption is a crime by articles 317 and 333 of the Penal Code and therefore, damages suffered as a result of an act of corruption must be compensated.

Article 12 of Law 8429/92 sets as one of the consequences for those who perpetrate acts of improbity, such as corruption, full reparation of the damages caused.

Please attach the text(s)

Brazilian Federal Constitution

Article 5. All persons are equal before the law, without any distinction whatsoever, Brazilians and foreigners residing in the country being ensured of inviolability of the right to life, to liberty, to equality, to security and to property, on the following terms:
(...)

XXXV - the law shall not exclude any injury or threat to a right from the consideration of the Judicial Power

Brazilian Civil Code

Law n. 10.406/2002

Art. 186. Anyone who, by action or voluntary omission, negligence or imprudence, violates right or causes damage to a third party, even if exclusively moral, commits an illicit act.

Brazilian Penal Code

Decree-LAW n 2.484/40

General and specific effect

Article 91 - The following are the effects of the sentence:

I - to make certain the obligation to indemnify the damage caused by crime;

II - loss, to the Federal Government, except as regards the right of an injured party or a third party in good-faith:

a) of the instruments of the criminal offense, provided that they consist of things whose manufacture, sale, use, bearing, or detention constitutes an illegal act

b) of the product of the criminal offense or of any good or security constituting a gain made by the offender from committing the criminal offense.

Passive Corruption

Article 317 - Requesting or receiving on his or her own account, directly or indirectly, even where outside the function or before taking in on, but on account of it, any improper advantage, or accepting the promise of such advantage:

Sentence -incarceration from 1(one) to 8 (eight) years and a fine.

§ 1º - the sentence shall be increased in one third if in consequence of the advantage or the promise, the official holds back or fails to execute any official action or practice and by doing so he/she breaks his official duty.

§ 2º - If the official acts, fails to act or holds back an official action when he gives in the request or influence of a third party, thus breaking his official duty,

Sentence - detention from 3 (three) months to 1 (one) year or a fine.

Active Corruption

Art. 333 - Offer or promise undue advantage to an official in order to convince him to act, fail to act or hold back an official act:

Sentence - incarceration from 2 (two) to 12 (twelve) years and a fine. (Provision included by the Law No. 10.163, of 12.11.2003)

Sole Paragraph - the sentence shall be increased in one third if due to advantage or a promise, the official holds back or omits an official act or does and by doing so breaks his official duty.

Law n. 8.429/92

Article 12. Independently of the criminal, civil and administrative sanctions, provided in a specific law, the individual responsible for the act of improbity is subjected to the following penalties:

I - in case of the article 9th, forfeiture of the assets and funds illicitly added to one's estate, integral compensation for damages, when there is, loss of the public office, suspension of the political rights from eight to ten years, payment of civil fine of up to three times the amount of the increase of estate and the prohibition to have contracts with the Government or receive benefits or tax incentives or credits, directly or indirectly, even if by means of a legal entity of which it is a major partner for the deadline of ten years;

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and, if available, information on recent cases, including amount and type of compensation emanating from legal proceedings initiated by a victim against those responsible for a damage resulting from an act of corruption

Have you ever assessed the effectiveness of the measures adopted to ensure that entities or persons who have suffered damage as a result of an offence established in accordance with this Convention have the right to initiate legal proceedings in order to obtain compensation?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

As for statistics, in 2009 the Office of the Attorney General of the Union (AGU) filled 340 administrative improbity lawsuits and participated as assistant in other 403. The lawsuits issued by AGU involve R\$ 33,211,874.28 and in 17% of them the assets of defendants were frozen in order to guarantee the reparation of damages.

131. Article 36

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a **body or bodies or persons specialized in combating corruption through law enforcement**. Such body or bodies or persons shall be granted the **necessary independence**, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the **appropriate training and resources** to carry out their tasks.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), institutional arrangements, law(s) or other measure(s):

Please cite the text(s)

Concerning the specialization in combating corruption through law enforcement, some Brazilian governmental bodies are to be considered such as the Court of Accounts, the Prosecutor General, the Federal Police and Judges.

The Prosecutor General's independency, as well as its unity and indivisibility, is described in Paragraph 1 of Article 127 of the Federal Constitution. In addition, Article 95 provides for the guarantees judges are granted with, which includes life tenure, irremovability, irreducibility of compensations, also secured for Public Prosecution members.

Article 73 of the Federal Constitution sets forth the definition of the Court of Accounts, and states, in its Paragraph 3, that its ministers shall be granted the same guarantees, prerogatives, impediments, compensations and perquisites as of the Superior Court of Justice's ministers.

Article 144 provides for the establishment of the public security, comprising the Federal Police, whose duties are described in Paragraph 1, which includes being the criminal police of the Union, among others.

Civil servants working at the Public Prosecution, Court of Accounts, Federal Police and judges in general, take office after being submitted to a nationwide public contest. This public contest comprises written exams, position-oriented technical writing, specialized training (also called formation course) and may also include sometimes personal interviews and attribution of better ranking to candidates holding higher diplomas than those required for the position.

Concerning resources, for instance, in 2010 those bodies were granted a budget of:

Court of Accounts: R\$ 1.334.097.924,00

Prosecutor General: R\$ 3.632.771.114,00

Federal Police: R\$ 3.987.508.712,00

Judiciary (as a whole): R\$29.334.726.797,00

Resolution n. 314, as of May 12 2003, of the Federal Justice Council, demands that Federal Regional Courts the specialization of federal criminal courts for exclusive or concurrent competence of suing and judging crimes against the national finance system, as well as laundering or concealment of goods/assets, rights and values.

Besides regular training courses those bodies may offer to their public officials, for instance at the National Police Academy, Magistrates' School, public officials working in combating corruption count on the National Program of Capacity Building and Training for the Combat to Corruption and Money Laundering, which was created to promote integration and coordination among public officials, having as basis courses and training programs in skills and abilities required in the adoption of preventive measures and investigations, as well as criminal acts on money laundering crime.

Please attach the text(s)

Federal Constitution

Article 73. The Federal Audit Court, formed by nine Justices, shall have its seat in the Federal District, its own staff and jurisdiction throughout the national territory, and shall exercise, insofar as pertinent, the incumbencies provided for in article 96. (CA No.20, 1998)

Paragraph 1. The Justices of the Federal Audit Court shall be appointed from among Brazilians who meet the following requirements:

I - more than thirty-five and less than sixty-five years of age;

II - moral integrity and spotless reputation;

III - notable knowledge of the law, accounting, economics and finances or of public administration;

IV - more than ten years of exercise of office or of actual professional activity which requires the knowledge mentioned in the preceding item.

Paragraph 2. The Justices of the Federal Audit Court shall be chosen:

I - one-third by the President of the Republic with the approval of the Federal Senate, two of them being alternately chosen from among auditors and members of the Public Prosecution at the Court, as indicated in a triple list by the Court, in accordance with criteria of seniority and merit;

II - two-thirds by the National Congress.

Paragraph 3. The Justices of the Federal Audit Court shall have the same guarantees, prerogatives, impediments, remuneration, and advantages as the Justices of the Superior Court of Justice, their retirement pensions and other pensions being ruled by the provisions of Article 40.

Paragraph 4. The auditor, when substituting for a Justice, shall have the same guarantees and impediments as the incumbent Justice, and, when in exercise of the other duties of the judicature, those of a Judge of a Federal

Regional Court.

(...)

Article 95. Judges enjoy the following guarantees:(CA No. 19, 1998; CA No. 45, 2004)

I - life tenure, which, at first instance, shall only be acquired after two years in office, loss of office being dependent, during this period, on deliberation of the court to which the judge is subject, and, in other cases, on a final and unappealable judicial decision;

II - irremovability, save for reason of public interest, under the terms of article 93, VIII;

III - irreducibility of compensation, except for the provisions of articles 37, X and XI, 39, paragraph 4, 150, II, 153, III, and 153, paragraph 2, I.

Sole paragraph. Judges are forbidden to:

I - hold, even when on paid availability, another office or position, except for a teaching position;

II - receive, on any account or for any reason, court costs or participation in a lawsuit;

III - engage in political or party activities.

IV - receive, on any account or for any reason, financial aid or contribution from individuals, and from public or private institutions, save for the exceptions set forth in law;

V - practice law in the court or tribunal on which they served as judges, for a period of three years following their retirement or discharge.

(...)

Article 127. The Public Prosecution is a permanent institution, essential to the jurisdictional function of the State, and it is its duty to defend the juridical order, the democratic regime and the inalienable social and individual interests (CA No. 19, 1998; CA No. 45, 2004).

Paragraph 1. Unity, indivisibility and functional independence are institutional principles of the Public Prosecution.

Paragraph 2. The Public Prosecution is ensured of functional and administrative autonomy, and it may, observing the provisions of article 169, propose to the Legislative Power the creation and abolishment of its offices and auxiliary services, filling them through a civil service entrance examination of tests or of tests and presentation of academic and professional credentials, the remuneration policies, and the career plans; the law shall provide for its organization and operation.

Paragraph 3. The Public Prosecution shall prepare its budget proposal within the limits established in the law of budgetary directives.

Paragraph 4. If the Public Prosecution does not forward its respective budget proposal within the time period stipulated in the law of budgetary directives, the Executive Power shall, with a view to engrossing the annual budget proposal, take into account the figures approved in the current budgetary law, such figures adjusted in accordance with the limits stipulated under the terms of Paragraph 3.

Paragraph 5. If the budget proposal referred to in this article and thus forwarded does not obey the limits stipulated under Paragraph 3, the Executive Power shall effect the necessary adjustments with a view to engrossing the annual budget proposal.

Paragraph 6. In the implementation of the budget of a specific fiscal year, no expenses may be incurred and no obligations may be assumed that exceed the limits stipulated in the law of budgetary directives, except when previously authorized, by opening supplementary or special credits.

Article 128. The Public Prosecution comprises (CA No. 19, 1998; CA No. 45, 2004):

I - the Public Prosecution of the Union, which includes:

a) the Federal Public Prosecution;

b) the Labour Public Prosecution;

c) the Military Public Prosecution;

d) the Public Prosecution of the Federal District and the Territories;

II - the Public Prosecutions of the states.

Paragraph 1. The head of the Public Prosecution of the Union is the Attorney-General of the Republic, appointed by the President of the Republic from among career members over thirty-five years of age, after his name has been approved by the absolute majority of the members of the Federal Senate, for a term of office of two years, reappointment being allowed.

Paragraph 2. The removal of the Attorney-General of the Republic, on the initiative of the President of the Republic, shall be subject to prior authorization by the absolute majority of the Federal Senate.

Paragraph 3. The Public Prosecutions of the states, of the Federal District and the Territories shall prepare a list of three names from among career members, under the terms of the respective law, for the selection of their Attorney-General, who shall be appointed by the Head of the Executive Power for a term of office of two years, one reappointment being allowed.

Paragraph 4. The Attorneys-General in the states, in the Federal District and the Territories may be removed from office by deliberation of the absolute majority of the Legislative Power, under the terms of the respective supplementary law.

Paragraph 5. Supplementary laws of the Union and of the states, which may be proposed by the respective Attorneys-General, shall establish the organization, the duties and the statute of each Public Prosecution, observing, as regards their members:

I - the following guarantees:

a) life tenure, after two years in office, with loss of office only by a final and unappealable judicial decision;

b) irremovability, save for reason of public interest, through decision of the competent collegiate body of the Public Prosecution, by the vote of the absolute majority of its members, full defense being ensured;

c) irreducibility of compensation, stipulated according to article 39, paragraph 4, and with due regard for the

provisions of articles 37, X and XI,
150, II, 153, III, 153, paragraph 2, I;

II - the following prohibitions:

- a) receiving, on any account or for any reason, fees, percentages or court costs;
- b) practicing the legal profession;
- c) participating in a commercial company, under the terms of the law;
- d) exercising, even when on paid availability, any other public function, except for a teaching position;
- e) engaging in political or party activities;
- f) receiving, on any account or for any reason, financial aid or contribution from individuals, and from public or private institutions, save for the exceptions set forth in law.

Paragraph 6. The provisions of article 95, sole paragraph, V, shall apply to the members of Public Prosecution.

Article 129. The following are institutional functions of the Public Prosecution (CA No. 45, 2004):

- I - to initiate, exclusively, public criminal prosecution, under the terms of the law;
- II - to ensure effective respect by the Public Authorities and by the services of public relevance for the rights guaranteed in this Constitution, taking the action required to guarantee such rights;
- III - to institute civil investigation and public civil suit to protect public and social property, the environment and other diffuse and collective interests;
- IV - to institute action of unconstitutionality or representation for purposes of intervention by the Union or by the states, in the cases established in this Constitution;
- V - to defend judicially the rights and interests of the Indian populations;
- VI - to issue notifications in administrative procedures within its competence, requesting information and documents to support them, under the terms of the respective supplementary law;
- VII - to exercise external control over police activities, under the terms of the supplementary law mentioned in the previous article;
- VIII - to request investigatory procedures and the institution of police investigation, indicating the legal grounds of its procedural acts;
- IX - to exercise other functions which may be conferred upon it, provided that they are compatible with its purpose, with judicial representation and judicial consultation for public entities being forbidden.

Paragraph 1. Legitimation by the Public Prosecution for the civil actions set forth in this article shall not preclude those of third parties in the same cases, according to the provisions of this Constitution and of the law.

Paragraph 2. The functions of Public Prosecution may only be exercised by career members, who must reside in the judicial district of their respective assignment, save when otherwise authorized by the head of the institution.

Paragraph 3. Admission into the career of Public Prosecution shall take place by means of a civil service entrance examination of tests and presentation of academic and professional credentials, ensuring participation by the Brazilian Bar Association in such examination, at least three years of legal practice being required of holders of a B.A. in law, and observing, for appointment, the order of classification.

Paragraph 4. The provisions of article 93 shall apply to the Public Prosecution, where appropriate.

Paragraph 5. In the Public Prosecution, proceedings will be assigned immediately upon filing.

Article 130. The provisions of this section concerning rights, prohibitions and form of investiture apply to the members of the Public Prosecution before the Audit Courts.

(...)

Article 144. Public security, the duty of the State and the right and responsibility of all, is exercised to preserve public order and the safety of persons and property, by means of the following agencies:

1. federal police;
2. federal highway police;
3. federal railway police,
4. civil polices.
5. military polices and military fire brigades.

Paragraph 1 - The federal police, instituted by law as a permanent body and structured into a career are limited to

1. investigate criminal offenses against the political and the social order or to the detriment of property, services and interests of the Union and of its autonomous government entities and public companies, as well as other offenses with interstate or international effects and requiring uniform repression as the law shall establish;
2. to prevent and repress the illegal traffic of narcotics and like drugs, as well as smuggling, without prejudice to action by the treasury authorities and other government agencies in their respective areas of competence;
3. to exercise the functions of maritime, air and border police.
4. to exercise, exclusively, the functions of criminal police of the Union.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply

with the provision under review:

The PNLD, describe above, is an example of a successful training and capacity building action.

Please provide information on the measures adopted to ensure the independence of the specialized body

Independence of the Public Prosecution is secured by the Federal Constitution, as mentioned above. Of the same importance, we shall mention judges' life tenure and irremovability, which make them able to carry out their functions without any undue influence.

Just to mention, civil servants in Brazil are lifetime career servants, meaning they also count on legitimacy for carrying out their duties towards fighting corruption and for them to be fired, they have to have committed irregularities punishable with expelling penalty.

If available, please provide information on how staff is selected and trained

Civil servants working at the Public Prosecution, Court of Accounts, Federal Police and judges in general, take office after being submitted to a nationwide public contest. This public contest comprises written exams, position-oriented technical writing, specialized training (also called formation course) and may also include sometimes personal interviews and attribution of better ranking to candidates holding higher diplomas than those required for the position.

Besides regular training courses those bodies may offer to their public officials, for instance at the National Police Academy, Magistrates' School, public officials working in combating corruption count on the National Program of Capacity Building and Training to Combat Corruption and Money Laundering, which was created to promote integration and coordination among public officials, having as basis courses and training programs in skills and abilities required in the adoption of preventive measures and investigations, as well as criminal acts on money laundering crime. Launched by the Ministry of Justice, until August 2009th the Program, which has included the direct support of COAF in a number of specific course offerings, had provided training to 6,181 professionals, as reflected on the chart below:

YEAR	2004	2005	2006	2007	2008	2009
PROFESSIONALS	253	490	909	1097	1746	1681

Professionals who successfully fulfill a specified set of requirements upon completing the program receive certificates in one of two categories: professional certificate in preventing and combating money laundering or expert certificate in combating and preventing money laundering.

The minimum requirements to qualify for the "Professional Certificate in Preventing and Combating Money Laundering," which must be fulfilled within a period of two (2) years, are:

- Completion of all mandatory PNLD course offerings; and
- Proof of participation in at least forty (40) course hours in PNLD certified training programs or events.

The minimum requirements to qualify for the "Professional Certificate in Preventing and Combating Money Laundering," which must be fulfilled within a period of four (4) years, are:

- Completion of all mandatory PNLD course offerings;
- Proof of participation in at least three hundred and sixty (360) course hours in PNLD certified training programs or events; and
- Completion of formal academic research related to PNLD course offerings.

In addition, institutions that provide training to their employees receive the official seal of the National Strategy to Combat Corruption and Money Laundering (Estratégia Nacional de Combate à Corrupção e à Lavagem de Dinheiro - ENCCLA).

The most recent training programs (2007-2009) centered on Corruption and Administrative Misconduct, with an emphasis on:

- Concepts and Definitions of Corruption - national legislation, conventions, treaties, methodologies, modalities of operation, typologies, case studies, corruption in comparative law; legal and criminal aspects of corruption - basic types, subjective criminal liability, objective criminal liability, elements of the offense, related and equivalent offenses, completion of the offense, attempted corruption, co-participation of agents, customary criminal practice, sentences, procedural aspects of corruption - investigation, competence, complaint filings and reporting, discovery, nullity, assurance measures, asset management, anticipated disposal, loss of assets, civil effects of conviction, case studies;
- Administrative Misconduct - legal nature, active subject, co-participation of agents, classification, typologies, treaties and case studies, procedural aspects of administrative misconduct - legitimacy, competence, requirements, assurance measures, privileged forum based on public function, statute of limitations, case studies;

- Illicit Enrichment - concepts and definitions, distinctions, legal consequences, treaties, case studies;
- Financial Investigations - concepts and definitions, use, legal consequences, regulations, connection to criminal law;
- Fraud in Public Procurement Procedures - concepts and definitions, types, legal consequences, treaties, case studies;
- Financing of Electoral Campaigns - concepts and definitions, distinctions, legal consequences, categories, case studies;
- Tax Havens - concepts and definitions, specificities, legal entities, activities, international cooperation;
- Informal Cash Remittance Systems - concepts and definitions, categories, legal consequences under criminal law, controls, case studies;
- Types of Foreign Exchange Exports - concepts and definitions, national legislation, international conventions, treaties and guidelines, methodologies and case studies;
- Types of Foreign Exchange Imports - concepts and definitions, national legislation, international conventions, treaties and guidelines, methodologies, case studies;
- Real Estate Market - concepts and definitions, categories of activities, legal consequences under criminal law, controls, regulations, professional obligations, case studies;
- Art and Antiquities Market - concepts and definitions, categories of activities, legal consequences under criminal law, controls, regulations, professional obligations, case studies;
- Jewels, Gemstone and Precious Metals Market - concepts and definitions, categories of activities, legal consequences under criminal law, controls, regulations, professional obligations, case studies;
- Games of Chance and Lotteries - concepts and definitions, distinctions, regulations, legal consequences, categories, professional obligations, case studies;
- Factoring - concepts and definitions, categories of activities, legal consequences under criminal law, controls, regulations, case studies;
- Transport of Securities - concepts and definitions, categories of activities, legal consequences under criminal law, controls, regulations, case studies;
- Financing of Terrorism - concepts and definitions, methods, scope of action, specificities by region and activity, regulations, international guidelines, case studies;
- Cyber Crimes concepts and definitions, distinctions, legal consequences, treaties, case studies;
- Sporting Events and Activities - concepts and definitions, distinctions, regulations, legal consequences, categories, examples;
- Tax Immunity - concepts and definitions, distinctions, regulations, legal consequences, categories, case studies;
- Improper Use of Judicial Proceedings - concepts and definitions, case studies;
- Tertiary Sector - concepts and definitions, distinctions, categories, regulations, legal consequences, controls, financial mechanisms, relations with public entities, vulnerabilities, case studies.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

132. Paragraph 1 of article 37

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention **to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.**

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Please, refer to item 104 (paragraph 3 of Article 30) on this matter.

Please attach the text(s)

Law No. 9034 of May 3, 1995, on organized crime (article 6):
Article 6 In the crimes practiced in a criminal organization, the penalty shall be reduced by two-thirds, when the spontaneous cooperation of the agent takes to the discovering of criminal offenses and its perpetrators. "

Law No. 9613 of March 3, 1998, on money laundering (article 1, Paragraph 5):
"Art 1 To conceal or disguise the nature, source, location, disposition, movement or ownership of property, rights or values derived directly or indirectly from crime:
§ 5 The penalty will be reduced by one to two thirds and begin to be fulfilled in open system, and the judge may fail to apply it or replace it with penalty of restriction of rights, if the author, co-author or accomplice voluntarily cooperates with the authorities, providing explanations that lead to the investigation of those offenses and its perpetrators, or location of property, rights or values that are object of these crimes. "

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If available, please provide information on the number and nature of such cases that have contributed to depriving offenders of the proceeds of crime and to recovering such proceeds. Please provide per annum figures since the year 2003 (or further back, if available)

Have you ever assessed the effectiveness of the measures adopted to encourage the persons mentioned above

to supply information useful to competent authorities?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

133. Paragraph 2 of article 37

2. Each State Party shall consider providing for the possibility, in appropriate cases, of **mitigating punishment of an accused person who provides substantial cooperation** in the investigation or prosecution of an offence established in accordance with this Convention.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Please refer back to answer for question 132, Paragraph 1 of Article 37.

Please attach the text(s)

Please refer back to answer for question 132, Paragraph 1 of Article 37.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If available, please provide information (statistics, types of cases, outcome) on related legal (civil, administrative or criminal) cases or other processes related to instances where punishment of an accused person who provided substantial cooperation was mitigated. Please provide per annum figures since the year 2003 (or further back, if available)

Have you ever assessed the effectiveness of the measures adopted to mitigate punishment of an accused person who provides substantial cooperation?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

134. Paragraph 3 of article 37

3. Each State Party shall consider providing for the possibility, in accordance with the fundamental principles of its domestic law, of **granting immunity from prosecution to a person who provides substantial cooperation** in the investigation or prosecution of an offence established in accordance with this Convention.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Please refer back to answer for question 132, Paragraph 1 of Article 37.

Please attach the text(s)

Please refer back to answer for question 132, Paragraph 1 of Article 37.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

If available, please provide information (statistics, types of cases, outcome) on legal (civil, administrative or criminal) cases or other process related to instances where immunity from prosecution was granted to persons who had provided substantial cooperation. Please provide per annum figures since the year 2003 (or further back)

Have you ever assessed the effectiveness of the measures adopted to grant immunity from prosecution to persons who provide substantial cooperation?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

135. Paragraph 4 of article 37

4. **Protection of such persons** shall be, mutatis mutandis, **as provided for in article 32** of this Convention.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies) or other measure(s)

Please cite the text(s)

Law n. 9807, as of July 13 1999, provides for the protection of victims and witnesses who voluntarily contribute with criminal investigations, through specially organized programs, which comprise actions such as security at

home, including control of telecommunications; transfer from residence or temporary accommodation to a location compatible with protection; the preservation of identity, image and data; monthly financial assistance to provide the necessary expenses, where the protected person is unable to develop regular work or has no source of income; among others, as it may be seen in the attached file.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If available, please provide information on the number of cooperating defendants/offenders who have received physical protection, how long they required protection, type of protection received and cost. Please provide per annum figures since the year 2003 (or further back, if available)

If you have a defendant/offender protection programme, how many cooperating defendants/offenders have entered it? Please provide per annum figures since the year 2003 (or further back, if available)

If applicable and available, please provide information on the number of cases where cooperating defendants/offenders have been permitted to give testimony using video or other communications technology. Please provide per annum figures since the year 2003 (or further back, if available)

If applicable and available, please provide information on the number of cooperating defendants/offenders who have been relocated to other States through arrangements or agreements. Please provide per annum figures since the year 2003 (or further back, if available)

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

136. Paragraph 5 of article 37

5. Where a **person** referred to in paragraph 1 of this article located in one State Party **can provide substantial cooperation** to the competent authorities of another State Party, the States Parties concerned may **consider entering into agreements or arrangements**, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable agreement(s), arrangement(s) or other measure(s)

Please cite the text(s)

There are no obstacles to the application of such a measure, or requisition of it by the defense, in a MLAT procedure.

Brazil is able to provide assistance in this matter, as it is possible to do so in Brazilian proceedings. Assistance can be provided on the basis of bilateral or multilateral treaties, as well as on the basis of reciprocity.

The treatment of the person referred to in paragraph 1 of this article as set forth in paragraphs 2 and 3 of this article is provided for in the Brazilian law as follows:

1 - The Brazilian Penal Code, in its article 65, III, d, classifies the spontaneous confession of a crime as a possibility to lessen the penalty.

2 - Law 8.137/90, which refers to crimes relating to fiscal, economic and consumer relations matters, in the sole paragraph of its article 16, determines that the participant that brings forth spontaneously all the details of the crime to the policial authority, will have its penalty reduced in one or two thirds.

3 - Law 9.613/98, the Brazilian anti-money laundering law, establishes in its paragraph 5 of article 1, that, in the event that the accused or his/her accomplice freely agrees to cooperate with the authorities by providing information that lead to the detection of a crime and the identification of those responsible for it, or to the discovery of assets, rights and valuables that were the object of the crime, the sentence may be reduced by one or two-thirds. The accused may also be allowed to start serving time in an open system of imprisonment. The judge may also decide whether to apply the penalty or substitute it for the restriction of rights.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions and Brazil has always received good evaluations in this regard.

137. Subparagraph (a) of article 38

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its **public officials**, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the **offences established in accordance with articles 15, 21 and 23 of this Convention has been committed**; or

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

The Federal Constitution provides for the integration and interaction among governmental bodies concerning several measures towards cooperation between public authorities. This cooperation may refer to civil, criminal or administrative investigations, accounting, financial, budgetary, operational and heritage inspections, internal control, among others.

Law. 9.613/98 establishes that the Council for Financial Activities Control shall notify competent authorities of any irregularity observed in any citizen's bank transactions.

Another important measure taken for promoting bodies' sharing of information is called ENCCLA - National Strategy to Combat Corruption and Money Laundering (Estratégia Nacional de Combate à Corrupção e à Lavagem de Dinheiro), which was started in 2003, aiming at deepening the coordination among governmental agents involved in several phases related to preventing and combating money laundering and (from 2007) corruption.

ENCCLA is coordinated by the National Secretariat of Justice, a body within the Ministry of Justice, and up to date gathers about 70 bodies from Executive, Legislative and Judiciary Branches both at federal and state levels and the Public Ministry. Once a year, those bodies meet for joining forces, in order to optimize public moneys and share information. The main goal is to reach efficient public policy in the public sector, in a way the State can organize in a consistent manner. For 2010, for instance, some measures, among others, are to be addressed by ENCCLA:

1. use of offshores as illicit money destination;
2. corruption associated with outsourced services;
3. irregularities in biddings and public works contracts for 2014 World Cup and 2016 Olympic Games.

Very well acknowledged by the general public are the Special Operations conducted by the Office of the Comptroller General (CGU), the Federal Police and the Federal Public Ministry. From 2003 to date, more than 70 special operations have been carried out, most of them in order to investigate and arrest people or groups who committed crimes against the public administration, such as embezzlement, active and passive bribery, among others.

Please attach the text(s)

Federal Constitution

Article 50. The Chamber of Deputies and the Federal Senate, or any of their committees, may summon a Minister of State or any chief officers of agencies directly subordinate to the Presidency of the Republic to personally render information on a previously determined matter, and absence without adequate justification shall constitute a crime of malversation.

Article 58. The National Congress and both its Houses shall have permanent and temporary committees, established in the manner and with the incumbencies set forth in the respective regulations or in the act from which their creation

Paragraph 1. In the composition of the Directing Boards and of each committee, the proportional representation of the parties or the parliamentary groups which participate in the respective House shall be ensured to the extent possible.

Paragraph 2 - The committees have the power, on account of the matter under their authority.

1. to debate and vote on bills of law which, in accordance with the regulations, are exempt from being submitted to the Plenary Assembly, except in the event of an appeal from one-tenth of the members of the respective House
2. to hold public audiences with entities of civil society;
3. to summon Ministers of State to render information on matters inherent to their duties;
4. to receive petitions, claims, statements or complaints from any person against acts or omissions of Government authorities or entities;
5. to request the testimony of any authority or citizen;
6. to examine construction work programs and national, regional and sectorial development plans and to report thereupon.

Paragraph 3 - Parliamentary inquiry committees, which shall have the powers of investigation inherent to the judicial authorities, in addition to other powers set forth in the regulations of the respective Houses, shall be created by the Chamber of Deputies and by the Federal Senate, jointly or separately, upon the request of one-third of its members, to investigate a given fact and for a certain period of time? and their conclusions shall, if the case may be, be forwarded to the Public Prosecution to determine the civil or criminal liability of the offenders.

Article 70. Control of accounts, finances, budget, operations and property of the Union and of the agencies of the direct and indirect administration, as to lawfulness, legitimacy, economic efficiency, application of subsidies and waiver of revenues, shall be exercised by the National Congress, by means of external control and of the internal control system of each Power.

Sole paragraph - Accounts shall be rendered by any individual or public entity which uses, collects, keeps, or

manages public monies, assets or values, or those for which the Union is responsible or which, on behalf of the Union, assumes obligations of a pecuniary nature.

Article 71. External control, incumbent on the National Congress, shall be exercised with the aid of the Federal Court of Accounts, which shall:

1. examine the accounts rendered annually by the President of the Republic, by means of a prior opinion which shall be prepared in sixty days counted from receipt;
2. evaluate the accounts of the administrators and other persons responsible for public monies, assets and values of the direct and indirect administration, including foundations and companies instituted and maintained by the Federal Government as well as the accounts of those who have caused a loss, misplacement or other irregularity resulting in losses to the public treasury;
3. examine, for the purpose of registration, the lawfulness of acts of admission of personnel, on any account, in the direct and indirect administration, including the foundations instituted and maintained by the Federal Government, with the exception of the appointments to commission offices, as well as the granting of civil and military retirement and pensions, except for subsequent improvements which do not alter the legal fundamentals of the conceding act;
4. carry out, on its own initiative or on that of the Chamber of Deputies, of the Federal Senate, or of a technical or inquiry committee, inspection and audits of an accounting, financial, budgetary, operational or property nature in the administrative units of the Legislative, Executive and Judicial Powers and other entities referred to in item II;
5. control the national accounts of supranational companies in whose capital stock the Union holds a direct or indirect interest, as set forth in the acts of incorporation;
6. control the use of any funds transferred by the Union, by means of an agreement, arrangement, adjustment or any other similar instrument, to a state, the Federal District or a municipality;
7. render the information requested by the National Congress, by either of its Houses or by any of the respective committees concerning accounting, financial, budgetary, operational and property control and the results of audits and inspections made;
8. in case of illegal expenses or irregular accounts, apply to the responsible parties the sanctions provided by law, which shall establish, among other comminations, a fine proportional to the damages caused to the public treasury;
9. determine a period of time for the agency or entity to take the necessary steps for the strict compliance with the law, if an illegality is established;
10. if not heeded, stop the execution of the impugned act, notifying the Chamber of Deputies and the Federal Senate of such decision;
11. present a formal charge to the competent Power on any irregularities or abuses verified.

Article 74. The Legislative, Executive and Judicial Powers shall maintain an integrated system of internal control for the purpose of:

1. evaluating the attainment of the goals established in the pluriannual plan, the implementation of government programmes and of the budgets of theca Union;
2. verifying the lawfulness and evaluating the results, as to effectiveness and efficiency, of the budgetary, financial and property management in the agencies and entities of the federal administration, as well as the use of public funds by private legal entities;
3. exercising control over credit transactions, collateral signatures and guarantees, as well as over the rights and assets of the Union,
4. supporting external control in the exercise of its institutional mission.

Article 129. The following are institutional functions of the Public Prosecution:

1. to initiate, exclusively, public criminal prosecution, under the terms of the law;
2. to ensure effective respect by the Public Authorities and by the services of public relevance for the rights guaranteed in this Constitution, taking the action required to guarantee such rights;
3. to institute civil investigation and public civil suit to protect public and social property, the environment and other diffuse and collective interests;
4. to institute action of unconstitutionality or representation for purposes of intervention by the Union or by the states, in the cases established in this Constitution;
5. to defend judicially the rights and interests of the Indian populations;
6. to issue notifications in administrative procedures within its competence, requesting information and documents to support them, under the terms of the respective supplementary law;
7. to exercise external control over police activities, under the terms of the supplementary law mentioned in the previous article;
8. to request investigatory procedures and the institution of police investigation, indicating the legal grounds of its procedural acts;
9. to exercise other functions which may be conferred upon it, provided that they are compatible with its purpose, with judicial representation and judicial consultation for public entities being forbidden.

Paragraph 1 - Legitimation by the Public Prosecution for the civil actions set forth in this article shall not preclude those of third parties in the same cases, according to the provisions of this Constitution and of the law

Paragraph 2 - The functions of Public Prosecution may only be exercised by career members, who must reside in

the judicial district of their respective assignment.

Paragraph 3 - Admission into the career shall take place by means of a civil service entrance examination of tests and presentation of academic and professional credentials, ensuring participation by the Brazilian Bar Association in such examination, and observing, for appointment, the order of classification.

Paragraph 4 - The provisions of article 93, II and VI shall apply to the Public Prosecution, where appropriate.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Non applicable.

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

The National Strategy to Combat Corruption and Money Laundering and the Special Operations carried out by the Office of the Comptroller General, the Federal Police and the Federal Public Ministry are good examples of successful actions taken by Brazil.

If available, please provide information on the number of times and cases in which such information has been shared. Please provide per annum figures since the year 2003 (or further back, if available)

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

138. Subparagraph (b) of article 38

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its **public officials**, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

...

(b) Providing, upon request, to the latter authorities **all necessary information**.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Please refer back to question 137.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable

if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

139. Article 38

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, **cooperation between**, on the one hand, **its public authorities, as well as its public officials**, and, on the other hand, **its authorities responsible for investigating and prosecuting criminal offences**. *(Please include here only what was not mentioned in paragraphs (a) and (b) .)*

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Very well acknowledged by the general public are the Special Operations conducted by the Office of the Comptroller General (CGU), the Federal Police and the Federal Public Ministry. From 2003 to date, more than 70 special operations have been carried out, most of them in order to investigate and arrest people or groups who committed crimes against the public administration, such as embezzlement, active and passive bribery, among others.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

For instance, some joint actions developed in articulation with the Federal Police and the Public Ministry are:

· **Operação Hygeia/MT** - aimed at stanching the leakage of federal resources in various municipalities in the state of Mato Grosso. The actual loss to the public coffers is over R\$ 50 million.

· **Operação Fumaça/CE** - leakage of resources for sanitation works in municipalities in the state of Ceará. Potential loss to the public coffers can reach R\$ 25,9 million.

· **Operação João de Barro/MG, RJ, TO e ES** - comprised the evaluation of federal resources application (part

of which coming from Growth Acceleration Program - PAC) allocated at the Ministries of the Cities, National Integration, Health, Tourism and Sport.

- **Operação Vassoura de Bruxa/BA** - investigation on illegal procedures which allowed for the leakage of federal resources, especially those concerning the FUNDEB, PNAE and PAB (medicines acquisition) in 31 municipalities in the south of the state of Bahia.
- **Operação Vampiro** - Special audit on the Ministry of Health, checking for bidding procedures, payments and other steps of the centralized bidding process for medicines acquisition. A R\$ 21 million loss was recorded.
- **Operação Gafanhoto** - Special audit in the state of Roraima for identifying and breaking a scheme that involved hiring "phantom civil servants" using federal resources. A R\$ 36,2 million loss identified.

Do you have a database or other ways through which information can be shared in order to promote the cooperation referred to in the provision under review?

Investigative Audits are specifically directed toward confronting corruption. As such, they constitute a special instrument that derive from findings ascertained during monitoring of government program execution and management performance in the public sector. Investigative audits can also arise from formal complaints, representations brought by other agencies, including the Federal Police and the Public Prosecutor's Office, and even requests from public managers themselves. They are designed to collect evidence on the facts and responsible parties and ensure adequate material proof is assembled to assist subsequent law enforcement and judicial investigations.

These combined efforts, coupled with continuous information exchanges among State control bodies on a regular and concerted basis, serves to strengthen inter-institutional cooperation, promoting the involvement and initiative of State control agencies in the three branches of government, with a view to ensuring corruption is effectively prevented and combated. This coordinated action is marked by information exchanges during all stages of the process to assure the resulting work is adequately organized on the basis of the data and evidence subsequently collected, which must be capable of fully supporting the corresponding law enforcement and judicial investigations.

If available, please provide examples of recent cases in which public authorities and authorities responsible for investigating and prosecuting criminal offences (or seeking the recovery of assets) have collaborated

News as of November 10th, 2010.

The Federal Police, the Office of the Comptroller General and the Federal Prosecutor triggered the Operation "Carcará Bahia", to dismantle an organized group that had been committing crimes against the Public Administration in about 21 municipalities of the State of Bahia. 500 federal policemen and 50 CGU officials participate in the operation.

The Operation envisages 82 confiscation and seizure mandates, 45 temporary imprisonment and a preventive detention. Among the people to be arrested are six mayors, four municipal secretaries and 15 municipal servants. The first information gathering shows that in the period of January 2008 through July 2010, the group might have diverted R\$ 1,3 million.

Have you ever assessed the effectiveness of the measures adopted to encourage cooperation between public authorities and authorities responsible for investigating and prosecuting criminal offences?

(Y) Yes

Yes, the assessment is done by ENCCLA itself, in a yearly basis, and this particular topic was also subject to compliance evaluation by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions and Brazil has always received good evaluations in this regard.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

140. Paragraph 1 of article 39

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its

domestic law, **cooperation between national investigating and prosecuting authorities and entities of the private sector**, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Law n. 9.613/98, known as the Law on Money Laundering, provides for how legal persons have to cooperate with the Council for Financial Activities Control (COAF), Brazilian Financial Intelligence Unit. This cooperation basically refers to customer identification and record-keeping and reports of financial transactions. Information may be shared with the competent authorities of other countries and international organizations on the basis of reciprocity or formal agreements.

Article 15 of the abovementioned Law establishes that the COAF shall inform competent authorities, for initiation of due procedures, the existence of substantial evidence of commission of crimes provided by law.

Please attach the text(s)

Law n. 9.613/98

Chapter V

Legal Entities subject to this Law

Article 9 The obligations set forth in sections 10 and 11 hereof shall apply to any legal entity that engages on a permanent or temporary basis, as a principal or secondary activity, together or separately, in any of the following activities:

- I. Receiving, acting as brokers and investing third parties' funds, in national or foreign currency;
- II. Purchase and sale of foreign currency or gold as a financial asset;
- III. Acting as securities custodian, issuer, distributor, clearer, negotiator, broker, or manager;

Sole paragraph The same obligations shall apply to the following:

- I. Stock, commodities, and futures exchanges;
- II. Insurance companies, insurance brokers, and institutions involved with private pension plans or social security;
- III. Payment or credit card administrators and consórcios (consumer funds commonly held and managed for the acquisition of consumer goods);
- IV. Administrators or companies that use cards or any other electronic, magnetic or similar means, that allow the transferal of funds;
- V. Companies that engage in leasing and factoring;
- VI. Companies that distribute any kind of property (including cash, real estate, and goods) or the rendering of services, or give discounts for their acquisition by means of lotteries or other similar methods;
- VII. Branches or representatives of foreign entities that engage in any of the activities referred to in this section, which take place in Brazil, even if occasionally;
- VIII. All other legal entities engaged in the performance of activities that are dependent upon an authorization from the agencies that regulate the stock, exchange, financial, and insurance markets;
- IX. Any and all national or foreign individuals or entities, who operate in Brazil in the capacity of agents, managers, representatives or proxies, commission agents, or who represent in any other way the interests of foreign legal entities that engage in any of the activities set forth in this section;
- X. Legal entities that engage in activities pertaining to real estate, including the promotion, purchase and sale of properties;

XI. Individuals or legal entities that engage in the commerce of jewelry, precious stones and metals, objects of art, and antiques.

Chapter VI

Customer Identification and Record-Keeping

Article 10 The legal entities referred to in Section 9 hereof shall:

- I. Identify their customers and maintain an updated record in compliance with the provisions set forth by the competent authorities;
- II. Keep an up-to-date record of all transactions, in national and foreign currency, involving securities, bonds, credit instruments, metals, or any asset that may be converted into cash, and that exceeds an amount set forth by the competent authorities and in accordance with the requirements they may issue;
- III. Comply with notices sent by the Council established under Section 14 hereof, within the time period stipulated by the competent judicial authority. The judicial proceedings pertaining to such matters shall be conducted in a confidential manner.

Paragraph 1 In the event that the customer is a legal entity, the identification mentioned in item I of this Section shall include the individuals who are legally authorized to represent it, as well as its owners.

Paragraph 2 The reference files and records mentioned in items I and II of this Section shall be kept during a minimum period of five years, counted from the date the account is closed or the date the transaction is concluded. The competent authorities may decide, at their own discretion, to extend this period of time.

Paragraph 3 The registration under item II of this Section shall also be made whenever an individual or legal entity, or their associates execute, during the same calendar month, transactions with the same individual, legal entity, conglomerate or group that exceed, in the aggregate, the limit set forth by the competent authorities.

Chapter VII

Reports of Financial Transactions

Article 11 The legal entities referred to in Section 9 hereof:

- I. Shall pay special attention to any transaction that, in view of the provisions set forth by the competent authorities, may represent serious indications of the crimes referred to in this law, or that may be related to them;
- II. Shall inform the competent authorities, within a period of twenty-four hours, and abstain from advising their customers of this action, of:
 - a) Any and all transactions listed in item II of Section 10 that entail an amount that exceeds the limits, terms, and conditions set forth by the competent authorities for this purpose;
 - b) The proposal or the execution of a transaction referred to in item I of this section.

Paragraph 1 The competent authorities referred to in item I hereof shall establish a list of transactions that could characterize the kind of operations contemplated herein, considering their basic features, the parties and amounts involved, the implementation, the means of execution, or the lack of economic or legal justification.

Paragraph 2 Information imparted in good faith, pursuant to the provisions set forth in this Section, shall not generate any civil or administrative liability.

Paragraph 3 The individuals or legal entities that are not subject to a specific control or regulator agency, shall provide the information referred to in this Section to the Council for Financial Activities Control (COAF), in the form provided for by the Council.

Chapter VIII

Administrative Liability

Article 12 The legal entities referred to in Section 9, as well as the managers of legal entities who fail to comply with the provisions set forth in sections 10 and 11 shall be subject to the sanctions hereinafter. The competent authorities shall apply, together or separately, the following sanctions:

- I. A warning;
- II. A monetary fine of an indefinite amount, ranging from one percent to double the amount of the transaction; or up to two hundred percent of the profits derived or presumably obtained as a result of the transaction; or a fine of up to R\$200,000.00 (two hundred thousand Reals);

III. A temporary prohibition on holding any position in the management of the legal entities referred to in the sole paragraph in section 9, for a period of up to 10 (ten) years;

IV. Cancellation of the authorization to operate;

Paragraph 1 The warning sanction shall be applied in the event of failure to comply with the provisions set forth in items I and II of Section 10.

Paragraph 2 A fine shall be applied whenever any of the legal entities mentioned in Section 9, acting negligently or harmfully:

I. Fails to correct the irregularities which gave cause to the issuance of the warning, within the time period set forth by the competent authorities;

II. Fails to carry out the identification or the registration referred to in items I and II of Section 10;

III. Fails to comply, within the stipulated time period, with the requirements set forth in item III of Section 10;

IV. Disregards the prohibition or fails to provide the information pursuant to the provisions set forth in section 11.

Paragraph 3 The penalty of temporary suspension of activities shall be applied to those responsible for serious violations of the provisions of this Law or whenever there is a specific and duly ascertained recurrence of previous transgressions that were punished with the application of a fine.

Paragraph 4 The penalty of cancellation of the authorization to operate shall be applied in instances of specific recurrence of transgressions that were previously punished with the application of the penalty set forth in item III of the initial portion of this Section.

Article 13 The procedure for the application of the sanctions set forth in this Chapter shall be regulated by a decree that shall ensure the right of rebuttal and ample rights of defense to the parties concerned.

Chapter IX

Council for Financial Activities Control

Article 14 The Council for Financial Activities Control (COAF) is hereby instituted, under the jurisdiction of the Ministry of Finance, for the purpose of regulating, applying administrative sanctions, receiving pertinent information, examining and identifying any suspicious occurrence of illicit activities set forth in this Law. The actions of COAF shall not conflict with the jurisdiction of other agencies.

Paragraph 1 COAF shall be the agency responsible for issuing the instructions set forth in Section 10 to the legal entities specified in section 9 that are not subject to any specific regulatory or surveillance agency. In these cases, COAF shall also be responsible for defining the entities and applying the sanctions set forth in Section 12.

Paragraph 2 COAF shall also be responsible for coordinating and advancing suggestions for the adoption of systems of cooperation and exchange of information designed to enable rapid and efficient responses in the struggle against the practice of concealment or disguise of assets, rights and valuables.

Article 15 COAF shall notify the competent authorities whenever it finds evidence of the existence of crimes defined in this Law, of clear indications of the occurrence of such crimes, or of any other illicit activity, so as to enable such authorities to take the appropriate measures.

Article 16 The members of COAF shall be civil servants of outstanding reputation and capability, named by act of the Minister of Finance and chosen among the career personnel of the Central Bank of Brazil, the Securities and Exchange Commission, the Superintendence of Private Insurance, the General Attorney Office for the National Treasury, the Secretariat of Federal Revenue, the Brazilian Agency of Intelligence, the Federal Police Department, and the Ministry of Foreign Affairs. In the last three cases, the Ministers having jurisdiction over each such entity shall nominate the members.

Paragraph 1 The Chairperson of the Council shall be appointed by the President of the Republic, acting on a recommendation of the Minister of Finance.

Paragraph 2 The decisions of COAF regarding the application of administrative sanctions may be appealed to the Minister of Finance.

Article 17 COAF's internal organization and mode of operation shall be set forth in bylaws to be approved by a decree of the Executive Branch.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If available, please provide information on recent cases in which entities of the private sector have collaborated with national investigating or prosecuting authorities

If applicable, please list any joint conferences or seminars, secondment policies, task forces, partnerships, other joint activities or forms of collaboration

The Council for Financial Activities Control (Conselho de Controle de Atividades Financeiras - COAF), Brazil's Financial Intelligence Unit (FIU), has organized a number of training programs for specialized human resources (including Board staff personnel and officials), in cooperation with other government agencies. All training programs involving COAF, whether those directly administered by the Council or in which the entity's staff participate, includes course content on money laundering and the related predicate offenses, among them the foreign bribery offense. In 2007, COAF provided training to approximately 1,052 participants, an additional 1,816 in 2008 and 2,907 in 2009 on issues related to the detection of money laundering.

Additionally, every year COAF offers a Financial Intelligence Training Course to professionals employed in financial institutions, oversight agencies and prosecution services. Launched by COAF in 2000, the program is supported by a variety of government academies and educational institutions. Individual courses addressed subjects ranging from money laundering, including the related predicate offenses, to financing of terrorism.

Participating Institutions in COAF's Training Program in 2009

Central Bank
São Paulo State Public Prosecutor's Office
Santa Catarina State Civil Police Department
Federal Savings Bank of Brazil
Santander Bank
Bank of Brazil
HSBC Bank
Banco Rural
Brazilian Association of Investigative Journalism (ABRAJI)
Brazilian National Intelligence Agency (ABIN)
Office of the Solicitor General of the Republic
Rio Grande do Norte State Public Prosecutor's Office
Pernambuco State Public Prosecutor's Office
Paraguayan Financial Analysis Unit
Paraíba State Public Prosecutor's Office
Colombian Banking Association

Have you ever assessed the effectiveness of the measures adopted to encourage cooperation between national investigating and prosecuting authorities and entities of the private sector?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

141. Paragraph 2 of article 39

2. Each State Party shall consider encouraging its **nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.**

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

As for corruption, it can be reported to several agencies, including the Federal Court of Accounts, the CGU, the Federal Police, the Ministério Público Federal (Federal Prosecutor's Office), the Administrative Board of Economic Defense or to the agency where the act of corruption took place, by means of the agency's ombudsman or disciplinary board. Reports are generally received on the Internet, by telephone, or directly at the agencies' office.

Various mechanisms are available to Brazilian citizens to report criminal offences that they become aware of, and the report can be made to several agencies. An instrument known as disque-denúncia (hotline) exists for reporting by individuals, and is generally used by the police agencies to receive official reports related to various criminal offences.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If you have hotlines or other mechanisms for offences to be reported, how many reports have you received? Please provide per annum figures since the year 2003 (or further back, if available)

If financial incentives are offered to encourage such reports, please provide details, available reports and relevant statistics

If anonymous reports are given due consideration by appropriate authorities, how many of the reports received have contributed to the investigation or prosecution of an offence established in accordance with the Convention? Please provide per annum figures since the year 2003 (or further back, if available)

Have you ever assessed the effectiveness of the measures adopted to encourage reporting the commission of an offence established in accordance with the Convention?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

142. Article 40

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are **appropriate mechanisms available** within its domestic legal system to **overcome obstacles that may arise out of the application of bank secrecy laws**.

Has your country adopted the mechanisms described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable mechanism(s):

Please cite the text(s)

Complementary Law n. 105, as of January 10th 2001, through its Article 1, Paragraphs 3 and 4, allows for breach of bank secrecy for the purpose of investigation and criminal proceedings.

Please attach the text(s)

Complementary Law 105/2001 (Please, find full text attached).

Article 1 Finance institutions shall keep secrecy in their active and passive transactions and services rendered.
(...)

Paragraph 3. It does not constitute a breach of duty of secrecy:
(...)

IV - the report, to competent authorities, of administrative and penal malpractices, comprising the provision of information on transactions which involve resources from any criminal offence;

VI - the provision of information in the terms and conditions established by Articles 2, 3, 4, 5, 6, 7, and 9 of this Complementary Law.

Paragraph 4. The breach of secrecy may be decreed, when necessary for verifying the occurrence of any malpractice, at any stage of the investigation or prosecution, and especially in the following crimes:

I - terrorism;

II - illicit trafficking of narcotic substances or similar drugs;

III - smuggling or trafficking in firearms, ammunition or materials for their production;

IV - extortion through kidnapping;

V - against the national financial system;

VI - against the Public Administration;

VII - against the tax order and social security;

VIII - money laundering or concealment of assets, rights and values;

IX - committed by a criminal organization.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

If available, please provide information (statistics, types of cases, outcome) on related legal (civil, administrative or criminal) cases or other processes. Please provide per annum figures since the year 2003 (or further back, if available)

Have you ever assessed the effectiveness of the mechanisms established to overcome obstacles arising out of the application of bank secrecy laws in the case mentioned above?

(Y) Yes

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions and Brazil has always received good evaluations in this regard.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

143. Article 41

Each State Party may adopt such legislative or other measures as may be necessary to **take into consideration**, under such terms as and for the purpose that it deems appropriate, any **previous conviction in another State of an alleged offender** for the purpose of using such information **in criminal proceedings** relating to an offence established in accordance with this Convention.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable law(s), policy(ies), or other measure(s)

Please cite the text(s)

Article 8 of the Brazilian Penal Code establishes that the penal sentence served abroad shall mitigate the penalty imposed in Brazil for the same crime, if the sentences are different among themselves. If the sentence is identical, the time served abroad must be deducted from the Brazilian sentence.

Article 42 of the Brazilian Penal Code establishes that time served in provisional arrest, in Brazil or abroad, must be taken into account, for the calculation of time to be served under liberty constraint measures or under security measures.

Article 61, I states that recidivism as an aggravating circumstance.

Article 63 of the Brazilian Penal Code establishes that the agent of the commission of a crime is considered to relapse when he commits another crime, after condemned for a previous crime by a final sentence, in the country or abroad.

Finally, Paragraph I of article 696 of the Brazilian Code of Penal Procedure states that the execution of a criminal sentence may be suspended, since "I - [the sentenced] has not being object, in the Country or abroad, of final condemnation to penalty of liberty constraint for another crime...".

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Brazilian courts widely recognize the possible aggravation of the penalty due to relapsing, when there is the defendant's previous conviction abroad. This happened, for example, in the following adjudications of the Supreme Court and the Superior Court of Justice, among many others:

STF. 1st Class. Habeas corpus in 68.468/DF. Rapporteur: Minister Celso de Mello. Judged 17 September 1991, unanimously. Journal of Justice, Section I, June 26. 1992, p. 10,105; STJ. 6th Class. HC on 149.424/RS.

Please provide information on recent cases where you took an alleged offender's previous conviction(s) in another State into consideration for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention

STF. 1st Class. Habeas corpus in 68.468/DF. Rapporteur: Minister Celso de Mello. Judged 17 September 1991, unanimously. Journal of Justice, Section I, June 26. 1992, p. 10,105; STJ. 6th Class. HC on 149.424/RS. Rapporteur: Minister Fernandes Og. Judged 21 September 2010, unanimously. Electronic Journal of Justice 11 October 2010

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

144. Subparagraph 1 (a) of article 42

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed **in the territory of that State Party**; or

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Article 5 of the Brazilian Penal Code establishes that the Brazilian law is applicable to crimes committed in the national territory, with no prejudice of Conventions, Treaties and rules of international law. In addition, the Criminal Procedure Code, through its Articles 70, 71, 88, 89 and 90, refers to determining where the infraction has been committed.

Please attach the text(s)

Brazilian Penal Code, Decree-Law n. 2848/40.

Territoriality

Article 5 - the Brazilian Law shall apply, without prejudice to conventions, treaties and rules of international law, to the crime committed in the national territory.

§ 1st - For the criminal purposes, it shall be considered extension of the national territory the Brazilian vessels and aircrafts of public nature or at the service of the Brazilian government wherever they are, and also Brazilian vessels and aircrafts, merchant or privately-owned, which are located respectively in the corresponding airspace or in high seas.

§ 2nd - The Brazilian law is also applicable to the crimes perpetrated aboard foreign privately-owned aircrafts or vessels, when the former are landing in the national territory or during the flight in the corresponding airspace and the latter at the harbor or in the Brazilian territorial sea.

Criminal Procedure Code

Art 70. The jurisdiction will, as a rule, be determined by where the offense is consummated or, if attempted, the place that it is practiced in the last act of execution.

§ If the first, started running in the national territory, the offense was consummated outside the jurisdiction, it will be determined by the place where it has been practiced in Brazil, the last act of execution.

§ 2 When the last act of execution is carried out abroad, the judge shall have jurisdiction of the place where the crime, albeit partially, has produced or had produced its result.

§ 3 When there is uncertain territorial boundary between two or more jurisdictions, or uncertain when the jurisdiction of the offense was consummated or attempted in the currencies of two or more jurisdictions, the jurisdiction will be established by the prevention.

Article 71. In the case of continued or permanent violation, committed in the territory of two or more jurisdictions, the jurisdiction will be established by the prevention.

Article 88. In the process of crimes committed outside the Brazilian territory, the jurisdiction shall be of the State capital where the accused last resided. If he or she has never resided in Brazil, the competent court will be the one in the capital of the Republic.

Article 89. The crimes committed in any vessel in territorial waters of the Republic, or in border rivers and lakes as well as the national board ships, at sea, will be prosecuted and tried by the justice of the first Brazilian port where the boat touches, after the crime, or when she gets distant of the country, by the last port touched.

Article 90. The crimes committed aboard national aircraft, within the airspace above the Brazilian territory, or the high seas or aboard a foreign aircraft within the airspace above the national territory, will be prosecuted and tried by the district justice in whose it is checked the landing area after the crime, or the county where the aircraft has departed.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the FATF as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions and Brazil has always received good evaluations in this regard.

145. Subparagraph 1 (b) of article 42

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

...

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

See above comments.

Please attach the text(s)

Brazilian Penal Code, Decree-Law n. 2848/40.

Territoriality

Article 5 - the Brazilian Law shall apply, without prejudice to conventions, treaties and rules of international law, to the crime committed in the national territory.

§ 1st - For the criminal purposes, it shall be considered extension of the national territory the Brazilian vessels and aircrafts of public nature or at the service of the Brazilian government wherever they are, and also Brazilian vessels and aircrafts, merchant or privately-owned, which are located respectively in the corresponding airspace or in high seas.

§ 2nd - The Brazilian law is also applicable to the crimes perpetrated aboard foreign privately-owned aircrafts or vessels, when the former are landing in the national territory or during the flight in the corresponding airspace and the latter at the harbor or in the Brazilian territorial sea.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Paragraph 1 of Article 5 of the Brazilian Penal Code establishes that for penal effects, the following are considered as extensions of the Brazilian Territory, and, therefore, subject to the Brazilian Law, as established in the caput of article 5:

- Brazilian ships and airships, of a public nature or at the service of the Brazilian government, no matter where they are; and
- Brazilian ships and airships, merchant or of a private nature, be them in the corresponding airspace or in the sea.

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the FATF as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions and Brazil has always received good evaluations in this regard.

146. Subparagraph 2 (a) of article 42

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed **against a national of that State Party**; or

Has your country established its jurisdiction over offences established in accordance with the Convention

when such offences are committed against a national of yours? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

The Brazilian Penal Code establishes, in paragraph 3 of its article 7, that crimes committed abroad against a Brazilian will be subject to the Brazilian law, if:

- a) the agent enters the national territory;
- b) the fact is also punishable in the country where it was committed;
- c) the crime is included among those for which Brazil authorizes extradition;
- d) the agent has not been declared innocent by a foreign court or has not served full sentence; AND
- e) the agent has not been forgiven abroad or, by other means, cannot be punished any longer, according to the most favorable law.

Please attach the text(s)

Brazilian Penal Code, Decree-Law n. 2848/40.

Extraterritoriality

Article 7. The following are subject to Brazilian law, even though committed abroad:

I - criminal offenses:

- a) against the life or liberty of the President of the Republic;
- b) against the assets or authority of the Federal Government, the Federal District, the States, the Territories, the Municipalities, a publicly-owned company, a mixed-ownership company, a government agency or foundation instituted by the Public Authority;
- c) against the public administration, by anyone in its service;
- d) of genocide, when the offender is Brazilian or domiciled in Brazil;

II - criminal offenses

- a) that under a treaty or convention, Brazil is obliged to suppress;
- b) committed by Brazilians;
- c) committed in Brazilian merchant or privately-owned aircraft or water-borne vessels, when abroad and not tried there.

Paragraph 1. In the cases set out in clause 1, the offender is punished under Brazilian law, even though tried and found not guilty or guilty abroad.

Paragraph 2. In the cases set out in clause II, the application of Brazilian law depends on the concurrence of the following conditions:

- 1) offender enters Brazilian territory;
- 2) The act is also punishable in the country where it was committed;
- 3) The criminal offense is included among those for which Brazilian law authorizes extradition;
- 4) The offender has not been tried and found not guilty abroad or has not served the sentence there;
- 5) The offender has not been pardoned abroad or, for any other reason, the sentence has not been eliminated, pursuant to the most favorable law.

Paragraph 3 - Brazilian law also applies to criminal offenses committed by foreigners against Brazilians abroad, if the conditions set out in the preceding paragraph are met and:

- 1) extradition has not been requested or denied;
- 2) there has been a requisition from the Ministry of Justice.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the FATF as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions and Brazil has always received good evaluations in this regard.

147. Subparagraph 2 (b) of article 42

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

...

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

Has your country established its jurisdiction over offences established in accordance with this Convention when such offences are committed by a national of yours or a stateless person who has his or her habitual residence in your territory? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Article 7.I,a) of the Brazilian Penal Code establishes that the Brazilian law applies if the crimes were committed by a Brazilian, even if committed abroad.

Please attach the text(s)

Brazilian Penal Code, Decree-Law n. 2848/40.

Extraterritoriality

Article 7. The following are subject to Brazilian law, even though committed abroad:

I - criminal offenses:

- a) against the life or liberty of the President of the Republic;
- b) against the assets or authority of the Federal Government, the Federal District, the States, the Territories, the Municipalities, a publicly-owned company, a mixed-ownership company, a government agency or foundation instituted by the Public Authority;
- c) against the public administration, by anyone in its service;
- d) of genocide, when the offender is Brazilian or domiciled in Brazil;

II - criminal offenses

- a) that under a treaty or convention, Brazil is obliged to suppress;
- b) committed by Brazilians;
- c) committed in Brazilian merchant or privately-owned aircraft or water-borne vessels, when abroad and not tried there.

Paragraph 1. In the cases set out in clause 1, the offender is punished under Brazilian law, even though tried and found not guilty or guilty abroad.

Paragraph 2. In the cases set out in clause II, the application of Brazilian law depends on the concurrence of the following conditions:

- 1) offender enters Brazilian territory;
- 2) The act is also punishable in the country where it was committed;
- 3) The criminal offense is included among those for which Brazilian law authorizes extradition;
- 4) The offender has not been tried and found not guilty abroad or has not served the sentence there;
- 5) The offender has not been pardoned abroad or, for any other reason, the sentence has not been eliminated, pursuant to the most favorable law.

Paragraph 3 - Brazilian law also applies to criminal offenses committed by foreigners against Brazilians abroad, if the conditions set out in the preceding paragraph are met and:

- 1) extradition has not been requested or denied;
- 2) there has been a requisition from the Ministry of Justice.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the FATF as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions and Brazil has always received good evaluations in this regard.

148. Subparagraph 2 (c) of article 42

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

...

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed **outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph (a) (i) or (ii) or (b) (i), of this Convention within its territory;**
or

Has your country established its jurisdiction over offences committed outside your territory as prescribed by the provision under review? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

The answer may be divided in two. First, as for the laundering practiced in Brazil of proceeds of predicate offenses practiced in foreign jurisdiction, Brazilian Money Laundering Law (9613/1998) is explicit in its article 2, II that this offense of of money laundering is punishable by Brazilian jurisdiction.

Second, as for the laundering of money which practiced, in part, in Brazil, jurisprudence sees it as a continued crime, therefore, if only an act is practiced in Brazil, the crime in whole is considered as practiced in Brazil. Also, by our Penal Code, the place of the crime is the place of both the action and result of it.

Please attach the text(s)

Law 9613 of 1998:

Article 2 The procedure and trial of crimes provided for in this Law:

II - are independent of the procedure and trial of crimes referred to in the preceding article [predicate offenses], even if committed in another country;

Penal Code:

Article 6 - It is considered that the crime is practiced in the place where the act or omission occurred in whole or in part, as well as where the result has been or should have been produced.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

149. Subparagraph 2 (d) of article 42

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

...

(d) The offence is committed **against the State Party**.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

According to Article 7 of the Brazilian Penal Code, even if committed abroad, crimes are subject to the Brazilian law if any of these conditions apply:

- a) against the life or the liberty of the President of the Republic;
- b) against public goods or the public faith of any territorial unity of Brazil, or against a public company and other enterprises instituted by the Government;
- c) against the public administration, when the agent is acting on the behalf of the public administration.

Please attach the text(s)

Brazilian Penal Code, Decree-Law n. 2848/40.

Extraterritoriality

Article 7. The following are subject to Brazilian law, even though committed abroad:

I - criminal offenses:

- a) against the life or liberty of the President of the Republic;
- b) against the assets or authority of the Federal Government, the Federal District, the States, the Territories, the Municipalities, a publicly-owned company, a mixed-ownership company, a government agency or foundation instituted by the Public Authority;
- c) against the public administration, by anyone in its service;
- d) of genocide, when the offender is Brazilian or domiciled in Brazil;

II - criminal offenses

- a) that under a treaty or convention, Brazil is obliged to suppress;
- b) committed by Brazilians;
- c) committed in Brazilian merchant or privately-owned aircraft or water-borne vessels, when abroad and not tried there.

Paragraph 1. In the cases set out in clause 1, the offender is punished under Brazilian law, even though tried and found not guilty or guilty abroad.

Paragraph 2. In the cases set out in clause II, the application of Brazilian law depends on the concurrence of the following conditions:

- 1) offender enters Brazilian territory;
- 2) The act is also punishable in the country where it was committed;
- 3) The criminal offense is included among those for which Brazilian law authorizes extradition;
- 4) The offender has not been tried and found not guilty abroad or has not served the sentence there;
- 5) The offender has not been pardoned abroad or, for any other reason, the sentence has not been eliminated, pursuant to the most favorable law.

Paragraph 3 - Brazilian law also applies to criminal offenses committed by foreigners against Brazilians abroad, if the conditions set out in the preceding paragraph are met and:

- 1) extradition has not been requested or denied;
- 2) there has been a requisition from the Ministry of Justice.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the FATF as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions and Brazil has always received good evaluations in this regard.

150. Paragraph 3 of article 42

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to **establish its jurisdiction** over the offences established in accordance with this Convention **when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.**

Has your country adopted measures to establish its jurisdiction as described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Several extradition treaties in force in Brazil provide for this measure.

Brazil, in accordance with its Federal Constitution, does not extradite its nationals. However, in order to contribute to crime suppression at the international scene, Brazil takes measures as may be necessary to establish under its jurisdiction the persecution of the defendants.

We have received some cases of investigations concluded in other countries regarding Brazilians defendants present in Brazil. As Brazil cannot extradite, our competent authorities shall start new investigations in our territory based on the information provided by the other country. After that, the Public Prosecutor Office must present a criminal charge against the Brazilian person.

Although Brazil has never received this kind of request based on the UNCAC, it is possible to grant assistance in this matter, as has been the case under reciprocity basis requests received.

Whereas extradition of nationals is not authorized by Brazilian Constitution (except for naturalized nationals and only by drug related crimes practiced before naturalization), Brazilian Penal Code dictates that the offenses practiced by a Brazilian national abroad might be persecuted by Brazilian jurisdiction (Article 7, II, b, with Article 7, paragraph 2).

More information on extradition is provided under items 154 to 172, relating to Article 44 of the UNCAC.

Please attach the text(s)

Federal Constitution

Article 5. All persons are equal before the law, without any distinction whatsoever, Brazilians and foreigners residing in the country being ensured of inviolability of the right to life, to liberty, to equality, to security and to property, on the following terms (CA No. 45, 2004):

(...)

LI - no Brazilian shall be extradited, except the naturalized ones in the case of a common crime committed before naturalization, or in the case there is sufficient evidence of participation in the illicit traffic of narcotics and related drugs, under the terms of the law;

Brazilian Penal Code

Article 7. The following are subject to Brazilian law, even though committed abroad:

II - criminal offenses

b) committed by Brazilians;

Paragraph 2. In the cases set out in clause II, the application of Brazilian law depends on the concurrence of the following conditions:

1) offender enters Brazilian territory;

2) The act is also punishable in the country where it was committed;

3) The criminal offense is included among those for which Brazilian law authorizes extradition;

4) The offender has not been tried and found not guilty abroad or has not served the sentence there;

5) The offender has not been pardoned abroad or, for any other reason, the sentence has not been eliminated, pursuant to the most favorable law

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases

Have you ever assessed the effectiveness of the measures adopted to establish jurisdiction over offences established in accordance with the Convention in the case mentioned by the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the FATF as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions and Brazil has always received good evaluations in this regard.

151. Paragraph 4 of article 42

4. Each State Party may also take such measures as may be necessary to **establish its jurisdiction** over the offences established in accordance with this Convention **when the alleged offender is present in its territory and it does not extradite him or her.**

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

This provision is present in many of the extradition treaties in force.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases

Have you ever assessed the effectiveness of the measures adopted to establish jurisdiction over the offences established in accordance with the Convention in the case mentioned by the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the FATF as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions and Brazil has always received good evaluations in this regard.

152. Paragraph 5 of article 42

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the **competent authorities of those States Parties shall, as appropriate, consult one another** with a view to coordinating their actions.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

The Brazilian Central Authority for extraditions, the Department of Foreigners of the Ministry of Justice, coordinates with foreign States when necessary. For the time being, Brazil counts on 24 extradition treaties in force. Other ones have been submitted to the National Congress. Also, within the Ministry of Justice, there are some negotiation of other treaties to be signed with other States. This policy has been sought by the Brazilian Government in an attempt to broaden and deepen international legal cooperation in this matter.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and details on factors facilitating such collaboration and coordination

Have you ever assessed the effectiveness of the measures adopted to facilitate coordination with other States Parties conducting an investigation, prosecution or judicial proceeding in respect of the same conduct?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the FATF as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions and Brazil has always received good evaluations in this regard.

153. Paragraph 6 of article 42

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

The UNCAC, as a Convention in force in Brazil, has the status of Ordinary Law in Brazil. Thus, this provision applies. Also, Article 5 of the Brazilian Penal Code establishes that the Brazilian Law is applicable, without prejudice of conventions, treaties and rules of international law committed in the national territory.

Please attach the text(s)

Brazilian Penal Code, Decree-Law n. 2848/40.

Territoriality

Article 5 - the Brazilian Law shall apply, without prejudice to conventions, treaties and rules of international law, to the crime committed in the national territory.

§ 1st - For the criminal purposes, it shall be considered extension of the national territory the Brazilian vessels and aircrafts of public nature or at the service of the Brazilian government wherever they are, and also Brazilian vessels and aircrafts, merchant or privately-owned, which are located respectively in the corresponding airspace or in high seas.

§ 2nd - The Brazilian law is also applicable to the crimes perpetrated aboard foreign privately-owned aircrafts or vessels, when the former are landing in the national territory or during the flight in the corresponding airspace and the latter at the harbor or in the Brazilian territorial sea.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the FATF as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions and Brazil has always received good evaluations in this regard.

IV. International cooperation

44. Extradition

154. Paragraph 1 of article 44

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s), including your policy on dual criminality

Please cite the text(s)

Extradition is regulated in Brazilian legislation by Article 102 (I) (g) of the Federal Constitution, by Art. 76 and following of Law n. 6815/1981 (the Foreigners Statute) and by Decree 6.061/2007 (which provides for the structure of the Ministry of Justice).

Extradition will be granted on the basis of a treaty or under the promise of reciprocity, according to article 76 of Law n. 6815/1981.

Article 77 of Law n. 6815/1981 provides for the situations in which extradition will not be granted. One of such situations refers to the dual criminality requirement, as follow:

Art. 77. Extradition shall not be granted when:

(...)

II - the fact which motivates the request is not considered a crime by Brazil or by the requesting State;

Law n. 6815/1981 does not state any exceptions to this rule.

It should be noted that Brazilian legislation demands that the fact is deemed a crime (a felony) under Brazilian or foreign legislation. In this context, extradition will not be granted if the fact is deemed a misdemeanour by either legislation.

The Supreme Federal Court is the body responsible for analyzing the extradition requests and their conformity with the Brazilian legislation (Art. 77, paragraph 2, Law n. 6815/81), whereas the Department of Foreigners (DEEST) of the Ministry of Justice is Brazil's Central Authority in extradition matters.

Outgoing extradition requests are received from the Judicial Branch by the DEEST, by means of its Division of Compulsory Measures. The DEEST reviews the corresponding documentation, in order to verify the conformity of the request with the relevant legislation, and then transmits the request by Ministerial Note to the Ministry of Foreign Affairs (MRE) for submission to the requested country. If the Requested State grants extradition, the Brazilian authorities remove the extradited person to foreign territory within the time period provided in the relevant international treaty, or on the date designated by the Requested State.

Incoming extradition requests are received from the requesting State by the DEEST through diplomatic channels (MRE). If the request is in conformity with the applicable international treaty or the Statute of Foreigners, it is transmitted, by means of a Ministerial Note, to the Federal Supreme Court. Once the Federal Supreme Court approves extradition in the time period established in international treaty or in Law 6815/1980, the Requesting State shall remove the individual from the national territory.

Please attach the text(s)

Foreigners Statute - Portuguese Text attached.

Federal Constitution

Article 102. The Supreme Federal Court is responsible, essentially, for safeguarding the Constitution, and it is within its competence:

I. to institute legal proceeding and trial, in the first instance, of:
(...)
g. extradition requested by a foreign state;

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review, including recent cases where dual criminality issues were raised and resolved

Please find below examples of rulings by the Supreme Federal Court on the requisite of dual criminality.

Forfeiture of vessel is not a crime under Brazil law; therefore, in this matter, it fails to fulfill dual criminality ([Ext 796](#), Rel. Min. Sydney Sanches, ruled in 13-9-2001, Plenary, *DJ* de 19-10-2001)

Extradition and dual criminality. The formalistic difference between the *nomen juris* of the offences shall not be used as grounds for denying extradition, as it need only be established that the same underlying conduct is criminalised in both Brazil and the requesting country. Dual criminality rule - which is required in extradition matters - demands that the crime the party is charged with be crime in both in Brazil and in the requesting State. What is important to meet the prerequisite of dual criminality is the presence of the elements of the crime set forth as necessary for the indictment under the laws of both Brazil and the requesting State, regardless of the name given to the crime. ([Ext 953](#), Rel. Min. Celso de Mello, julgamento em 28-9-05, Plenário, *DJ* de 11-11-05). **In the same line of ruling:** [Ext 897](#), Rel. Min. Celso de Mello, julgamento em 23-9-04, Plenário, *DJ* de 18-2-05; [Ext 549](#), Rel. Min. Celso de Mello, julgamento em 28-5-92, Plenário, *DJ* de 16-6-92; [Ext 545](#), Rel. Min. Celso de Mello, julgamento em 19-12-91, Plenário, *DJ* de 13-2-98; [Ext 669](#), Rel. Min. Celso de Mello, ruled in 6-3-96, Plenary, *DJ* de 29-3-96.

SUMMARY: Extradition. 2. Absence of a treaty between the Government of the Federative Republic of Brazil and the Government of the Federal Republic of Germany. 3. Promise of reciprocity. 4. Processing the application in accordance with Law No. 6815 of August 19, 1980. Formal requirements met. 5. Request made by virtue of a custody warrant issued by the District Court of Geilenkirchen, for the crimes of embezzlement, fraud, disloyalty and retention and diversion of fees. 6. Dual criminality: correspondence of the offences under the laws of Brazil and Germany. 7. Due to statutes of limitation, the sentence may not be carried out in relation to the conduct described in Section III (case 60 - Deviation) of the arrest warrant issued by German justice. 8. Extradition granted in part. (Ext 1027 / RFA - Germany, Rapporteur: Min. GILMAR MENDES, Ruling: 15/12/2006, **Ruling Body: Plenary**)

SUMMARY: 1. Extradition. 2. Investigations for clarification of the alleged crimes of embezzlement and money laundering. 3. Extradition request based on art. 81 of Law No. 6815 of August 19, 1980 and Art. XII of the Extradition Treaty signed between Brazil and Portugal on May 7, 1991 and promulgated by Decree No. 1325 of December 2, 1994. 4. Compliment with formal requirements. 5. The crimes for which the person sought is under investigation in Portugal, as specified in Arts. 375, No. 1 and 368-A, paragraph 2, of the Portuguese Penal Code, have correspondence with the offences in the Brazilian Penal Code (art. 312 - embezzlement) and Law No. 9.613/1998 (Article 1, section V - wash assets, rights and valuables). Fulfillment of the dual criminality requirement. 6. Claim has not prescribed. 7. Extradition request granted. 8. Taking into account request from the defence, determination of the Plenum of the Supreme Court in the sense of immediate enforcement of the decision, regardless of publication of the above or of res judicata. (**Ext 1064 / Portugal**, Rapporteur: **Min. GILMAR MENDES**, Ruling in: **09/08/2007**, **Ruling Body: Plenary**)

SUMMARY: EXTRADITION. POLICE CUSTODY WARRANT ISSUED BY GERMAN COURT. EXTRADITION REQUEST ON THE BASIS OF PROMISE OF RECIPROCITY: FULFILLMENT OF THE REQUIREMENTS OF THE LAW N. 6.815/80. EXTRADITED INVESTIGATED BY CRIMES OF RECEIVING AND CONCEALING STOLEN PROPERTY AND MONEY LAUNDERING: DUAL CRIMINALITY REQUIREMENT FULFILLED. EXTRADITED WITH FAMILY BASED IN BRAZIL: APPLICATION OF FEDERAL SUPREME COURT PRECEDENT N. 421. EXTRADITION GRANTED. 1. The request by the Federal Republic of Germany on the basis of promise of reciprocity meets the assumptions required for its approval, pursuant to Law No 6.815/80. 2. The Requesting State does have jurisdiction to adjudicate the alleged crime committed by the extradited, who, in that country, would have been the author of an act that fulfills the definitional elements of a crime; that being the case of compliance with the provisions of art. 78, inc. I, of Law 6.815/80 and the territorial principle of international criminal law. 3. Fulfillment of the dual criminality requirement, as provided for in art. 77, inc. II of Law No 6.815/80: the offences the claimed person is charged with are similar to the crime of receiving stolen goods under Art. 180 of the Penal Code. 4. The condemnation was not prescribed under the laws of both countries (art. 77, inc. VI of Law No. 6.815/80). 5. The case law of the Supreme Court states in the sense that, in the act of extradition, the Court may not address the merits of the claim brought by the requesting State or the evidentiary context in which the request rests. 6. To have a family in Brazil does not preclude the granting of extradition (Precedent 421: "It does not prevent the extradition the fact that the person claimed is married to a Brazilian or have a child with a Brazilian"). 7. Based on the promise of reciprocity that supports this application for extradition, the Federal Republic of Germany shall ensure the deduction from the term of the sentence of the period of detention served in Brazil. 8. Extradition granted. (Ext 1077/RFA - Germany, Rapporteur Min. Cármen Lúcia, Ruling 20/06/2007, Ruling body: Plenary).

Inadmissibility of extradition in case of the misdeed of illegal possession of firearms, which constituted for the time being, before the enactment of the Law 9437, only a misdemeanour. ([Ext 1.065](#), Rel. Min. Sepúlveda Pertence, ruled in 17-5-07, Plenary, *DJ* de 29-6-07)

Disparity between the penalties stipulated in Brazil and Paraguay, therefore resulting either in the absence of dual criminality or in the imposition of the lesser sanction. Dismissal: in regard to the criminal offences, the Law 6.815/90 requires only the dual criminality rule to be met. There is no provision about equivalence between penalties and the mandatory imposition of the lesser sanction ([EXT 1.130](#), Rel. Min. Eros Grau, ruled in 19-12-08, Plenary, *DJE* de 17-4-09)

Extradition. Dual Criminality. Conspiracy. Gang crime. Assets Laundering. Dual criminality is required and so is the association of three or more persons for the characterization of the crime of gang formation, according to Penal Code article 288 ([Ext 1.051](#), Rel. Min. Marco Aurélio, ruled in 21-5-09, Plenary, *DJE* de 7-8-09)

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

The Brazilian legislation on extradition has been assessed by other international organizations, namely by their mechanisms to review compliance with international conventions, like the OAS (Mesicic), the OECD and the FATF/GAFI.

155. Paragraph 2 of article 44

2. Notwithstanding the provisions of paragraph 1 of this article, a **State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.**

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Dual criminality is required in extradition matters, according to art.77(II) of Law n. 6815/81.

However, Brazil does not apply the principle of dual criminality in an overly restrictive manner, as it is mitigated by the Supreme Federal Court.

For instance, the Supreme Federal Court has ruled that it is not required that the elements of the offence are the same, or use the same terminology. Where dual criminality is required, it only needs to be established that the same underlying conduct is criminalized (either as a stand alone offence or otherwise) in both Brazil and the requesting country. It is not necessary to establish that each element of the offence is identical. Precedents will be attached to this question.

However, Brazil has ratified bilateral and multilateral treaties that provide the possibility of assistance regardless of dual criminality, such as, for instance, the Agreement on Cooperation and Mutual Legal Assistance in Criminal Matters between Brazil and Spain (ratified in December 2008), the US-Brazil Mutual Legal Assistance Treaty (17 October 1997) and the (OAS) Interamerican Convention on Mutual Assistance in Criminal Matters (ratified in January 2008). Also holding similar provision is Article 2, item I, of the Extradition Treaty of Mercosur.

It should be further noted that the Supreme Federal Court has accepted the UN Convention against Corruption as basis for a complementation of the dual criminality requisite in the Extradition process n. 1103, which will be attached to this question.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases

Please find below ruling(s) from the Brazilian Supreme Federal Court

Extradition and dual criminality. The formalistic difference between the nomen juris of the offences shall not be used as grounds for denying extradition, as it need only be established that the same underlying conduct is criminalised in both Brazil and the requesting country. Dual criminality rule - which is required in extradition matters - demands that the crime the party is charged with be crime in both in Brazil and in the requesting State. What is important to meet the prerequisite of dual criminality is the presence of the elements of the crime set forth as necessary for the indictment under the laws of both Brazil and the requesting State, regardless of the name given to the crime. (Ext 953, Rapporteur Min. Celso de Mello, ruled on 28-9-05, Plenary, DJ de 11-11-05). **In the same line of ruling:** Ext 897, Rel. Min. Celso de Mello, ruled on 23-9-04, Plenary, DJ de 18-2-05; Ext 549, Rel. Min. Celso de Mello, ruled on 28-5-92, Plenary, DJ de 16-6-92; Ext 545, Rel. Min. Celso de Mello, ruled on 19-12-91, Plenary, DJ de 13-2-98; Ext 669, Rel. Min. Celso de Mello, ruled on 6-3-96, Plenary, DJ de 29-3-96.

Money laundering. Such offence is not explicitly included in the reference list of the Expatriation Treaty celebrated between Brazil and the United States of America. The Plenary (HC n. 92.598, tried on 13th July 2007) understands that such offence was automatically included in the specific Treaty, as it is part of the list of offences contained in the United Nations' Convention against Transnational Organized Crime, of which Brazil and the United States are signatories. (Ext 1.103, Rel. Min. Eros Grau, ruled on 13-3-08, Plenary, DJE de 7-11-08)

If available, please provide information on extraditions granted for offences not punishable under your domestic law

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

The Brazilian legislation on extradition has been assessed by other international organizations, namely by their mechanisms to review compliance with international conventions, like the OAS (Mestic), the OECD and the FATF/GAFI.

156. Paragraph 3 of article 44

3. If the **request for extradition includes several separate offences**, at least one of which is extraditable under this article and **some of which are not extraditable** by reason of their period of imprisonment but are related to offences established in accordance with this Convention, **the requested State Party may apply this article also in respect of those offences.**

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable rule(s) or measure(s)

Please cite the text(s)

As stated in question n. 154, article 77 of Law n. 6815/1981 provides for the situations in which extradition will not be granted. One of such situations refers to the period of imprisonment requirement, as follows:

Art. 77. Extradition shall not be granted when:

(...)

IV - Brazilian law determines as a sanction for the crime an imprisonment equal or inferior to 1 (one) year;

If an extradition request refers to more than one offence, this requirement must be met by each offence separately.

As it can be noted in the questions relating to Chapter III of UNCAC, Brazilian legislation rarely determines for the crimes described in the Convention an imprisonment equal or inferior to one year.

Furthermore, an extradition request can be ruled partially granted by the Supreme Federal Court. In this case, the request, which relates to more than one offence, can be granted for that or those offences that follow all the requirements of Brazilian legislation, but not for that or those offences that fall outside the requirements of Brazilian legislation.

Finally, extradition treaties can establish a different time period for this requisite.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review, including recent court and other cases and any other information on extradition granted in accordance with the provision under review

Please find below examples of rulings by the Supreme Federal Court of Brazil.

The gravity of the offence is analysed by the sanction prescribed to it. In the Extradition Treaty concluded between Brazil and Argentina, the countries compromised themselves to extradite everyone that commits crimes with sanctions of imprisonment of over two years. (Ext 803, rapporteur Min. Nelson Jobim, ruled on 04-12-02, Plenary, DJ 29-8-03)

Extradition: formal requisites met; exclusion of facts which are being prosecuted in Brazil or in relation to which dual criminality is not met. Extradition partially granted. Request reject in relation to the facts described in items 6, 7, 8 and 9. (Ext 719, Rapporteur Min. Sepúlveda Pertence, ruled on 4-3-98, Plenary, DJ of 29-8-03)

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools

and resources utilized:

The Brazilian legislation on extradition has been assessed by other international organizations, namely by their mechanisms to review compliance with international conventions, like the OAS (Mesicic), the OECD and the FATF/GAFI.

157. Paragraph 4 of article 44

4. Each of the **offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.** A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Currently, Brazil has 21 extradition treaties in force with the following countries: Argentina; Australia; Belgium; Bolivia; Chile; Colombia; Ecuador; France; Italy; Korea; Lithuania; Mexico; Paraguay; Peru; Portugal; Spain; Switzerland; Uruguay; the United Kingdom; the United States; and Venezuela. (See, respectively, Decrees 62979; 2010/1996; 41909/1957; 9920/1942; 1888/1937; 6330/1940; 2950/1938; 5258/2004; 863/1993; 4152/2002; 4528/1939; 2535/1938; 16925/1925; 15506/1922; 1325/1994; 99340/1990; 23997/1934; 13414/1919; 2347/1997; 55750/1965; and 5362/1940, in Portuguese). Other treaties are being negotiated or being already analysed by the National Congress of Brazil.

Brazil always to include the widest possible range of offences in its Extradition treaties.

Also, extradition may also be granted on the basis of reciprocity (Foreigners Statute art.76):

Art. 76. Extradition may be granted when the Requesting State bases the request on an existing treaty, or when it promises reciprocity to Brazil.

It should be noted as well that, as described in question n. 155, the Supreme Federal Court of Brazil has already used the UNCAC to complement the list of offences included in an extradition treaty, namely the Treaty between Brazil and the United States of America.

On the issue of political crimes, article 77 of Law n. 6.815/80 states that extradition, however, will not be granted when the fact represents a political crime:

Art. 77. Extradition shall not be granted:

(...)

VII - the fact constitutes a political crime;

Nevertheless, the paragraphs of art. 77 determine that it falls solely within the competencies of the Supreme Federal Court to determine whether the fact constitutes a political crime:

§ 1º The exception within item VII will not prevent the extradition when the fact constitutes, mainly, an infraction of common penal law, or when the crime described in common penal law, linked to the political crime, constitutes the principal fact.

§ 2º It falls exclusively within the competencies of the Supreme Federal Court to determine

the character of the offense

§ 3° *The Supreme Federal Court may consider to not constitute political crimes the attempts on the lives of Heads of State or any authorities, as well as acts of anarchy, terrorism, sabotage, kidnaping or those that refer to war propaganda or to violent procedures to subvert the political or social order.*

In Brazil, the offences established in accordance with the UNCAC are not considered political crimes. They are all established under common penal law (as opposed to military penal law), on the Brazilian Criminal Code (Decree-Law n. 2.848, of December 7th 1940).

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Please, refer to cases attached under question n. 155 for the first part of the paragraph.

Please provide a sample of relevant extradition treaties

For example, please consult:

The US-Brazil Mutual Legal Assistance Treaty (17 October 1997)

Portuguese: http://www.planalto.gov.br/ccivil_03/decreto/2001/D3810.htm

English: http://www.oas.org/juridico/MLA/pt/bra/br_mlat_br_us_en.pdf

Please provide information on recent extradition cases where offences established in accordance with this Convention were not deemed to be a political offence

Extradition cases in which offences established in accordance with the UNCAC were not deemed to be a political offence could not be found in the jurisprudence and rulings of the Supreme Federal Court of Brazil, since, as described previously on this question, in Brazil, the offences established in accordance with the UNCAC are not considered political crimes. They are all established under common penal law (as opposed to military penal law), on the Brazilian Criminal Code (Decree-Law n. 2.848, of December 7th 1940).

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

The Brazilian legislation on extradition has been assessed by other international organizations, namely by their mechanisms to review compliance with international conventions, like the OAS (Mesicic), the OECD and the FATF/GAFI.

158. Paragraph 5 of article 44

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it **may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.**

Does your country consider this Convention as the legal basis for extradition in respect to any offence to which the article under review applies?

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

As already addressed in previous questions, in Brazil, an extradition request is not limited to the countries with which Brazil has signed a treaty. Extradition can be requested by or to any country. When a treaty has not been signed, the request shall use documents stated by law n. 6.815/80 (Foreigners Statute) and shall be based on the promise of reciprocity. This Convention shall also be used as a legal basis for requests.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases

If applicable and available, please provide information on extraditions granted without a treaty, using this Convention as the legal basis

Please find below example(s) of rulings of the Supreme Federal Court:

Money laundering. Such offence is not explicitly included in the reference list of the Expatriation Treaty celebrated between Brazil and the United States of America. The Plenary (HC n. 92.598, tried on 13th July 2007) understands that such offence was automatically included in the specific Treaty, as it is part of the list of offences contained in the United Nations' Convention against Transnational Organized Crime, of which Brazil and the United States are signatories. (Ext 1.103, Rel. Min. Eros Grau, ruled on 13-3-08, Plenary, DJE de 7-11-08)

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

The Brazilian legislation on extradition has been assessed by other international organizations, namely by their mechanisms to review compliance with international conventions, like the OAS (Mesicic), the OECD and the FATF/GAFI.

159. Subparagraph 6 (a) of article 44

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, **inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition** with other States Parties to this Convention; and

Does your country make extradition conditional on the existence of a treaty?

(Y) Yes

Has your country informed the Secretary-General of the United Nations as prescribed above? (Check one answer)

(Y) Yes

160. Subparagraph 6 (b) of article 44

A State Party that makes extradition conditional on the existence of a treaty shall:

...

(b) If it does not take this Convention as the legal basis for cooperation on extradition, **seek**, where appropriate, **to conclude treaties on extradition with other States Parties** to this Convention in order to implement this article.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable treaty(ies) or other measure(s)

Please cite the text(s)

As already addressed in question n. 158, in Brazil, an extradition request is not limited to the countries with which Brazil has signed a treaty. Extradition can be requested by or to any country. When a treaty has not been signed, the request shall use documents stated by law n. 6.815/80 (Foreigners Statute) and shall be based on the promise of reciprocity. This Convention shall also be used as a legal basis for requests.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review (i.e. information on recent extradition cases based on treaties between your country and other States Parties)

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

The Brazilian legislation on extradition has been assessed by other international organizations, namely by their mechanisms to review compliance with international conventions, like the OAS (Mesicic), the OECD and the FATF/GAFI.

161. Paragraph 7 of article 44

7. States Parties that do not make extradition conditional on the existence of a treaty shall **recognize offences to which this article applies as extraditable offences between themselves.**

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Please, see above items 158 and 161.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of this provision (i.e. information on recent extradition cases between your country and other States parties for offences established in accordance with this Convention)

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

The Brazilian legislation on extradition has been assessed by other international organizations, namely by their mechanisms to review compliance with international conventions, like the OAS (Mesicic), the OECD and the FATF/GAFI.

162. Paragraph 8 of article 44

8. Extradition shall be **subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties**, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s), including relevant domestic law(s) and conditions

Please cite the text(s)

Please, see above items, specifically items 154, 155, 157 and 158.

Other cases in which extradition can be refused are also included in art. 77 of Law n. 6815/80. A description of them follows below:

Art. 77. Extradition shall not be granted:

I - when the person is Brazilian, except if the nationality was acquired after the fact that motivates the request;

(...)

III - Brazil is competent, according to its legislation, to prosecute and judge the offence committed by the person;

(...)

V - the person is being prosecuted or has been already convicted or acquitted in Brazil for the same fact in which the request is based upon;

VI - the offence has prescribed according to the Brazilian or to the requesting State statutes of limitations;

(...)

VIII - the person will be prosecuted, in the requesting State, by a Court of Exception.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Please provide information on conditions and grounds upon which extradition requests were refused

Please, find below examples of rulings by the Supreme Federal Court. Other rulings which also relate to refusals of extradition requests can be found in other items.

EXTRADITION - COMMON AND POLITICAL CRIMES - CONTAMINATION. Once found the interweaving of political crimes and common crimes, it is imperative to refuse extradition. Precedent: Extraditions No 493-0 and 694-1, reported by ministers Pertence and Sydney Sanches, respectively. (Ext 994/Italy, Rapporteur Min. Marco Aurélio, ruled on 14/12/2005, Plenary).

In face of a possible life sentence in the requesting State, the extradition request should be granted on condition that the requesting State assumed, on a formal commitment, to commute the life imprisonment to a maximum of thirty years. (Ex 1069, Rep. Min Gilmar Mendes, trial 08/09/2007, 09/14/2007 DJ). In the same vein: Ext 1060, Rep. Min Gilmar Mendes, trial in 15 -10-07, DJ 31/10/2007.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

The Brazilian legislation on extradition has been assessed by other international organizations, namely by their mechanisms to review compliance with international conventions, like the OAS (Mesicic), the OECD and the FATF/GAFI.

163. Paragraph 9 of article 44

9. States Parties shall, subject to their domestic law, endeavour to **expedite extradition procedures** and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Some treaties to which Brazil is signatory provide for the possibility of simplified extradition. These include the Extradition Treaty of Mercosur (Decree 4.975/2004, Art.27), the Extradition Treaty of Mercosur, Bolivia and Chile (Decree 5.867/2006, Art. 27) and Extradition Convention of the Member States to the Community of Portuguese Speaking Countries, of November 23rd 2005 (Article 19).

In simplified extradition cases, the defendant agrees to be extradited without trial in the Supreme Court of Brazil

Moreover, Brazil is about to implement the Convention on the Transfer of Sentenced Persons within the Member-States of the Community of Portuguese speaking Countries (Legislative Decree 174/2009) and the MERCOSUR's Agreement on the Transfer of Sentenced Persons among States-Parties (Legislative Decree 291/2007). Both treaties will also address the issue of simplifying evidentiary requirements.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

Please, find below the translation of art. 27 of both Extradition Treaty of Mercosur and of the the Extradition Treaty of Mercosur, Bolivia and Chile:

Article 27

Simplified or Voluntary Extradition

The requesting State Party may grant an extradition if the requested person, under due legal assistance and before a judicial authority of the requested State Party, declares his/her express consent to be delivered to the requesting State Party, after being informed of his/her right to a formal proceeding of extradition and of the protection it entails.

And the translation of art. 19 of the Extradition Convention of Member States to the

Community of Portuguese Speaking Countries:

Article 19

Simplified or Voluntary Extradition

The requesting State Party may grant an extradition if the requested person, under due legal assistance and before a judicial authority of the requested State Party, declares his/her express consent to be delivered to the requesting State Party, after being informed of his/her right to a formal proceeding of extradition and of the protection it entails.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Simplified extradition procedures are not sent to the Federal Supreme Court for appreciation. Therefore, it falls solely within the competencies of the

Department of Foreigners (DEEST, namely its Division of Compulsory Measures) of the Ministry of Justice, the Brazilian Central Authority in extradition matters, as described in item 154.

The DEEST is implementing at this moment a new computerized system to store the data relating to extradition requests (incoming and outgoing ones). The implementation is scheduled to be finished in the first trimester of 2011 and the Division of Compulsory Measures is one of the few remaining departments in this last phase of the implementation process.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

The Brazilian legislation on extradition has been assessed by other international organizations, namely by their mechanisms to review compliance with international conventions, like the OAS (Mesicic), the OECD and the FATF/GAFI.

164. Paragraph 10 of article 44

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, **take a person whose extradition is sought and who is present in its territory into custody** or take other appropriate measures to ensure his or her presence at extradition proceedings.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

In urgent cases, preventive custody for the purposes of extradition may be requested from the Requested State through diplomatic channels or INTERPOL, as stated in Article 82 and its paragraphs of Law n. 6815/80.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

Art. 82. In urgent cases, preventive detention of the requested person can be determined, as long as requested in due communication, sent through whatever the means, by competent authority, diplomatic or consular agent of the requesting State.

§ 1. The request, which will describe the committed crime, must be based on a conviction sentence, a statement of flagrante arrest, a warrant of arrest, or, still, on escape of the defendant.

§ 2. After the detention, the requesting State must formalize the request in ninety days, according to article 80.

§ 3. The detention based on this article shall not be maintained beyond the period stated in the previous paragraph, and a new detention request shall not be admitted for the same fact if the extradition is not formally requested.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

If applicable and available, please provide information on recent court or other cases in which a person whose extradition was sought and who was present in your territory has been taken into custody and cases in which other appropriate measures were taken to ensure his or her presence at extradition proceedings (please describe those measures)

Please find below examples of rulings by the Supreme Federal Court

Extradition. Oriental Republic of Uruguay. Murder. Meeting the requirements of Law No. 6.815/80. The limitation period has not expired both from the perspective of the foreign law and of Brazilian criminal law. Review of facts underlying the investigation. Impossibility. System contentious limited. Precedents. Investigation still ongoing. Possibility of extradition. Withdrawal of the warrant: There are no exceptional circumstances justifying the withdrawal of the arrest warrant of the wanted person. Constitutional legitimacy of the prison for precautionary purposes. Precedents. Request granted. 1. The request by the Eastern Republic of Uruguay, based on the Extradition Agreement between the States Parties of MERCOSUR meets the assumptions required for its approval, pursuant to Law No. 6.815/80. 2. The fact attributed to extraditing criminal matches in Brazil the crime of manslaughter, as provided for in Art. 121 of the Brazilian Penal Code, thereby satisfying the requirement of dual criminality as foreseen in art. 77, subsection II of Law No. 6.815/80. 5. Provisional arrest is appropriate and in the nature of precaution, "intended, in his major duty instrumental function, to ensure the implementation of any extradition order" (Ext No. 579-Q, Full Court, Rapporteur Minister Celso de Mello, DJ 10/9/1993), pursuant to Articles

81 and 84 of Law No. 6.815/90, which precludes the granting of bail when you're facing an exceptional situation, which is not the case the species. 9. According to art. 91, item I of Law No. 6.815/80 and Article 17 of the Extradition Agreement between the States Parties of MERCOSUR, the Republic of Uruguay shall ensure the deduction of the time the person claimed has remained jailed in Brazil under the request. 10. Extradition upheld. (Ext. 1178/Uruguay, rapporteur Min. Dias Toffoli, ruled on 10/06/2010, Plenary).

SUMMARY: HABEAS CORPUS. DETENTION PENDING EXTRADITION. NON-OCCURRENCE OF DURESS. DISMISSAL. 1. Detention for extradition purposes (Law 6.815/1985, art. 81) is a precondition for the extradition request, not to be confused with arrests of procedure of the Code of Criminal Procedure. 2. For it is a regular police custody, despite the pending appeal of the arrest warrant, there is no evidence of unlawful detention. (HC 83540/São Paulo, Rapporteur Min. Joaquim Barbosa, ruled on 27/11/2003, Plenary).

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

The Brazilian legislation on extradition has been assessed by other international organizations, namely by their mechanisms to review compliance with international conventions, like the OAS (Mesicic), the OECD and the FATF/GAFI.

165. Paragraph 11 of article 44

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies **solely on the ground that he or she is one of its nationals**, shall, at the request of the State Party seeking extradition, **be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution**. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable practice(s) or measure(s)

Please cite the text(s)

Brazil does not extradite its own nationals as this is prohibited by the Federal Constitution (art.5, item LI). However, in such cases, the Brazilian authorities are required to prosecute the national who has committed the crime (Criminal Code, art.7(II)(b)). In such instances, the matter must be referred to the Prosecutors Office as soon as the request is received by the competent authority from the requesting state.

Brazil has specific legal provisions governing the conduct of such prosecutions. As soon as it is determined that an extradition request involves a Brazilian national, the Requesting State is informed of the refusal and, at the same time, is requested to amend the extradition request to facilitate the fact-finding phase of the Brazilian criminal proceedings. Decree-Law 394/1938 provides that the Brazilian authorities will seek from the Requesting State the evidentiary elements required for the proceeding, so that the competent judge may proceed, in accordance with Brazilian procedural rules. The Requesting State will be informed of the final decision or resolution (art.1, para.3)

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

Art. 7, II, item b of the Brazilian Criminal Code.

Art. 7. Although committed abroad, the following will be subjected to the Brazilian legislation:

(...)

II - the crimes:

(...)

b - committed by Brazilians;

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

If available, please provide information on recent court or other cases submitted for prosecution by your authorities (statistics, types of cases, outcomes). Please provide per annum figures since the year 2003 (or further back, if available)

Please, refer to item 163 on reasons why statistics cannot be provided at this moment.

Please find below examples of Supreme Federal Court rulings on the matter:

SUMMARY: EXTRADITION. INDICTMENT FOR THE CRIME OF FELONY MURDER. PROOF OF THE BRAZILIAN CITIZENSHIP OF THE PERSON IN QUESTION. Request refused. Imposition of the principle of aut dedere aut judicare. Being unable to meet the request for international cooperation, Brazil, in these cases, must assume the obligation to prosecute the person sought to avoid the impunity of the crime committed by its national elsewhere. Extradition denied (Ext 916 - Argentina, Rap. Min. Carlos Britto, ruled on 19/05/2005, Plenary).

SUMMARY: "OBITER DICTUM". RAPPORTEUR (MIN. CELSO DE MELLO), MOTIVATED BY THE FACT THAT THE HABEAS CORPUS HAS BECOME DEVOID OF PURPOSE. IMPOSSIBILITY OF EXTRADITION OF BRAZILIAN NATIONALS AND THE POSSIBILITY OF EXTRATERRITORIAL CRIMINAL LAW ENFORCEMENT TO CRIMES COMMITTED ABROAD BY BRAZILIANS - The Brazilian born, whatever the circumstances and nature of the crime, must not be extradited, because the Constitution of the Republic of Brazil contains a no-exception clause that prevents the surrender of whoever holds, either by the criterion of "jus soli" or of "jus sanguinis", a Brazilian citizenship. This remains even if the person acquires another nationality through the recognition of the original nationality by the foreign law. If the extradition may not be granted on the ground that the person sought bears the condition of Brazilian, it will legitimise the possibility of the Brazilian State, through the extraterritorial application of its own criminal law (Penal Code, art. 7, II, b, and its § 2) - and also considering what states the Extradition Treaty Brazil / Portugal (Article IV) - to bring before its competent national authority (CPP, art. 88) the concerning "Persecutio criminis", in order to prevent, on grounds of ethical and legal reason, that Brazilians (native and naturalized) who committed crimes abroad go unpunished. (HC 83113 - Federal District, Rap. Min. Celso de Mello, ruled on 26/06/2003, Plenary).

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

The Brazilian legislation on extradition has been assessed by other international organizations, namely by their mechanisms to review compliance with international conventions, like the OAS (Mesicic), the OECD and the FATF/GAFI.

166. Paragraph 12 of article 44

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the **condition that the person will be returned to that State Party to serve the sentence imposed** as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such **conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.**

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Please, refer to item 165.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

If available, please provide information on court or other recent cases of conditional extradition or surrender (including number of cases, outcomes, etc.). If possible, please provide per annum figures since the year 2003 (or further back, if available)

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

The Brazilian legislation on extradition has been assessed by other international organizations, namely by their mechanisms to review compliance with international conventions, like the OAS (Mesicic), the OECD and the FATF/GAFI.

167. Paragraph 13 of article 44

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, **consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.**

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Please, refer to item 165.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

If applicable and available, please provide information on court or other recent cases in which such a sentence has been enforced

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

The Brazilian legislation on extradition has been assessed by other international organizations, namely by their mechanisms to review compliance with international conventions, like the OAS (Mesicic), the OECD and the FATF/GAFI.

168. Paragraph 14 of article 44

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be **guaranteed fair treatment at all stages of the proceedings**, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies) or measure(s):

Please cite the text(s)

The 1988 Constitution of Brazil guarantees due process of law to every judicial and administrative procedures (Art. 5, particularly items LII to LVII). In this context, extradition requests must follow the due process of Law n. 6.815/80 to be granted or refused (except in the case of simplified extradition procedures as seen on item 163). To the persons subjected to extradition procedures, legal assistance is guaranteed right, and if they cannot afford an attorney, a public defender will be assigned to his/her case.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases

Please find below examples of rulings by the Supreme Federal Court:

Summary: "Habeas Corpus" - ALIEN NON-RESIDENT IN BRAZIL - IRRELEVANCY - LEGAL STATUS THAT DOES NOT DISQUALIFY AS HOLDER OF RIGHTS AND OF LEGAL AND CONSTITUTIONAL GUARANTEES - ACCESS THEREFORE TO PROCEDURAL REMEDIES TO SAFEGUARD FREEDOM - PRECEDENTS - REQUEST REFUSED. FOREIGN CITIZENS, EVEN THOSE WITHOUT HOUSEHOLD IN BRAZIL, ARE ENTITLED TO ALL BASIC PRIVILEGES THAT ENSURE THE PRESERVATION OF THE STATUS LIBERTATIS ", WHICH ASSURED HIM OBSERVANCE FROM PUBLIC AUTHORITIES OF THE CONSTITUTIONAL PROVISION OF" DUE PROCESS ". (HC 102041- SÃO PAULO, Rapp. Min. CELSO DE MELLO, Ruled on: 20/04/2010).

Summary: "Habeas Corpus" - ALIEN NON-RESIDENT IN BRAZIL - IRRELEVANCY - LEGAL STATUS THAT DOES NOT DISQUALIFY AS HOLDER OF RIGHTS AND OF LEGAL AND CONSTITUTIONAL GUARANTEES - ACCESS THEREFORE TO PROCEDURAL REMEDIES TO SAFEGUARD FREEDOM - PRECEDENTS. NEED OF PUBLIC AUTHORITIES TO COMPLY WITH LEGAL GUARANTEES THAT COMPOSE THE CONSTITUTIONAL RIGHT OF DEFENCE - DECISION THAT GOES AGAINST THE ESTABLISHED CASE LAW OF THE FEDERAL SUPREME COURT - UNLAWFUL DETENTION - . FOREIGN CITIZENS, EVEN THOSE WITHOUT HOUSEHOLD IN BRAZIL, ARE ENTITLED TO ALL BASIC PRIVILEGES THAT ENSURE THE PRESERVATION OF THE STATUS LIBERTATIS ", WHICH ASSURED HIM OBSERVANCE FROM PUBLIC AUTHORITIES OF THE CONSTITUTIONAL PROVISION OF" DUE PROCESS (HC 94404 - SÃO PAULO, Rapp. Min. CELSO DE MELLO, ruled on 18/11/2008).

The person claimed is defenseless. Given the above, and taking into account that the prerequisites to granting extradition are present in this case, it is requested, based on articles 210 and 211 do RISTF (Bylaws of the Supreme Court) in conjunction with article 5 LI and LII of the Constitution, the extradition of João Belo Vilela Caldeira. The provisions of article 261 of Code of Criminal procedure is a corollary of the principle of full defense (art 5 LV) and it requires a timely, technical and effective defense. Whenever this is absent, it weakens the due process of law (...) I understand that the manifestation in pages 155-158 as a pure formalistic act done by the defendant of the person claimed, which does not meet

the requirement of the law and the Constitution. Therefore, I declare the person claimed in a situation of lack of legal defence and determine referral of case to the Public Defender of the Union. (art. 210 of RISTF).” (Ext 1.115, Rapp. Min. Cezar Peluso, monocratic ruling, ruled on 15-4-08, DJE of 23-4-08)

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

The Brazilian legislation on extradition has been assessed by other international organizations, namely by their mechanisms to review compliance with international conventions, like the OAS (Mesicic), the OECD and the FATF/GAFI.

169. Paragraph 15 of article 44

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of **prosecuting or punishing a person on account of that person’s sex, race, religion, nationality, ethnic origin or political opinions** or that compliance with the request would cause **prejudice to that person’s position for any one of these reasons.**

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), practice(s), or measure(s)

Please cite the text(s)

As described before, under Brazilian legislation, extradition can be refused if requested for cases of political crimes and cases in which the person will be judged by a Court of Exception.

Furthermore, as stated in article 91 of Law 6815/80, even if the extradition is granted, it will not be implemented if the requesting State does not guarantee the following:

Art. 91. The delivery of the extradited person will not be executed if the requesting State does not compromise:

- I - to not arrest or prosecute the person for facts occurred before the request;*
- II - to take into consideration the detention time served in Brazil due to the extradition;*
- III - to commute corporeal or capital punishments to imprisonment, except for the cases in which the Brazilian legislation allows for capital punishments;*
- IV - to not deliver the extradited person to another State, without Brazil's consent; and*
- V - to not consider any political reason to increase the sanctions.*

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable

if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

If applicable and available, please provide information on recent court or other cases where extradition was refused on such grounds

EXTRADITION - COMMON AND POLITICAL CRIMES - CONTAMINATION. Once found the interweaving of political crimes and common crimes, it is imperative to refuse extradition. Precedent: Extraditions No 493-0 and 694-1, reported by ministers Pertence and Sydney Sanches, respectively (Ext. 994 - Italy, Rapp. Min. Marco Aurélio, ruled on 14/12/2005, Plenary).

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

The Brazilian legislation on extradition has been assessed by other international organizations, namely by their mechanisms to review compliance with international conventions, like the OAS (Mesicic), the OECD and the FATF/GAFL.

170. Paragraph 16 of article 44

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies) or measure(s):

Please cite the text(s)

Brazil does not refuse MLA requests on the grounds that the offence is considered to involve fiscal matters. Although some of the multilateral treaties to which Brazil is a party do provide that a requested state may refuse assistance in such cases, Brazil does not exercise these options. For example, Brazil is a party to the *Inter-American Convention on Mutual Legal Assistance in Criminal Matters* (Decree 6340/2008, mentioned previously). Article 9(f) of that Convention provides that a requested state may refuse to provide MLA when it determines that the request pertains to a tax crime, except where the offence is committed by way of an intentionally false statement or failure to declare income derived from any other offence covered by the Convention. However, Brazil is also a party to the Optional Protocol to this Convention (promulgated by the same Decree) which provides that countries shall not exercise their right to refuse to provide MLA solely on the ground that the request concerns a tax crime if the requesting country is also a party to this Protocol (art.1) or if the act specified in the request corresponds to a similar tax crime under the laws of the requested state (art.2). As well, Brazil's bilateral MLA agreements with the following

countries specifically do not provide for refusing a request on the basis that the offence involves fiscal or tax matters: Cuba, China, Colombia, France, Italy, Korea, Peru, Portugal, Ukraine and the United States.

The Brazilian judicial authorities may issue court orders allowing competent authorities to access financial records, regardless of bank secrecy or confidentiality, at any stage of an investigation or legal proceedings involving any illicit activity, and particular in cases involving crimes of: ML or concealment of assets, rights and valuables; terrorism; drug trafficking; arms trafficking; extortion through kidnapping; acts against the Brazilian financial system or Public Administration; acts against the fiscal and social security order; and acts committed by a criminal organisation (Complementary Law 105/2001 art.1, para.4 - attached to item 119 relating to paragraph 7 of Article 31 of the UNCAC). Similarly, BACEN and CVM must provide any information required from them by the Judicial branch under court order, on the condition that such information shall not be used for purposes other than those pertaining to the investigation (Complementary Law 105/2001 art.3).

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

Please provide information on recent cases in which extradition involving fiscal matters was not refused

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

The Brazilian legislation on extradition has been assessed by other international organizations, namely by their mechanisms to review compliance with international conventions, like the OAS (Mesicic), the OECD and the FATF/GAFI.

171. Paragraph 17 of article 44

17. **Before refusing extradition**, the requested State Party shall, where appropriate, **consult with the requesting State Party** to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

As described in previous items, the Supreme Federal Court of Brazil is responsible for analysing extradition requests and for verifying their compliance with legal requisites. It is a judicial process in which the requesting State must submit all necessary documents and information and where the extraditing person is entitled to a proper defense. Please, refer to previous items for more information on the procedure.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

Please provide information on recent court or other cases and illustrations of relevant exchanges between your country and other States

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

The Brazilian legislation on extradition has been assessed by other international organizations, namely by their mechanisms to review compliance with international conventions, like the OAS (Mesicic), the OECD and the FATF/GAFI.

172. Paragraph 18 of article 44

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach any other bilateral or multilateral agreement(s) or arrangement(s) related to extradition that have not already been attached in previous answers related to this article

Please cite the text(s)

As described in previous items, Brazil has currently twenty one bilateral extradition treaties and others are in the process of negotiation or approval by the National Congress.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or

legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

The Brazilian legislation on extradition has been assessed by other international organizations, namely by their mechanisms to review compliance with international conventions, like the OAS (Mesicic), the OECD and the FATF/GAFI.

173. Article 45

States Parties may consider entering into **bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention** in order that they may complete their sentences there.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach applicable bilateral or multilateral agreement(s) or arrangement(s) related to extradition that have not already been attached in previous answers

Please cite the text(s)

Brazil also has specific mechanisms that allow for the transfer of Sentenced Persons (Decree 6061/2007 art.9(III)). This Decree aims to transfer persons to serve their sentences in their own countries. The Department of Foreigners (DEEST) is Brazil's Central Authority in such matters.

Outgoing prisoner transfer requests are received by the DEEST from Brazilian citizens serving sentences abroad. The corresponding documents are transmitted to the Criminal Enforcement Court where the Brazilian convict's family lives, and the Court shall arrange a place at a Brazilian correctional facility. If the Central Authorities of both the transferring and receiving State render a final decision approving of the transfer, the Brazilian public officials transport the convict to the sentencing State for the purpose of serving the remainder of the foreign sentence.

Incoming prisoner transfer requests are received by the DEEST from foreign convicts serving sentences in Brazil. The DEEST brings the application, including any supporting documents, before the Judicial Branch and translates the documents into the official language of the foreign convict's country of origin. Following acquiescence by the National Secretariat of Justice, the proceeding is transmitted to the receiving country through diplomatic channels. If the foreign authorities grant the request, the receiving country shall arrange the removal of the convict from the Brazilian territory, at a place and on a date agreed upon by the Parties. The transfer of custody of the foreign convict to the police officers of his/her country of origin occurs at the same time as the rendition act.

Moreover, Brazil has signed treaties in order to regulate the Transfer of Sentenced Persons to serve their sentences in their countries of origin with the following countries: Argentina; Chile; Canada; Paraguay; Peru; Portugal; Spain; and the United Kingdom of Great Britain and Northern Ireland.

In addition, Brazil has implemented the Inter-American Convention on Serving Criminal Sentences Abroad (Decree 5919/2006) and the Convention on the Transfer of Sentenced Persons of Member States to the Community of Portuguese Speaking Countries, of November 23rd 2005 (available at: <<http://ven.to/duB>> or

<<http://www.rjcplp.org/RJCPLP/sections/informacao/instrumentos-multilaterais/anexos/RJCPLP/sections/informacao/instrumentos-multilaterais/anexos/convencao-transferencia/downloadFile/file/CPLP%20Transfer%Eancia%20Pessoas%20Condenadas%20%28assinada%29.pdf?nocache=1197903012.05>>).

Please attach the text(s)

Decree 6061/2007, art.9, III:

Art. 9. The Department of Foreigners is competent for:

(...)

III - the overseeing of the processes relating to the transfer of sentenced persons to carry out imprisonment time in their country of origin, based on the treaties to which Brazil is party;

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

The Brazilian legislation on extradition has been assessed by other international organizations, namely their mechanism to review compliance with international conventions, like the OAS (Mesicic), the OECD and the FATF/GAFI.

174. Paragraph 1 of article 46

1. States Parties shall afford one another the **widest measure of mutual legal assistance** in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Brazil is able to provide assistance for cooperation with respect to the investigation, prosecution and judicial proceedings related to the freezing, seizure, confiscation and return of the proceeds of offences in general, including those established in accordance with the Convention.

Please cite, summarize and attach applicable bilateral or multilateral agreement(s) or arrangement(s) or other measure(s)

Please cite the text(s)

Brazil is able to provide assistance for cooperation with respect to the investigation, prosecution and judicial proceedings related to the freezing, seizure, confiscation and return of the proceeds of offences in general, including those established in accordance with the Convention.

So, the provision under review has been fully implemented through the provision of cooperation on a reciprocity basis.

Also, bilateral agreements in order to provide assistance in criminal matters are in force with: Canada, China, Colombia, Cuba, France, Italy, Peru, Portugal, Spain, South Korea, Surinam, Switzerland, Ukraine and the United States of America.

Agreements were also negotiated and approved by the Congress as regards Angola, Honduras, Lebanon, Mexico, Nigeria, Panama and the United Kingdom.

Agreements with Belgium, Jordan and El Salvador have been signed, but pending approval from the Congress.

Some agreements were also signed but still not sent to approval by the Congress: Algeria, The Bahamas, Germany, Hong Kong, Morocco, Nicaragua, Romania, Syria and Turkey, as well as another relevant country that requested confidentiality until the agreement is in Congress.

Agreements are being negotiated with Albania, the British Virgin Islands, Cameroon, Cayman Islands, Costa Rica, Egypt, Ecuador, Greece, India, Iran, South Africa, Israel, Liechtenstein, Lithuania, Luxembourg, Monaco, Norway, Poland, Russia, South Africa and the United Arab Emirates.

Brazil is also a part to the United Nations Convention against Transnational Organized Crime and to its Protocols, which serves as a basis for mutual legal assistance in criminal matters.

Please attach the text(s)

*This list has also been attached to checklist, in case the links here present any problems. In specific provisions, texts in English and/or Spanish will also be attached.

Multilateral Agreement within Mercosur

Protocol for Mutual Legal Assistance in Criminal Matters - Decree n. 3.468, of 17 May 2000 - http://www.planalto.gov.br/ccivil_03/decreto/D3468.htm

Multilateral Agreements within Organization for Economic Co-operation and Development (OECD)

OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transaction - Decree n.º 3.678, of November 30 2000 - http://www.planalto.gov.br/ccivil_03/decreto/D3678.htm

Multilateral Agreements within Organization of American States (OAS)

Inter-American Convention on Mutual Legal Assistance in Criminal Matters - Decree n. 6.340, of January 2008 - http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2008/Decreto/D6340.htm

Inter-American Convention On Serving Criminal Sentences Abroad
<<http://www.oas.org/juridico/english/treaties/a-57.html>> - Decree n.º 5.919, of October 3 2006 - http://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2006/Decreto/D5919.htm

Inter-American Convention Against Corruption - Decree n.º 4.410, of October 7 2002 - http://www.planalto.gov.br/ccivil_03/decreto/2002/D4410.htm

Inter-American Convention Against Terrorism
<http://www.google.com/url?sa=t&source=web&cd=1&ved=0CBcQFjAA&url=http%3A%2F%2Fwww.oas.org%2Fxxiiga%2Fenglish%2Fdocs_en%2Fdocs_items%2FAGres1840_02.htm&ei=fPkQTeXaOcq8Abc17iLDg&usq=AFQjCNEAP8HsJg8A1B_c-oWSeyDnunuFjA>- Decree n.º 5.639, of December 26 2005 - http://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2005/Decreto/D5639.htm

Inter-American Convention Against The Illicit Manufacturing Of And Trafficking In Firearms, Ammunition, Explosives, And Other Related Materials - Decree n.º 3.229, of October 29 1999 - http://www.planalto.gov.br/ccivil_03/decreto/D3229.htm

Convention To Prevent And Punish The Acts Of Terrorism Taking The Form Of Crimes Against Persons And Related Extortion That Are Of International Significance - Decree n.º 3.018, of April 6 1999 - http://www.planalto.gov.br/ccivil_03/decreto/D3018.htm

Inter-American Convention On International Traffic In Minors - Decree n.º 2.740, of August 20 1998 - http://www.planalto.gov.br/ccivil_03/decreto/D2740.htm

Convention On Private International Law (Bustamante Code) - Decree n.º 18.871, of August 13 1929 - <http://ccji.pgr.mpf.gov.br/ccji/legislacao/legislacao-docs/bustamante.pdf>

Inter-American Convention On Proof Of And Information On Foreign Law - Decree n.º 1.925, of June 10 1996 - http://www.planalto.gov.br/ccivil_03/decreto/1996/D1925.htm

Multilateral Agreements within the United Nations (UN)

United Nations Convention Against Corruption - Decree n.º 5.687, of January 31 2006 - http://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2006/Decreto/D5687.htm

United Nations Convention Against Transnational Organized Crime - Decree n.º 5.015, of March 12 2004 - http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2004/decreto/d5015.htm

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime - Decree n.º 5.017, of March 12 2004 - http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2004/decreto/d5017.htm

Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime - Decree n.º 5.016, of March 12 2004 - http://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2004/Decreto/D5016.htm

Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime - Decree n.º 5.941, of October 26 2006 - http://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2006/Decreto/D5941.htm

International Convention For The Suppression Of The Financing Of Terrorism - Decree n.º 5.640, of December 26 2005 - http://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2005/Decreto/D5640.htm

Optional Protocol To The Convention On The Rights Of The Child On The Sale Of Children, Child Prostitution And Child Pornography - Decree n.º 5.007, of March 8 2004 - http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2004/decreto/D5007.htm

Convention For The Suppression Of The Traffic In Persons And Of The Exploitation Of The Prostitution Of Others And Final Protocol - Decree n.º 46.981, of October 8 1959 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1017/1/ONU_lenocinio.pdf

International Convention For The Suppression Of The Traffic In Women And Children - amended by Lake Success Protocol, New York, on November 1947 - Decree n.º 23.812, of January 30 1934 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1018/1/ONU_lakesuccess.pdf

Protocol To Amend The Convention For The Suppression Of The Traffic In Women And Children, And The Convention For The Suppression Of The Traffic In Women Of Full Age - Decree n.º 37.176, of April 15 1955 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1019/1/ONU_emendatrafico.pdf

Convention For The Suppression Of The Illicit Traffic In Dangerous Drugs - Decree n.º 2.994, of August 17 1938 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1020/1/ONU_drogasnocivas.pdf

United Nations Convention Against Illicit Traffic In Narcotic Drugs And Psychotropic Substances - Decree n.º 154, of July 1991 - http://www.oas.org/juridico/MLA/pt/bra/pt_bra_1988_convencao_trafico.pdf

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents - Decree n.º 3.167, of September 14 1999 - http://www.planalto.gov.br/ccivil_03/decreto/D3167.htm

International Convention against the Taking of Hostages - Decree n.º 3.517, of June 20 2000 - <http://www.planalto.gov.br/ccivil/decreto/D3517.htm>

Convention on the Physical Protection of Nuclear Material - Decree n.º 95, of April 16 1991 - <http://www2.mre.gov.br/dai/protf%C3%ADsica.htm>

Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation - Decree n.º 2.611, of June 2 - http://www.planalto.gov.br/ccivil_03/decreto/D2611.htm

International Convention for the Suppression of Terrorist Bombings - Decree n.º 4.394, of September 26 2002 -

http://www.planalto.gov.br/ccivil_03/decreto/2002/D4394.htm

Other Multilateral Agreements

UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects - Decree n.º 3.166, of September 14 1999 - http://www.planalto.gov.br/ccivil_03/decreto/D3166.htm

Agreement for the Repression of the Traffic in White Women - Decreto n.º 5.591, de 13 de julho de 1905 - <http://portal.mj.gov.br/main.asp?View={B53EDE30-4290-400F-A337-D7E4137F6F0D}&Team=¶ms=itemID={77C37328-9A91-4438-853F-3357E1B82506};&UIPartUID={2868BA3C-1C72-4347-BE11-A26F70F4CB26}>>

Agreement between the Federative Republic of Brazil and the Republic of Paraguay for the Restitution of Stolen or Robbed Automotive Vehicles - Decree n.º 139, of November 29 1995 - http://www.planalto.gov.br/ccivil_03/decreto/1997/d2131.htm

Agreement on the Guarantee of Reciprocity in the Transmission of Information on Criminal Records between the Government of the Federative Republic of Brazil and the Government of the Federative Republic of Germany

Bilateral Agreements/Treaties of Legal Cooperation in Penal Matters with

The Republic of Cuba - Decree n.º 6.462, of May 21 2008 - https://www.planalto.gov.br/ccivil_03/_ato2007-2010/2008/decreto/d6462.htm

The Kingdom of Spain - Decree n.º 6.681, of December 08 2008 - http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2008/Decreto/D6681.htm

The People's Republic of China - Decree n.º 6.282, of December 3 2007 - http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2007/Decreto/D6282.htm

The United States of America - Decree n.º 3.810, of May 2 2001 - http://www.planalto.gov.br/ccivil_03/decreto/2001/D3810.htm

The Republic of Colombia - Decree n.º 3.895, of August 23 2001 - <http://www.planalto.gov.br/CCivil/decreto/2001/D3895.htm>

The French Republic - Decree n.º 3.324, of December 30 1999 - http://www.planalto.gov.br/ccivil_03/decreto/D3324.htm

The Italian Republic - Decree n.º 862, of July 9 1993 - http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/D0862.htm

The Republic of Peru - Decree n.º 3.988, of October 29 2001 - http://www.planalto.gov.br/ccivil_03/decreto/2001/D3988.htm

The Portuguese Republic - Decree n.º 1.320, of November 30 1994 - http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/D1320.htm

The Republic of Korea - Decree n.º 5.721, of March 13 2006 - http://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2006/Decreto/D5721.htm

The Republic of Suriname - Decree n.º 6.832, of April 29 2009 - http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2009/Decreto/D6832.htm

Bilateral Agreements relating to Letters Rogatory

Agreement for the Execution of Letters Rogatory Between Brazil and Argentina - Decree n.º 7.871, of November 03 1880 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1478/1/Carta_rog_argentina.pdf

Protocol to Modify the Agreement for the Execution of Letters Rogatory Between the United States of Brazil and the Argentine Nation - Decree n.º 40.998, of February 22 1957 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1473/1/Carta%20Rogat%3%b3ria_BrasilArgentina.pdf

Agreement for the Execution of Letters Rogatory Celebrated Between Brazil and Bolivia - Decree n.º 7.857, of October 15 1880 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1474/1/Carta%20rogat%3%b3ria_BrasilBol%3%advia.pdf

Agreement, via Notes Exchange, for the Exemption of Legalization for Letters Rogatory Between Brazil and Chile - <http://www.oas.org/juridico/MLA/pt/traites/pt-traites-mla-bra-chl-1970.pdf>

Agreement, via Notes Exchange, about the Simplification of the Legalization of Public Documents between the

Argentine Republic and the Federative Republic of Brazil - http://www2.mre.gov.br/dai/b_argt_390_5172.htm

Amendment for the Exemption from Consular Legalization in relation to the Execution of Letters Rogatory between Brazil and the United States of America - http://www2.mre.gov.br/dai/b_eua_216B_2102.htm
Agreement, via Notes Exchange, About the Partial Gratuity of the Execution of Letters Rogatory in Criminal Matters, between the Government of the Federative Republic of Brazil and the Government of the French Republic - http://www2.mre.gov.br/dai/b_fran_100_2330.htm

Agreement for the Reciprocal Execution of Letters Rogatory Between Brazil and Peru - Decree nº 7.582, of December 27 1879 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1476/1/Carta%20Rogat%c3%b3ria_BrasilPeru.pdf

Broadening Agreement for the Execution of Letters Rogatory Between Brazil and Peru - Decree nº 1.395, of May 18 1893 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1472/1/Carta%20Rogat%c3%b3ria_ampliativo_BrasilPeru.pdf

Agreement, via Notes Exchange, Relating to the Execution of Letters Rogatory Between Brazil and Portugal - http://www2.mre.gov.br/dai/b_port_25_3450.htm

Protocol Relating to the Execution of Letters Rogatory Between Brazil and Uruguay - Decree nº 9.169, of November 30 1911 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1477/1/Carta%20Rogat%c3%b3ria_BrasilUruguai.pdf

Bilateral Agreements relating to Extradition between Brazil and

Extradition Treaty between Brazil and Argentina - Decree nº 62.979, of July 11 1968 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1449/1/Argentina_dec.62979.pdf

Extradition Treaty between Brazil and Australia - Decree nº 2.010, of September 23 1996 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1450/1/Australia_dec.2010.pdf

Extradition Treaty between Brazil and Belgium and agreement to rule the treaty - Decree nº 41.909, of July 1942 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1451/1/Belgica_dec.41909.pdf

Extradition Treaty between Brazil and Bolivia - Decree nº 9.920, of August 17 1937 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1507/1/Bolivia_dec.9920.pdf

Extradition Treaty between Brazil and Chile - Decree nº 1.888, of September 25 1940 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1452/1/Chile_dec.1888.pdf

Extradition Treaty between Brazil and Colombia - Decree nº 6.330, of March 7 2002 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1456/1/Colombia_dec.6330.pdf

Extradition Treaty between Brazil and South Korea - Decree nº 4.152, of August 8 1938 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1460/1/Coreia_dec.4152.pdf

Extradition Treaty between Brazil and Ecuador - Decree nº 2.950, of June 22 1990 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1453/1/Equador_dec.2950.pdf

Extradition Treaty between Brazil and Spain - Decree nº 99.340, of February 11 1965 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1461/1/Espanha_dec.99340.pdf

Extradition Treaty between Brazil and the United States of America and supplementing protocol - Decree nº 55.750, of February 11 1965 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1462/1/EUA_dec.55750.pdf

Extradition Treaty between Brazil and France - Decree nº 5.258, of July 9 1993 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1466/1/Franca_dec.pdf

Extradition Treaty between Brazil and Italy - Decree nº 863, of July 9 1993 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1467/1/Italia_dec.863.pdf

Extradition Treaty between Brazil and Lithuania - Decree nº 4.528, of March 22 1938 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1492/1/Litu%c3%a2nia_dec.4528.pdf

Extradition Treaty between Brazil and Mexico - Decree nº 2.535, of May 27 1925 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1493/1/Mexico_dec.2535.pdf

Extradition Treaty between Brazil and Paraguay - Decree nº 16.925, of May 1922 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1496/1/Paraguai_dec.16925.pdf

Extradition Treaty between Brazil and Peru - Decree nº 15.506, of December 1994 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1509/1/Peru_dec.15506.pdf

Extradition Treaty between Brazil and Portugal - Decree nº 1.325, of October 10 1997 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1510/1/Portugal_dec.1325.pdf

Extradition Treaty between Brazil and Switzerland - Decree nº 23.997, of March 13 1934 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1499/1/Sui%c3%a7a_dec.23997.pdf

Extradition Treaty between Brazil and Venezuela - Decree nº 5.362, of March 12 1940 - http://www.cnj.jus.br/dpj/cji/bitstream/26501/1501/1/Venezuela_dec.5362.pdf

Extradition Agreement among States Parties of Mercosur - Decree nº 4.975, of January 30 2004 - http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2004/decreto/D4975.htm

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please, refer to the attached file with information and figures on MLA requests.

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

The majority of the Mutual Legal Assistance Treaties in Criminal Matters assigns the Department of Asset Recovery and International Legal Cooperation - DRCI as the agency in charge of handling both incoming and outgoing MLA requests. Since 2004, the DRCI has forwarded the following annual quantities of requests issued by the Brazilian Authorities:

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

175. Paragraph 2 of article 46

2. Mutual legal assistance shall be afforded to the **fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party** with respect to investigations, prosecutions and judicial proceedings in relation to the **offences for which a legal person may be held liable** in accordance with article 26 of this Convention in the requesting State Party.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Even though a legal person cannot be held criminally liable for corruption in Brazil, assistance can be afforded to foreign jurisdictions where such a criminal liability exists, using the UNCAC as a basis for the request or under a reciprocity basis.

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Even though a legal person cannot be held criminally liable for corruption in Brazil, assistance can be afforded to foreign jurisdictions where such a criminal liability exists, using the UNCAC as a basis for the request or under a reciprocity basis.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases

If available, please provide information on recent cases in which mutual legal assistance was provided to a requesting State Party with respect to investigations, prosecutions and judicial proceedings in relation to offences for which a legal person was or could be held liable under this Convention

If applicable, please provide information on recent cases in which you denied mutual legal assistance to a requesting State Party with respect to investigations, prosecutions and judicial proceedings in relation to offences for which a legal person was or could be held liable under this Convention

If available, please provide information on recent cases in which mutual legal assistance was received from a requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to offences for which a legal person was or could be held liable under this Convention

If applicable, please provide information on recent cases in which your country was denied mutual legal assistance by a requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to offences for which a legal person was or could be held liable under this Convention

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

176. Subparagraph 3 (a) of article 46

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons;

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

All of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Assistance can also always be provided on the basis of reciprocity.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

If available, please provide information on recent court or other cases in which you have made a request for evidence or statement from persons to be taken

In 2008, Brazil made 2 requests for taking statements from people.

"Case 1" - Two investigations were started in Brazil which focuses were on a businessman who was supposedly using his companies to commit financial crimes. At these cases, the Brazilian authorities started the legal procedure in Brazil; nonetheless, the Mutual Legal Assistance was necessary because the accused had addresses abroad. So, as a result, according to the United Nations Convention against Transnational Organized Crime and its Protocols, the Central Authority in Brazil formulated requests to the foreign countries in order to take evidence and statements from the accused. In both cases, the mutual legal assistances were effective and quick.

If available, please provide information on some recent cases in which you have received a request for evidence or statement from persons to be taken

In 2008, Brazil received 1 request for taking statements from people.

"Case 2" - In 2008, based on international investigations, Brazil received one request from an European Country for taking statements from people. In this case, the State Party investigated a politician who used to demand bribe and the payment of supposedly illegal commissions. The legal procedure in Brazil was: the request was sent to the Attorney General's Office, the institution which has the responsibility to receive from the Central Authority in Brazil requests concerning evidence taking or statements from persons. After a few months, the request was fulfilled by the Brazilian authorities and the letter of request for legal assistance was considered completed.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

177. Subparagraph 3 (b) of article 46

3. **Mutual legal assistance** to be afforded in accordance with this article may be requested for any of the following purposes:

...

(b) **Effecting service of judicial documents;**

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

All of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Assistance can also always be provided on the basis of reciprocity.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

If available, please provide information on recent court or other cases in which you have made a request for service of judicial documents

In 2008, Brazil made 2 requests for effecting service of judicial documents.

"Case 1" - In 2008, two investigations were started in Brazil which focuses were on a businessman who was supposedly using his companies to commit financial crimes. As a consequence, Brazil made two requests in 2008 for effecting service of judicial documents. The process for effecting service of judicial documents requested by the Central Authority in Brazil was analogue to the process for taking evidence or statements from one person, in other words, the Mutual Legal Assistance was necessary because the accused had addresses abroad. In both cases, the Central Authority in these countries received the requests and started local legal procedures. The mutual legal assistances were effective and quick.

If available, please provide information on some recent cases in which you have received a request for service of judicial documents

Brazil has not yet received requests for effecting service of judicial documents.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

178. Subparagraph 3 (c) of article 46

3. **Mutual legal assistance** to be afforded in accordance with this article may be requested for any of the following purposes:

...

(c) **Executing searches and seizures, and freezing;**

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Assistance can also always be provided on the basis of reciprocity.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

If available, please provide information on recent court or other cases in which you have made a request to execute searches, seizures, and freezing

In 2008, Brazil made 4 requests for freezing assets.

"Case 3" - One government body was investigated after denunciations of irregularities in the processes of International Competition to by specific products. Several severe measures such as breach of communications secrecy were taken allowing the discovery of a complex organized crime involving fraud and corruption.

The money received through these actions was transferred to some foreign countries by a person not allowed by the Central Bank to remit money abroad. One country was requested to provide bank records and also to trace and identify assets pertaining to the people involved. If something was found, the country should freeze it. Unfortunately the country could not grant the assistance.

About the other cases, we are not allowed to provide more information not to prejudice the progress of the respective Proceedings, because they are treated under confidentiality.

If available, please provide information on some recent cases in which you have received a request to execute searches, seizures, and freezing

Brazil has not received requests for freezing assets.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

179. Subparagraph 3 (d) of article 46

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

...

(d) Examining objects and sites;

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Assistance can also always be provided on the basis of reciprocity.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

If available, please provide information on recent court or other cases in which you have made a request to examine objects and sites

Brazil has not sent requests for examining objects and sites.

If available, please provide information on some recent cases in which you have received a request to examine objects and sites

Brazil has not received requests for examining objects and sites.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its

180. Subparagraph 3 (e) of article 46

3. **Mutual legal assistance** to be afforded in accordance with this article may be requested for any of the following purposes:

...

(e) **Providing information, evidentiary items and expert evaluations;**

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Assistance can also always be provided on the basis of reciprocity.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

If available, please provide information on recent court or other cases in which you have made a request to receive information, evidentiary items and expert evaluations

Between 2008 and 2010, Brazil has made 3 requests for obtaining information.

In these cases, the investigations began with complaints made by the local media, which informed the Brazilian authorities about the supposed payment of bribes by some companies to secure the signing of certain contracts.

"Case 4" - One investigation was started in Brazil after denunciations of payment of bribes by some companies to ensure the signing of contracts with the Public Administration. In this investigation the Brazilian competent authority ordered the breach of bank secrecy of several people which allowed the police authorities to find traces of the crime. At that time, the foreign press announced that there were investigations against the same companies in the countries X and Y.

Brazil has then formulated 2 requests to the X and Y countries to obtain information about their investigations, based on the UNCAC. The measures requested were to obtain copies of experts reports, financial information, statements and all documents which the foreign authorities could provide that would be useful to the Brazilian investigation.

"Case 5" - In one of those cases, the investigations began with complaints made by the local media, which informed the Brazilian authorities about the supposed payment of bribes by some companies to secure the signing of certain contracts.

In this regard, the Brazilian authorities have opened proceedings to investigate those companies, and, through international request to the Independent Inquiry Committee of the United Nations, based on the UNCAC, have asked for information about some transactions which were made by those companies that would be useful to the Brazilian investigation.

Concerning that, the request was fully executed by the requested authority.

If available, please provide information on some recent cases in which you have received a request to provide information, evidentiary items and expert evaluations

Brazil has not received requests for providing information, evidentiary items and expert evaluations.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

181. Subparagraph 3 (f) of article 46

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

...

(f) **Providing originals or certified copies of relevant documents and records**, including government, bank, financial, corporate or business records;

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Assistance can also always be provided on the basis of reciprocity.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

If available, please provide information on recent court or other cases in which you have made a request to receive originals or certified copies of relevant documents and records

In at least 16 requests for asset tracing, identification and freezing, relevant documents, including bank, financial, corporate or business records were requested.

"Case 6"- Investigation cases were started in Brazil to analyze the hiring of several members of the same family

to work for a government body. It was possible to discover that these family was linked to the approval of irregular contracts with the government body. For this approval, the family received part of the money. Some witnesses affirmed that this money was illegally sent abroad and it was necessary to confirm this information. Mutual legal assistance was requested to the country B to obtain bank records.

"Case 7" - One company in the agricultural sector was investigated for opening some accounts in a foreign country. The investigation showed that, coincidentally, it was the same period that a regional development bank was defrauded and its official money was detoured.

A witness affirmed that the company owners would have accounts in country A and, then, Brazil requested mutual legal assistance, based on the UNCAC, from the country A, in order to obtain bank information and to discover if the public money not used for the regional development had been detoured. Unfortunately, the banks of the country A do not maintain records for several years and the assistance could not be granted to Brazil.

"Case 8" - Between October and November, 2008, the Brazilian authorities were investigating some companies under suspicion of bribe in international business. Through local media, Brazilian authorities have found out that those companies were also under investigation on two other South American Countries, since those were multinational companies.

In this regard, in order to recollect further information for the investigations, the Brazilian Central Authority has sent two international requests, based on UNCAC, to obtain copies of penal proceedings in course on countries A and B.

Is important to mention that one of those requests was fully executed already, and as for the other one, the Brazilian Central Authority continues to expect the results of the request.

We are not allowed to provide more information concerning these specific cases to not prejudice the progress of the respective Proceedings, because they are treated under confidentiality.

If available, please provide information on some recent cases in which you have received a request to provide originals or certified copies of relevant documents and records

In 2008, Brazil has received 1 request to provide relevant documents.

We are not allowed to provide more information concerning these specific cases to not prejudice the progress of the respective Proceedings, because they are treated under confidentiality.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

182. Subparagraph 3 (g) of article 46

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

...

(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Assistance can also always be provided on the basis of reciprocity.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

If available, please provide information on recent court or other cases in which you have made a request for identification or tracing of proceeds of crime, property, instrumentalities or other things for evidentiary purposes

Between 2005 and 2009, Brazil has made 16 requests for tracing proceeds of crime.

We are not allowed to provide more information concerning these specific cases to not prejudice the progress of the respective Proceedings, because they are treated under confidentiality.

If available, please provide information on some recent cases in which you have received a request to identify or trace proceeds of crime, property, instrumentalities or other things for evidentiary purposes

In 2008, Brazil received 1 request for identifying proceeds of crime.

We are not allowed to provide more information concerning these specific cases to not prejudice the progress of the respective Proceedings, because they are treated under confidentiality.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

183. Subparagraph 3 (h) of article 46

3. **Mutual legal assistance** to be afforded in accordance with this article may be requested for any of the following purposes:

...

(h) Facilitating the voluntary appearance of persons in the requesting State Party;

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Assistance can also always be provided on the basis of reciprocity.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

If available, please provide information on recent court or other cases in which you have made a request for facilitation of the voluntary appearance of persons

Brazil has not yet sent requests for facilitating the voluntary appearance of persons in the requesting State Party.

If available, please provide information on some recent cases in which you have received a request to facilitate the voluntary appearance of persons

Brazil has not yet received requests for facilitating the voluntary appearance of persons in the requesting State Party.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

184. Subparagraph 3 (i) of article 46

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

...

(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Assistance can also always be provided on the basis of reciprocity.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

If available, please provide information on recent court or other cases in which you have made a request to receive other types of assistance

Brazil has not sent requests for assistance based on this Subparagraph.

If available, please provide information on some recent cases in which you have received a request to provide other types of assistance

Brazil has not received requests for assistance based on this Subparagraph.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

185. Subparagraph 3 (j) of article 46

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

...

(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Assistance can also always be provided on the basis of reciprocity.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

If available, please provide information on recent court or other cases in which you have made a request for identification, freezing and tracing the proceeds of crime in accordance with this Convention

Between 2006 and 2009, Brazil made 7 requests for identifying, tracing and freezing proceeds of crime to be recovered.

Until the present moment, none of them has been completely executed.

We are not allowed to provide more information concerning these specific cases not to prejudice the progress of the respective Proceedings, because they are treated under confidentiality.

If available, please provide information on some recent cases in which you have received a request to identify, freeze and trace the proceeds of crime in accordance with this Convention

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

186. Subparagraph 3 (k) of article 46

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

...

(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Assistance can also always be provided on the basis of reciprocity.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

If available, please provide information on recent court or other cases in which you have made a request for the recovery of assets in accordance with this Convention

Brazil has made 7 requests for the recovery of assets. One has been refused and the funds were released to the defendant. The others are still being executed.

We are not allowed to provide more information concerning these specific cases to not prejudice the progress of the respective Proceedings, because they are treated under confidentiality.

If available, please provide information on some recent cases in which you have received a request to recover assets in accordance with this Convention

Brazil has not received requests for the recovery of assets.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

187. Paragraph 4 of article 46

4. Without prejudice to domestic law, the **competent authorities** of a State Party may, **without prior request, transmit information relating to criminal matters to a competent authority in another State Party** where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party to this Convention.

Is it possible for your country to transmit information as described above?

(Y) Yes

Please cite, summarize and attach the applicable policy(ies) or measure(s):

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into force provide for this possibility and assistance is provided accordingly. Assistance can also always be provided on the basis of reciprocity. The Prosecutor General is one of the bodies competent to do so, as well as others within the Executive Branch, such as the Office of the Comptroller general, in matters relating to corruption.

Please attach the text(s)

There is no specific norm allowing for information transmission to foreign authorities in criminal matters.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

If available, please provide information on recent court or other cases in which you have received information relating to criminal matters, without prior request, that could assist authorities in undertaking or successfully concluding inquiries and criminal proceedings

In two recent cases (2008 and 2009), an European country has transmitted to the Brazilian authorities information regarding an investigation about corruption in which part of the crime took place in Brazil. After that, Brazil presented a formal request for MLA to the foreign country to obtain further information as evidence to be used in the Brazilian Proceedings.

The abovementioned case may be summarized as follows:

"Case 4" - One investigation was started in Brazil after denunciations of payment of bribes committed by some companies to ensure the signing of contracts with the Public Administration. In this investigation the Brazilian competent authority ordered the breach of bank secrecy of several people which allowed the police authorities to find traces of the crime. At that time, foreign press announced that there were investigations against the same companies in the countries X and Y.

Brazil has then formulated 2 requests to the countries X and Y to obtain information about their investigations, based on the UNCAC. The measures requested were to obtain copies of experts reports, financial information, statements and all documents which the foreign authorities could provide that would be useful to the Brazilian investigation.

Also, in a recent case (2006), Brazil has received some information from different Financial Intelligence Units of different countries which allowed the Brazilian authorities to investigate an important Brazilian case about corruption.

Another important case deals with the possible commission of the crime of money laundering and diversion of resources for private enrichment, by leaders of the Universal Church of the Kingdom of God (Igreja Universal do Reino de Deus) [Note: This is public information.]. The Superior Court of Justice considered valid communication from the Prosecutor General of State of the Sao Paulo to US authorities on the evidences of those crimes, with the request of, in accordance with its domestic law, the breach of bank secrecy of accused (Superior Court of Justice. Presidency. agravo regimental suspension of security in 2.382/SP. Rapporteur: Ari Pargendler Minister, President. Judged on October 26. 2010, monocratic decision. Journal of Electronic Justice 28 October. 2010; news available at <<http://ven.ou> <http://www.stj.gov.br/portal_stj/publicacao/engine.wsp?tmp.area=398&tmp.texto=99602; acesso em: 14 nov. 2010)." Yc="to / dul or <http://www.stj.gov.br/portal_stj/publicacao/engine.wsp?tmp.area=398&tmp.texto=99602, access: 14 November 2010)."to / dul> or <http://www.stj.gov.br/portal_stj/publicacao/engine.wsp?tmp.area=398&tmp.texto=99602>, access: 14 November 2010).

If available, please provide information on some recent cases in which you have transmitted information relating to criminal matters, without prior request, that could assist authorities in undertaking or successfully concluding inquiries and criminal proceedings

Brazil has not transmitted spontaneous informations as described in this Paragraph.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

188. Paragraph 5 of article 46

5. The **transmission of information pursuant to paragraph 4** of this article shall be **without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information**. The competent authorities receiving the information shall **comply with a request** that said **information remain confidential**, even temporarily, or with **restriction on its use**. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies) or measure(s):

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Assistance can also always be provided on the basis of reciprocity.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

Please provide information on the handling of recent court or other cases in which exculpatory evidence was disclosed by your authorities

Brazil has disclosed exculpatory evidence under this Paragraph.

Please provide information on the handling of some recent cases in which exculpatory evidence was disclosed by the authorities of a requested State Party

Brazil has not requested or received exculpatory evidence disclosed by the authorities of a requested State Party.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

189. Paragraph 6 of article 46

6. The provisions of this article **shall not affect the obligations under any other treaty**, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

In Brazil, treaties have the status as ordinary laws. Thus, this provision is in force and has law standard since Decree Nº 5.687, from January 31st, 2006 promulgated the UNCAC.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

190. Paragraph 7 of article 46

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are **not bound by a treaty of mutual legal assistance**. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.

Is your country bound by such treaty(ies) of mutual legal assistance?

(Y) Yes

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable treaty(ies), provision(s) or other measure(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into have mutual legal assistance chapters and assistance is provided accordingly. Assistance can also always be provided on the basis of reciprocity. The use of the best instrument for each MLA case is sought by the Brazilian Central Authority, the Departamento for Assets Recovery and International Legal Cooperation of the Ministry of Justice - DRCI. In the case of Brazilian requests, national authorities receive information on the best instrument for their requests. If a demand is received from abroad, the DRCI will suggest, if need be, the best instrument so that Brazil will better provide the assistance sought.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Please provide relevant treaty provisions or agreements with other States

The mutual legal assistance bilateral instruments in force are available at:
<http://portal.mj.gov.br/data/Pages/MJB53EDE30ITEMID6B887BA8B7B04664B80B0C73DCF4C8CCPTBRIE.htm>

The multilateral instruments in force that have MLA provisions are available at:
<http://portal.mj.gov.br/data/Pages/MJB53EDE30ITEMID4F35B33D57A44C7A887FFE3BFAE61831PTBRIE.htm>

Please provide information on recent cases in which mutual legal assistance was based on such treaty provisions or agreements

In more than 20 recent cases, Brazil has received or sent requests for mutual legal assistance based on reciprocity or on bilateral or regional treaties.

If available, please provide examples of recent cases in which your country and another State Party agreed to apply the provisions set forth in paragraphs 9 to 29 in order to facilitate cooperation

There is no case in which Brazil and another country have expressly agreed to apply the provisions of UNCAC in order to facilitate cooperation.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

191. Paragraph 8 of article 46

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

National authorities and foreign authorities, these via MLA procedures, have the same range of access to information originated in the lifting of bank secrecy. It is possible, by means of previous authorization by the Judicial branch, the lift of bank secrecy needed for the investigation of any criminal act in any phase of the inquiry or the judicial proceeding, particularly in relation to the crimes of terrorism, illicit trafficking of narcotic drugs or others, smuggling or trafficking of arms and ammunition or material used in their production, extortion by kidnapping, crimes against the national financial system, against the Public Administration, against the tax and social security order; money laundering or concealing of assets, rights and valuables, crimes perpetrated by a criminal organization (article 1, paragraph 4 of Complementary Law 105, dated 10 January 2001 - please find full text attached).

Many of the bilateral and multilateral treaties Brazil entered into force provide for this possibility and assistance is provided accordingly. Assistance can also always be provided on the basis of reciprocity.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review, including recent cases in which bank secrecy rules or issues did not impede effective mutual legal assistance

In more than one recent cases, Brazil has received requests for MLA in which it was requested the breach of bank secrecy of several accounts held in different Brazilian banks. Even if in Brazil there are rules of bank secrecy, the Public Prosecutor Office was able to obtain Brazilian decisions in order to have access to those accounts and to provide MLA accordingly.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

192. Subparagraph 9 (a) of article 46

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the **absence of dual criminality, shall take into account the purposes of this Convention**, as set forth in article 1;

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), practice(s), or other measure(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Assistance can also always be provided on the basis of reciprocity.

Demonstrating dual criminality to provide international legal cooperation is as an optional requisite in most treaties of this kind. In addition, in order to verify this requisite, the responsible Brazilian bodies are guided by the interpretation of the courts in the sense that: i) first degree arrangements (summons, subpoena, notification and evidence gathering) do not require the existence of dual criminality; ii) it must be taken into consideration only the essential elementary features of the crime description in the foreign legal system and the underlying conduct of the criminal, not the denomination attributed to the crime by each legal system.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related mutual legal assistance and other recent cases

Non applicable. As seen in previous items, on the requirement of dual criminality for granting mutual legal assistance.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

193. Subparagraph 9 (b) of article 46

(b) States Parties may **decline to render assistance pursuant to this article on the ground of absence of dual criminality**. However, a requested State Party shall, where consistent with the basic concepts of its legal system, **render assistance that does not involve coercive action**. Such assistance may be refused when requests involve matters of a *de minimis* nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), practice(s) or other measure(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Assistance can also always be provided on the basis of reciprocity.

Demonstrating dual criminality to provide international legal cooperation is as an optional requisite in most treaties of this kind. In addition, in order to verify this requisite, the responsible Brazilian bodies are guided by the interpretation of the courts in the sense that: i) first degree arrangements (summons, subpoena, notification and evidence gathering) do not require the existence of dual criminality; ii) it must be taken into consideration only the essential elementary features of the crime description in the foreign legal system and the underlying conduct of the criminal, not the denomination attributed to the crime by each legal system.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please explain what measures you consider to be coercive; please attach any available definitions or relevant legal texts

Please explain what matters you consider to be of a *de minimis* nature; please attach any available definitions or relevant legal texts

The Brazilian tradition in rendering MLA regularly does not take into account if the request involve matters of a *de minimis* nature. The Brazilian Central Authority does not have records of the denial of a single case on such grounds.

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

Please provide information on the types of non-coercive actions taken when rendering assistance in the absence of dual criminality

Non applicable. Brazil does not require dual criminality for granting mutual legal assistance.

Please provide information on recent cases in which your country refused mutual legal assistance on the ground of absence of dual criminality

Non applicable. Brazil does not require dual criminality for granting mutual legal assistance.

Please provide information on recent cases in which your request for mutual legal assistance was refused on the ground of absence of dual criminality

In a recent case, Brazil has requested mutual legal assistance from an European country which is studying the possibility to cooperate, as dual criminality is not clear in their view.

If applicable and available, please provide information on recent cases in which your country provided assistance to another State Party in the absence of dual criminality

Non applicable. Brazil is able to provide all mutual legal assistance regardless of dual criminality. Dual criminality is not a prerequisite to Brazil being able to provide MLA involving first degree arrangements (summons, subpoena, notification and evidence gathering). Where dual criminality is required, it needs only to be established that the same underlying conduct is criminalised (either as a stand alone offence or otherwise) in both Brazil and the requesting country. It is not necessary to establish that each element of the offence is identical.

If applicable and available, please provide information on recent cases in which you received assistance from another State Party in the absence of dual criminality

No such case was found in our records.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

194. Subparagraph 9 (c) of article 46

(c) Each State Party may consider adopting such measures as may be necessary to enable it to **provide a wider scope of assistance** pursuant to this article **in the absence of dual criminality**.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies), practice(s), or other measure(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Assistance can also always be provided on the basis of reciprocity.

Demonstrating dual criminality to provide international legal cooperation is as an optional requisite in most treaties of this kind. In addition, in order to verify this requisite, the responsible Brazilian bodies are guided by the interpretation of the courts in the sense that: i) first degree arrangements (summons, subpoena, notification and evidence gathering) do not require the existence of dual criminality; ii) it must be taken into consideration only the essential elementary features of the crime description in the foreign legal system and the underlying conduct of the criminal, not the denomination attributed to the crime by each legal system.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases in which assistance was provided despite the lack of dual criminality

Non applicable. Brazil is able to provide all mutual legal assistance regardless of dual criminality.

Have you ever assessed the effectiveness of the measures adopted to facilitate the provision of assistance in the absence of dual criminality?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

195. Subparagraph 10 (a) of article 46

10. A **person who is being detained or is serving a sentence** in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention **may be transferred** if the following conditions are met:

(a) **The person freely gives his or her informed consent;**

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Assistance can also always be provided on the basis of reciprocity.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases

No relevant cases were found in our records.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under

review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

196. Subparagraph 10 (b) of article 46

10. A **person who is being detained or is serving a sentence** in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention **may be transferred if** the following conditions are met:

...

(b) The **competent authorities of both States Parties agree**, subject to such conditions as those States Parties may deem appropriate.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s), agreement(s) and condition(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Assistance can also always be provided on the basis of reciprocity.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases

No relevant case was found in our records.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

197. Subparagraph 11 (a) of article 46

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Assistance can also always be provided on the basis of reciprocity.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and recent related cases

No relevant case was found in our records.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

198. Subparagraph 11 (b) of article 46

11. For the purposes of paragraph 10 of this article:

...

(b) The State Party to which the person is transferred shall **without delay implement its obligation to return the person** to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Assistance can also always be provided on the basis of reciprocity.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and recent related transfer cases

No relevant case was found in our records.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

199. Subparagraph 11 (c) of article 46

11. For the purposes of paragraph 10 of this article:

...

(c) The State Party to which the person is transferred **shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;**

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

200. Subparagraph 11 (d) of article 46

11. For the purposes of paragraph 10 of this article:

...

(d) The **person transferred shall receive credit for service of the sentence being served** in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and recent related transfer cases

No relevant case was found in our records.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

201. Paragraph 12 of article 46

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, **shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty** in the territory of the State to which that person is transferred **in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.**

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies) or measure(s):

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Decree Nº 5.687, of January 31, 2006, which promulgates the UNCAC confers the status of ordinary law to the Convention.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and recent related cases

No relevant case was found in our records.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

202. Paragraph 13 of article 46

13. Each State Party shall **designate a central authority** that shall have the responsibility and power to **receive requests for mutual legal assistance** and either to **execute them or to transmit them** to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. **The Secretary-General of the United Nations shall be notified of the central authority** designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

Has your country established a central authority(ies) as described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable arrangement(s) or measure(s)

Please cite the text(s)

For assistance made with or received under the UNCAC, the Central Authority is the DRCI - Departamento de Recuperação de Ativos e Cooperação Internacional (Department of Recovery of Asset and International Cooperation), from the Ministry of Justice.

The majority of the Mutual Legal Assistance Treaties in Criminal Matters concluded by the Brazilian State appoints the Ministry of Justice as the Brazilian Central Authority. Besides, the Decree 6.061 of 15 March 2007 established that the Department of Asset Recovery and International Legal Cooperation-DRCI is the unit of that Ministry to which this function was assigned.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If applicable and available, please provide recent court or other cases

Have you ever assessed the effectiveness of the measures adopted to designate a central authority responsible for receiving requests for mutual legal assistance and for executing or transmitting them? (Check one answer)

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

Has your country notified the Secretary-General of the United Nations as prescribed above? (Check one answer)

(Y) Yes

Does your country allow that requests for mutual legal assistance and any related communications be transmitted to the central authorities designated by States Parties? (Check one answer)

(Y) Yes

Does your country require that such requests and related communications be addressed to it through diplomatic channels? (Check one answer)

(N) No

Does your country agree that, in urgent circumstances, requests for mutual legal assistance and related communications be addressed to it through the International Criminal Police Organization? (Check one answer)

(Y) Yes

The Interpol and any other channel, including faxes, e-mails or telephone calls are acceptable for the transmission of an urgent request. Every action possible for the guarantee of the effectiveness and timeliness of the request will be done in advance, but the assistance itself will only be executed when the formal written documentation is received.

203. Paragraph 14 of article 46

14. **Requests shall be made in writing** or, where possible, by **any means capable of producing a written record, in a language acceptable** to the requested State Party, under conditions allowing that State Party to establish authenticity. The **Secretary-General of the United Nations shall be notified of the language or languages acceptable** to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

Has your country notified the Secretary-General of the United Nations as prescribed above? (Check one answer)

(Y) Yes

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s) and language(s)

Please cite the text(s)

The Interpol and any other channel, including faxes, e-mails or telephone calls are acceptable for the transmission

of an urgent request. Every action possible for the guarantee of the effectiveness and timeliness of the request will be done in advance, but the assistance itself will only be executed when the formal written documentation is received.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

204. Paragraph 15 of article 46

15. A request for mutual legal assistance shall contain:

(a) The **identity of the authority making the request;**

(b) The **subject matter and nature of the investigation, prosecution or judicial proceeding** to which the request relates and the **name and functions of the authority conducting the investigation, prosecution or judicial proceeding;**

(c) A **summary of the relevant facts**, except in relation to requests for the service of judicial documents;

(d) A **description of the assistance sought and details of any particular procedure** that the requesting State Party wishes to be followed;

(e) Where possible, the **identity, location and nationality of any person concerned;** and

(f) The **purpose** for which the evidence, information or action is sought.

Is your country in compliance with provision (a) above? (Check one answer)

(Y) Yes

Is your country in compliance with provision (b) above? (Check one answer)

(Y) Yes

Is your country in compliance with provision (c) above? (Check one answer)

(Y) Yes

Is your country in compliance with provision (d) above? (Check one answer)

(Y) Yes

Is your country in compliance with provision (e) above? (Check one answer)

(Y) Yes

Is your country in compliance with provision (f) above? (Check one answer)

(Y) Yes

Please provide a sample request for mutual legal assistance containing all the requirements

Request for Mutual Legal Assistance in Criminal Matters

- 1.) **Legal Grounds:** This request for assistance is based on:
 - a. The United Nations Convention Against Transnational Organized Crime - Palermo Convention or UNTOC.
 - b. The United Nations Convention Against Corruption - Merida Convention or UNCAC.
- 2.) **To:** Central Authority of
- 3.) **From:** Department of Assets Recovery and International Legal Cooperation / National Secretariat of Justice / Ministry of Justice of Brazil.
- 4.) **Requesting Authority:** The name and the occupation.
- 5.) **Reference:** Name given to the case , like “Operation XYZ.”
- 6.) **Summary:** Describe the number of the Proceedings and the court in charge to preserve the principle os specialty.
 - a. Proceedings:
 - i. XXXXXXXXXXXXX, under way at the Xth Criminal Court of São Paulo, state of São Paulo, which aimed, among other measures, at the search and seizure, the lift of bank and tax secrecy for charge of active corruption.
 - b. Legal provisions referring to the offenses perpetrated.
 - i. Articles 4, 16, 17 and 22 of the Law No. 7.492/86 (crimes against the national financial system);
 - ii. Article 1st, subsection VI of the Law No. 9.613/98 (money laundering).
 - iii. Article 337 of the Brazilian Criminal Code (Decree-Law No. 2.848/40).
 - c. Investigated persons: XXXXXXXXXXXXXXXXXXXXXXX
- 7.) **Facts:** Describe the facts occurred so as the foreign countries whose domestics laws requires dual criminality can find in their laws a

correspondent crime.

8.) Transcription of the legal provisions: To mention on which domestic law the Proceedings/Investigation is based.

a. Decree-Law No. 2.848/40 (Brazilian Criminal Code)

Article 333 (Active Corruption) - To offer ou to promise undue advantage to a public official, in order to determine him or her to practice, omit ou delay an official act:

Sentence - incarceration, from 2 (two) to 12 (twelve) years, and fine.

Sole paragraph - The sentence is raised by a third if, in reason to the undue advantage or promise, the public official delays or omits an official act, or practices it breaching functional duty.

9.) Description of the requested assistance:

To mention which kind of assistance will be necessary.

Example: Lift of secrecy and restraint of the accounts maintained in financial institutions.

10.) Objective of the Request:

To inform in what the assistance will help the national proceedings or investigations to continue.

Example: This request for assistance aims to locate and freeze embezzled funds in order to allow for the their characterization as resulting from criminal activities, and also to verify the existence of other beneficiaries and the continuance of the crimes of money laundering and corruption.

11.) Procedures to be observed:

To mention if it is requested confidentiality and/or urgency in the proceeding of this request for assistance.

City, Date.

Signature of the Requesting Authority

Have you ever assessed the effectiveness of any of the measures adopted to comply with the provision under review?(Check one answer)

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized (please specify which of the measures (a) to (f) above your answer refers to):

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

205. Paragraph 16 of article 46

16. The requested State Party **may request additional information** when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s) and types of additional information you may need

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Decree N° 5.687, of January 31, 2006, which promulgates the UNCAC confers the status of ordinary law to the Convention.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and recent related cases where additional information was necessary

In recent cases between Brazil and two American Countries we were requested to provide additional information regarding one of the measures in the request, for instance: the confirmation of the account number or the full name of his holder (when the request aims at the transmission of bank documents related to the bank account). The additional information was provided by the Brazilian authorities.

Please describe the types of additional information deemed necessary

The information demanded by the UNCAC text are enough for the vast majority of the cases. There might be cases, nevertheless, in which additional information to be provided by the requesting State may be necessary in order to provide effective and timely cooperation.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

206. Paragraph 17 of article 46

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies) or other measure(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Decree Nº 5.687, of January 31, 2006, which promulgates the UNCAC confers the status of ordinary law to the Convention. Assistance can also always be provided on the basis of reciprocity.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Please provide information on requests executed in ways different from those specified in the request due to domestic legal requirements

In recent cases involving Brazil and other countries, the authorities have specifically asked for confidentiality in the treatment of requests.

Also, when the mentioned request aims at the service of the process, according to the Brazilian Criminal Code, the defendant has the right to present his previous defense to the criminal charge brought before him within 10 (ten) days.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

207. Paragraph 18 of article 46

18. Whenever possible and consistent with fundamental principles of domestic law, when an **individual** is in the **territory of a State Party** and **has to be heard as a witness or expert by the judicial authorities of another State Party**, the first State Party may, at the request of the other, **permit the hearing to take place by video conference** if it is not possible or desirable for the individual in question to appear in person in the

territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

Does your country permit hearings of individuals mentioned above to take place by video conference as described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Articles 185 and 222 of the Brazilian Code of Criminal Procedure provide for the use of videoconference in criminal proceedings. Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Decree N° 5.687, of January 31, 2006, which promulgates the UNCAC confers the status of ordinary law to the Convention. Assistance can also always be provided on the basis of reciprocity.

Please attach the text(s)

Code of Criminal Procedure

Art. 185. The defendant when appearing before a judiciary authority, in the course of a criminal proceeding, shall be qualified and interrogated in the presence of his/her, appointed or nominated, defender.

§ 2. Exceptionally, the judge, by a reasoned decision, ex officio or after a request of either party, may conduct the interrogation through a videoconference system or other technological resource for transmission of sounds and images in real time, provided that the measure is necessary to tend to one of the following purposes:

I - to prevent risks to public safety, when there are solid grounds to suspect that the defendant is part of a criminal organization or that he/she could escape during his/her transportation to Court;

II - to allow for the participation of the defendant in the act, when there is relevant difficulty to his/her presence in Court due to an illness or other personal circumstance;

III - to prevent the defendant from influencing the deposition of witnesses or victims, as long as it is not possible for them to give their depositions through a videoconference, as stated in art. 217 of this Code;

IV - to answer to a serious matter of public order.

Article 222. The witness who lives outside the jurisdiction of the court will be questioned by the judge at his/her place of residence, to that end a letter rogatory being issued, with reasonable period, the parties being enjoined.

§ 1. The expedition of rogatory shall not suspend the prosecution.

§ 2. After the deadline marked, the judgement can take place, but at any time, the rogatory, once returned, will be added to the file.

§ 3. In the case provided for in this article, the hearing of the witness may be held by videoconference or other technological device to transmit sound and pictures in real time, allowed the presence of the defender, and can be performed even during the hearing of evidence and trial.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases

If applicable and available, please provide information on recent cases in which a hearing has been permitted to take place by video conference if it was not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party

Please provide information on recent relevant cases in which you made or received such a request

No relevant case was found in our records.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Brazil does not yet count on systematized statistics to quantify the enforcement of this mechanism.

208. Paragraph 19 of article 46

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Decree Nº 5.687, of January 31, 2006, which promulgates the UNCAC confers the status of ordinary law to the Convention. Assistance can also always be provided on the basis of reciprocity.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

In a case in which the Federal Prosecutor (MPF) received documents from Switzerland with use restrictions in criminal proceedings for tax crime, the MPF itself filed a lawsuit with the aim of excluding the documents used for this purpose, in compliance with the commitment to that country

Please provide information on the handling of recent cases in which exculpatory evidence was disclosed by your authorities

Neither our authorities nor authorities of a requesting State disclosed exculpatory evidence for investigations, prosecutions or judicial proceedings other than those stated in the request. Thus, there are no recent cases in which exculpatory evidences were disclosed by our authorities or by authorities of a requesting State.

Please provide information on recent court or other cases in which exculpatory evidence was disclosed by the authorities of a requesting State

Neither our authorities nor authorities of a requesting State disclosed exculpatory evidence for investigations, prosecutions or judicial proceedings other than those stated in the request. Thus there are no recent cases in which exculpatory evidences were disclosed by our authorities or by authorities of a requesting State.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions and Brazil has always received good evaluations in this regard.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

209. Paragraph 20 of article 46

20. The requesting State Party may require that the requested State Party **keep confidential the fact and substance of the request**, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Decree N° 5.687, of January 31, 2006, which promulgates the UNCAC confers the status of ordinary law to the Convention. Assistance can also always be provided on the basis of reciprocity.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or

legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and recent cases in which it was not possible to comply with the requirement of confidentiality

We have found no relevant case in our files.

Please provide information on how such cases were handled

There is no recent case in which Brazil was not able to comply with the requirement of confidentiality. Normally, except to extent necessary to execute the request, Brazil keeps the fact and the substance of the request confidential. An example of the successful implementations of domestic measures adopted to comply with the requirement of confidentiality are based on our Criminal Process Code, article 20, which affirms that the authority will ensure the investigation secrecy necessary to elucidate the fact or required by the interests of society. Moreover, the UNCAC is in force in Brazil and has the force of an ordinary law, which, by itself, is enough to create the obligation of confidentiality based on the Convention.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

210. Subparagraph 21 (a) of article 46

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Decree Nº 5.687, of January 31, 2006, which promulgates the UNCAC confers the status of ordinary law to the Convention. Thus, the requirements of the UNCAC for an MLA request are necessary for the provision of MLA based on the Convention. Nevertheless, if a request is based on another treaty or on reciprocity, the requirements may differ.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

If applicable and available, please provide information on recent court or other cases in which you refused mutual legal assistance because the request was not made in conformity with the provisions of this article

There are recent cases with other countries from America in which we refused mutual legal assistance because the requests were not made according to the provisions of this Article. These requests, after being modified, were duly executed.

If applicable and available, please provide information on other recent cases in which you were refused mutual legal assistance because the request was not made in conformity with the provisions of this article

No such cases were found in our records.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions and Brazil has always received good evaluations in this regard.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

211. Subparagraph 21 (b) of article 46

21. Mutual legal assistance may be refused:

...

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Decree Nº 5.687, of January 31, 2006, which promulgates the UNCAC confers the status of ordinary law to the Convention. Thus, the requirements of the UNCAC for an MLA request are necessary for the provision of MLA based on the Convention. Nevertheless, if a request is based on another treaty or on reciprocity, the requirements may differ.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

If applicable and available, please provide information on recent court or other cases in which you refused mutual legal assistance because you considered that the execution of the request was likely to prejudice your sovereignty, security, ordre public or other essential interests

There is no recent court or other cases in which we refused mutual legal assistance due to considering that the execution of the request was likely to prejudice our order public, security, sovereignty, or other essential interests, neither a refusal from another country concerning this article.

If applicable and available, please provide information on recent other cases in which you were refused mutual legal assistance because the execution of the request was considered to be likely to prejudice other States parties' sovereignty, security, ordre public or other essential interests

No relevant cases were found in our records.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions and Brazil has always received good evaluations in this regard.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

212. Subparagraph 21 (c) of article 46

21. Mutual legal assistance may be refused:

...

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Decree Nº 5.687, of January 31, 2006, which promulgates the UNCAC confers the status of ordinary law to the Convention.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under

review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

If applicable and available, please provide information on recent court or other cases in which you refused mutual legal assistance because the requested action was prohibited by your domestic law

There is no recent court case in which we refused mutual legal assistance because the requested actions were prohibited by our domestic law from carrying out the action requested with regard to any similar offence.

If applicable and available, please provide information on other recent cases in which you were refused mutual legal assistance because the requested action was prohibited by the requested State Party's domestic law

No relevant cases were found in our records.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions and Brazil has always received good evaluations in this regard.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

213. Subparagraph 21 (d) of article 46

21. Mutual legal assistance may be refused:

...

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Decree Nº 5.687, of January 31, 2006, which promulgates the UNCAC confers the status of ordinary law to the Convention.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under

review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

If applicable and available, please provide information on recent court or other cases in which you refused mutual legal assistance because it would have been contrary to your legislative framework on mutual legal assistance

No relevant cases were found in our records.

If applicable and available, please provide information on other recent cases in which you were refused mutual legal assistance because it would have been contrary to the requested State Party's legislative framework on mutual legal assistance

In 2010, Brazil was refused mutual legal assistance in one case because the foreign Court decided the requested action was prohibited by the domestic law.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions and Brazil has always received good evaluations in this regard.

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

214. Paragraph 22 of article 46

22. States Parties **may not refuse a request for mutual legal assistance on the sole ground** that the offence is also considered to **involve fiscal matters**.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Brazil does not refuse MLA requests when they involve fiscal matters. Brazilian law defines various types of tax crimes, so that hardly a request for international legal cooperation would be refused for lack of compliance with the principle of double jeopardy (double criminality or dual criminality).

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under

review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review, including mutual legal assistance in recent cases involving fiscal matters

Brazil does not refuse MLA on these grounds. Nevertheless, in a recent case, an European State denied a Brazilian request that involved fiscal matters, financial crimes and tax evasion. Brazil sent it back to the other State Party, asking for the execution concerning the financial crimes, excepting the crime based on which they understood it was not possible to cooperate.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

215. Paragraph 23 of article 46

23. Reasons shall be given for any refusal of mutual legal assistance.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

The Brazilian Central Authority for the Merida Convention, the Department for Assets Recovery and International Legal Cooperation of the Ministry of Justice - DRCI, examines all cases of refusal of assistance, be them under the UNCAC or not. Should any case of refusal arrive at the Central Authority, DRCI will make sure there is no chance of providing the assistance as requested, and then, only then, write a letter to the requesting Authority informing the reasons for the denial and, if possible, any other means of obtaining the requested assistance.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and recent related cases

In a recent case, Brazil asked for the reconsideration of a request that was not executed by the State Party, which claimed that the request was supposedly offending an Article of the bilateral MLAT, for involving tax matters.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

216. Paragraph 24 of article 46

24. The requested State Party shall **execute the request for mutual legal assistance as soon as possible** and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

The Brazilian Central Authority for the Merida Convention, the Department for Assets Recovery and International Legal Cooperation of the Ministry of Justice - DRCI, executes or forwards for execution all requests of MLA within two to three working days.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and recent related cases

One of the most efficient and successful measure adopted by the Brazilian Central Authority to contact its counterparts by e-mail.

Please provide information on the customary length of time between receiving requests for mutual legal assistance and responding to them

It takes six months on average to accomplish the measure required.

Please provide information on recent cases in which a requesting State inquired about the status and progress of measures taken by your authorities

In most of the cases, after three months without any answer, the requesting State uses to ask about the status

and progress of the measures taken by our authorities.

Please provide information on recent cases in which your country was able to respond to such inquiries and how

When the requesting authority asks about the status and progress of a request, the Brazilian Central Authority gets in touch with the competent authority by Official letter or e-mail and, at the same time, informs the requesting authority about these actions. Also, the Brazilian Central Authority commits to forward the response as soon as it arrives in its office.

Please provide information on recent cases in which the requesting State Party informed you that the assistance sought was no longer required

We have no recent case in which the requesting State Party informed us that the assistance sought was no longer required.

Please provide information on the customary length of time between submitting requests for mutual legal assistance and receiving a response to them

It takes six months on average.

Please provide information on recent cases in which you requested information about the status and progress of measures taken by another State Party's authorities

If need be, the Brazilian Central Authority gets in touch with the Central Authority of the other State Party, by Official letter or e-mail, and at the same time informs the requesting authority about these actions. Also, the Brazilian Central Authority commits to forward the response as soon as it arrives in its office.

Please provide information on recent cases in which another State Party was able to respond to such inquiries and how. Please provide information on recent cases where you informed another State Party that the assistance sought was no longer required

In some cases, the requested State Party asks for additional information, which the Brazilian Central Authority demands the requesting authority to provide.

Have you ever assessed the effectiveness of the measures adopted to regulate the execution of requests for mutual legal assistance?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

217. Paragraph 25 of article 46

25. **Mutual legal assistance may be postponed** by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Decree Nº 5.687, of January 31, 2006, which promulgates the UNCAC confers the status of ordinary law to the Convention.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review, including recent cases in which the provision of mutual legal assistance was postponed by the requested State Party on the ground that it interfered with an ongoing investigation, prosecution or judicial proceeding

Brazil has no recent case in which the provision of mutual legal assistance was postponed by the requested State Party on the ground that it interfered with an ongoing investigation, prosecution or judicial proceeding.

Please provide information on recent cases in which you postponed the provision of mutual legal assistance on the ground that it interfered with an ongoing investigation, prosecution or judicial proceeding

The Brazilian Authority has no record of cases in which it postponed the provision of mutual legal assistance on the ground that it interfered with an ongoing investigation, prosecution or judicial proceeding.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

218. Paragraph 26 of article 46

26. **Before refusing a request** pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall **consult** with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Decree Nº 5.687, of January 31, 2006, which promulgates the UNCAC confers the status of ordinary law to the Convention.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review, recent related cases, and ways in which they were handled

The Brazilian Central Authority consults with its counterparts before refusing requests, generally by e-mail or other electronic means, such as the Secure Information Exchange System provided by the Organization of the American States.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

219. Paragraph 27 of article 46

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other **person who**, at the request of the requesting State Party, **consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding** in the territory of the requesting State Party **shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty** in that territory **in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party**. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Decree N° 5.687, of January 31, 2006, which promulgates the UNCAC confers the status of ordinary law to the Convention.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and recent related cases

No relevant cases were found in our records.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

220. Paragraph 28 of article 46

28. The **ordinary costs** of executing a request shall be **borne by the requested State Party**, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable policy(ies) or other measure(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Decree Nº 5.687, of January 31, 2006, which promulgates the UNCAC confers the status of ordinary law to the Convention.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Please provide examples of recent arrangements related to cases in which costs were not covered (only) by the requested State

There are no recent arrangements related to cases in which ordinary costs of executing were necessary to fulfil the request.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

221. Subparagraph 29 (a) of article 46

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Decree Nº 5.687, of January 31, 2006, which promulgates the UNCAC confers the status of ordinary law to the Convention.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If available, please provide information on how such records, documents or information can be obtained and how they were provided to the requesting State Party

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

222. Subparagraph 29 (b) of article 46

29. The requested State Party:

...

(b) **May**, at its discretion, **provide** to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, **copies of any government records, documents or information** in its possession that under its domestic law are **not available to the general public**.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Many of the bilateral and multilateral treaties Brazil entered into provide for this possibility and assistance is provided accordingly. Decree Nº 5.687, of January 31, 2006, which promulgates the UNCAC confers the status of ordinary law to the Convention.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review, including the types of records, documents or information not available to the general public and ways in which they were provided to the requesting State Party and provided to you by a requested State Party

In a recent case in Brazil, concerning an important matter of corruption related to one big company, Brazil has sent a request to an European Country.

In this regard, through international cooperation Brazil requested the sharing of evidences produced in their domestic cases.

In response, Brazil received documents and information not available to the general public.

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

223. Paragraph 30 of article 46

30. States Parties shall consider, as may be necessary, the possibility of **concluding bilateral or multilateral agreements or arrangements** that would serve the purposes of, give practical effect to, or enhance the provisions of this article.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable bilateral or multilateral agreement(s) or arrangement(s) or other measure(s)

Please cite the text(s)

Brazil has concluded several MLATs and multilateral agreements that cover the subject of the UNCAC.

Bilateral agreements in order to provide assistance in criminal matters are in force with: Canada, China, Colombia, Cuba, France, Italy, Peru, Portugal, Spain, South Korea, Surinam, Switzerland, Ukraine and the United States of America.

Agreements were also negotiated and approved by the Congress as regards Angola, Honduras, Lebanon, Mexico, Nigeria, Panama and the United Kingdom.

Agreements with Belgium, Jordan and El Salvador have been signed, but pending approval from the Congress. Some agreements were also signed but still not sent to approval by the Congress: Algeria, The Bahamas, Germany, Hong Kong, Morocco, Nicaragua, Romania, Syria and Turkey, as well another relevant country that requested confidentiality until the agreement is in Congress.

Agreements are being negotiated with Albania, the British Virgin Islands, Cameroon, Cayman Islands, Costa Rica, Egypt, Ecuador, Greece, India, Iran, South Africa, Israel, Liechtenstein, Lithuania, Luxembourg, Monaco, Norway, Poland, Russia, South Africa and the United Arab Emirates.

Brazil is also a part to the United Nations Convention against Transnational Organized Crime and to its Protocols, which serves as a basis for mutual legal assistance in criminal matters.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Have you ever assessed the effectiveness of the measures adopted to conclude such bilateral or multilateral agreements or arrangements?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools

and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

224. Article 47

States Parties shall consider the possibility of **transferring to one another proceedings for the prosecution of an offence** established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

The transferring of proceedings is not a part of the Brazilian legal system. Nevertheless, whenever such a situation arises, Brazil solves it by sending or receiving the relevant information to or from its international counterpart, so that local proceedings can be initiated in the requested country, in order to prosecute the offence accordingly. This can be done on the basis of treaties or reciprocity.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

If available, please provide information on recent court or other cases in which proceedings for the prosecution of an offence of corruption have been transferred to and from you

Non applicable. There is no legal framework in Brazil which allows the transfer of proceedings.

Have you ever assessed the effectiveness of the measures adopted to facilitate the transfer of proceedings for the prosecution of an offence established in accordance with the Convention?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

225. Subparagraph 1 (a) of article 48

1. States Parties shall **cooperate closely** with one another, consistent with their respective domestic legal and administrative systems, to **enhance the effectiveness of law enforcement action to combat the offences covered by this Convention**. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish **channels of communication between their competent authorities, agencies and services** in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Networks of legal cooperation are intended to solve problems found in the cooperation among States. Accessing information, meeting deadlines and specific legal procedures in each country and searching for and solutions are addressed. Some networks are composed by national contact points designated by Prosecuting authorities, the judiciary and other entities involved in legal cooperation, which center themes of cooperation nation-wide and act as intermediaries for closer cooperation between their country and other members of the network. The networks seek to facilitate cooperation through informal contacts, information sharing, markup hearings, preliminary examinations over requests for assistance. To that end, they hold periodic meetings. Currently, Brazil takes part of three networks of international legal cooperation: a) Ibero-American Judicial Cooperation Network (IberRED) b) Network of International Legal and Judicial Cooperation of Portuguese Language Countries (CPLP Judicial Network), c) Hemispheric Network for Exchange of Information for Legal Assistance in Criminal Matters and Extradition.

International cooperation actions related to the Federal Police Department are carried out through executive aspect and they are held by the International Criminal Police Coordination General, which represents INTERPOL in Brazil and among its duties we can mention:

- coordinate, together with congeneric areas abroad, the execution of international criminal police acts demanded by Brazilian authorities;
- in Brazil, coordinate the execution of formal acts requested by foreign authorities, which include necessary procedures for active and passive extradition and for promoting sharing information with other congeneric entities and multinational organizations recognized by Brazil which participate in police organizations, for the sake of the investigation process.

The National Strategy Against Corruption and Money Laundering (ENCCLA), which is co-ordinated by the Ministry of Justice, is the primary policy-co-ordination mechanism in Brazil with respect to ML, FT and corruption. The Integrated Management Cabinet for Prevention and Combat against Corruption and Money Laundering (GGI-LD), composed of 60 agencies, meets once a year to identify ML/FT activities and review the effectiveness of the national system in order to determine the main objectives for the ENCCLA for the following year. The document that results from this meeting establishes joint actions for the GGI-LD members. ENCCLA is in charge of delivering this national policy and also seeks to enhance the co-ordination of relevant government institutions and the private sector. The full ENCCLA meets once per year, and a core group of ENCCLA's members meet every three months. Since 2008, the ENCCLA has had three Working Groups: the Legal Working Group which reviews national legislation and proposes legal reforms; the Operational and Strategic Working Group which identifies domestic trends and emerging typologies of ML and corruption; and the Information Technology Working Group which provides technology support to the other working groups and facilitates the integration of national databases. The Working Groups meet in the days before the annual Plenary and on an ad-hoc basis. For example, the Legal Working Group held nine meetings in 2009.

ENCCLA brings together a broad range of government ministries and agencies. In 2009, the following bodies participated in ENCCLA: the General Attorney's Office (AGU); Brazilian Intelligence Agency (ABIN); Brazilian Telecommunications Agency; Federal Judge Association; National Association of the Federal Prosecutors; Association of Magistrates of the State of Rio de Janeiro; National Association of State Attorneys; BACEN; Bank of Brazil; Chamber of Deputies; Republic Presidency's Civil House; Federal Savings Bank; CVM; Federal Justice Council; COAF; National Council of Justice; National Council of Public Prosecution; National Council of the Attorneys-General of the Federal and State Public Prosecution; National Council of State Chief of Police; CGU; DPF; DRCI; Republic Presidency's Institutional Security Cabinet; National Social Security Office; Ministry of Defense; Ministry of Finance; Ministry of Justice; Ministry of Social Security; MRE; Ministry of Labor; Ministry of Planning, Budget and Management; Public Prosecutor's Office; the National Finance Attorney General; Secretariat of the Federal Revenue of Brazil; Legislative Issues Secretariat; Economic Rights Secretariat; SPC; Secretariat for the Reform of the Judiciary; National Treasury Secretariat; National Anti-drugs Secretariat; National Secretariat of

Justice; National Public Security Secretariat; Federal Budget Secretariat; Federal Senate; SUSEP; Superior Court of Justice; Federal Supreme Court; Federal Court of Audit; Brazilian Public Prosecutor Schools Board of Directors; National Collegiate of Correctors of Justice; Brazilian Federation of Banks Association; Government of the State of Bahia; National Group for the Combat against Organised Criminal Groups; State Public Prosecution of Bahia; State Public Prosecution of São Paulo; State Public Prosecution of Rio de Janeiro; Bahia Secretariat of Public Security; Bahia Court of Justice; and the Electoral Superior Court.

Also, the Brazilian system for reporting activities possibly related to money laundering or terrorist financing comprises two types of reports to the Brazilian Financial Intelligence Unit - FIU, the Council for the Control of Financial Activities - COAF. In accordance with the AML Law, Law 6.613, these types are: suspicious transactions reports (STRs) and currency transaction reports (CTRs). All STRs and CTRs are submitted electronically to COAF in encrypted form through COAF's System of Information (SISCOAF); therefore, COAF is a paperless FIU.

COAF disseminates its products to all investigative agencies at the federal and state level, including the federal and state police and prosecutors, and the investigative branch of the federal tax authorities.

The COAF Plenary is responsible for deliberating on issues related specifically to COAF's activities as an FIU and supervisor. The COAF Plenary meets monthly and comprises the President and representatives of: BACEN, CVM, SUSEP, the General Attorney Office of the National Treasury, ABIN, the DPF, the Secretariat of Federal Revenue (RFB), the MRE, the Ministry of Justice and the CGU. One of the objectives of structuring COAF as an inter-ministerial, collegiate decision-making body was to facilitate standardisation of the regulations, actions and measures applied to the reporting entities.

COAF has access on a timely basis to a wide range of financial, administrative and law enforcement information that it requires to properly undertake its functions. COAF's requests to government authorities for information must be made using specific forms and the requested authority must treat these matters as a high priority (Decree 2799/1998 art.11, para.2-3). For information which is not of a confidential nature, government authorities must establish mechanisms to make their IT systems compatible with COAF's for the exchange of electronic information (art.11, para.5). SISCOAF provides COAF with a direct connection to nine authorities' databases. COAF also accesses 16 databases via web connections, gains access to three databases by way of batch request, and may obtain information on request from a further nine government databases.

Access to database via SISCOAF

National Register of Legal Entity

National Register of Natural Person

Declaration of Real Estate Operations

The Information System of the Central Bank

System of Elections Campaigns Accountability - Electoral Superior Court

Integrated System of Governmental Staff Administration

The General Attorney of National Treasury

Register of Commercial Establishments

Line of Foreign Trade Information

Information may be obtained on request

National Register of Electors - Personal Information

Commercial Unions of the Brazilian Federative States

National Council of Prosecutors

National Statistical Data related to Drug Enforcement

System of Generative Information of Tax Action

Register and Tracing of Customs Mediators' Actions

Declaration of Income Tax of Natural Persons and Legal Entities

Tax Payers' Dossiers

National Registry of Companies - National Department of Commerce Registries

Access to database via a web interface

Register of Tourism Services Providers

Register of Governmental Tourism Projects

National Register of Auto-motor vehicles
National Register of Driver licenses
National System of Rural Register
ICONE Service of the Presidency of the Republic
System of Analysis of Foreign Trade Information
National Register of Social Security Information
National System of Foreigner Register
National System of Passports
National System of Wanted and Interrupted People
System of Prosecution Accompaniment
National System of Criminal Information
National System of Procedures
National System of International Traffic
National System of Chemical Products Control

Access to information via batch requests
Register of Aircrafts
National Register of Vessels
e-DPV database of the RFB

Please attach the text(s)

For IberRED, please refer to <http://www.iberred.org/reglamentacion>.

As for the CPCL Legal Network, the three main documents are:

a) Convention for Judicial Assistance in Criminal Matters of the Member States to the Community of Portuguese Speaking Countries, of November 23rd 2005 (available at: <http://ven.to/du-> or http://www.rjcplp.org/RJCPLP/sections/informacao/instrumentos-multilaterais/anexos/conv-auxilio-judiciario/downloadFile/file/CPLP_Auxilio_Judiciario_Mutuo_assinada.pdf?nocache=1197902369.71);

b) Extradition Convention of Member States to the Community of Portuguese Speaking Countries, of November 23rd 2005 (available at: <http://ven.to/duA> or <http://www.rjcplp.org/RJCPLP/sections/informacao/instrumentos-multilaterais/anexos/RJCPLP/sections/informacao/instrumentos-multilaterais/anexos/convencao-extradicao/downloadFile/file/CPLP%20Extradi%E7%E3o%20%28assinada%29.pdf?nocache=1197902913.99>);

c) Convention on the Transfer of Sentenced Persons of Member States to the Community of Portuguese Speaking Countries, of November 23rd 2005 (available at: <http://ven.to/duB> or <http://www.rjcplp.org/RJCPLP/sections/informacao/instrumentos-multilaterais/anexos/RJCPLP/sections/informacao/instrumentos-multilaterais/anexos/convencao-transferencia/downloadFile/file/CPLP%20Transfer%EAncia%20Pessoas%20Condenadas%20%28assinada%29.pdf?nocache=1197903012.05>).

For the Hemispheric Network for Exchange of Information for Legal Assistance in Criminal Matters and Extradition, please refer to <http://www.oas.org/juridico/mla/en/index.html>.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Do you have a database through which information can be shared?

If available, please provide examples of recent cases in which your law enforcement authorities have exchanged information with those of other State Parties for offences covered by this Convention (please describe the aspects of such offences covered by information exchanges)

If applicable, please provide information on exchange of information for recent cases involving other criminal activities

Have you ever assessed the effectiveness of the measures adopted to establish or enhance channels of communication with other States Parties' law enforcement authorities, agencies and services?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

226. Subparagraph 1 (b) (i) of article 48

1. States Parties shall **cooperate closely** with one another, consistent with their respective domestic legal and administrative systems, to **enhance the effectiveness of law enforcement action to combat the offences covered by this Convention**. States Parties shall, in particular, take effective measures:

...

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

The cooperation proposed in this Subparagraph 1(b) (i) of Article 48 takes place regularly by means of customary mechanisms of international legal cooperation.

Please attach the text(s)

There is no specific statutory provision for that purpose, which is generally provided for in international legal cooperation agreements.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and recent related cases

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

227. Subparagraph 1 (b) (ii) of article 48

1. States Parties shall **cooperate closely** with one another, consistent with their respective domestic legal and administrative systems, to **enhance the effectiveness of law enforcement action to combat the offences covered by this Convention**. States Parties shall, in particular, take effective measures:

...

b) To **cooperate** with other States Parties **in conducting inquiries with respect to offences covered by this Convention** concerning:

...

(ii) The **movement of proceeds of crime or property derived from the commission of such offences**;

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

The cooperation proposed in this Subparagraph 1(b) (ii) of Article 48 takes place regularly by means of customary mechanisms of international legal cooperation.

Please attach the text(s)

There is no specific statutory provision for that purpose, which is generally provided for in international legal cooperation agreements.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and recent related cases

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

228. Subparagraph 1 (b) (iii) of article 48

1. States Parties shall **cooperate closely** with one another, consistent with their respective domestic legal and administrative systems, to **enhance the effectiveness of law enforcement action to combat the offences covered by this Convention**. States Parties shall, in particular, take effective measures:

...

b) To **cooperate** with other States Parties in **conducting inquiries with respect to offences covered by this Convention** concerning:

...

(iii) **The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;**

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

The cooperation proposed in this Subparagraph 1(b) (iii) of Article 48 takes place regularly by means of customary mechanisms of international legal cooperation.

Please attach the text(s)

There is no specific statutory provision for that purpose, which is generally provided for in international legal cooperation agreements.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and recent related cases

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

229. Subparagraph 1 (c) of article 48

1. States Parties shall **cooperate closely** with one another, consistent with their respective domestic legal and administrative systems, to **enhance the effectiveness of law enforcement action to combat the offences covered by this Convention**. States Parties shall, in particular, take effective measures:

...

(c) To **provide**, where appropriate, necessary **items or quantities of substances for analytical or investigative purposes**;

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

The cooperation proposed in this Subparagraph 1(c) of Article 48 takes place regularly by means of customary mechanisms of international legal cooperation.

Please attach the text(s)

There is no specific statutory provision for that purpose, which is generally provided for in international legal cooperation agreements.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

230. Subparagraph 1 (d) of article 48

1. States Parties shall **cooperate closely** with one another, consistent with their respective domestic legal and administrative systems, to **enhance the effectiveness of law enforcement action to combat the offences covered by this Convention**. States Parties shall, in particular, take effective measures:

...

(d) To **exchange**, where appropriate, **information with other States Parties concerning specific means and methods used to commit offences covered by this Convention**, including the use of false identities, forged, altered or false documents and other means of concealing activities;

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

The cooperation proposed in this Subparagraph 1(d) of Article 48 takes place regularly by means of customary mechanisms of international legal cooperation.

Please attach the text(s)

There is no specific statutory provision for that purpose, which is generally provided for in international legal cooperation agreements.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related analyses, reports or typologies related to means and methods used to commit offences established in accordance with the Convention

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

231. Subparagraph 1 (e) of article 48

1. States Parties shall **cooperate closely** with one another, consistent with their respective domestic legal and administrative systems, to **enhance the effectiveness of law enforcement action to combat the offences covered by this Convention**. States Parties shall, in particular, take effective measures:

...

(e) To facilitate **effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts**, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

On the strategic level, it was created the "Integrated Management Cabinet for Prevention and Combat against Money Laundering" (GGI-LD), resulting from the 2004 ENCCLA goal No. 1 (* For information on ENCCLA, please refer to previous items on Article 48 of UNCAC), which is responsible for the definition of public policy and macro-objectives in this area. Along the year, the GGI-LD keeps track of the proceeding of the objectives and goals defined at the ENCCLA, trying to keep up the constant articulation among the government bodies. The GGI-LD is coordinated by the Department of Assets Recovery and International Mutual Legal Assistance of the Ministry of Justice.

In 2005, the Strategy added to its original functions the fight against corruption. So the current name is National Strategy against Corruption and Money Laundering - ENCCLA (Estratégia Nacional de Combate à Corrupção e à Lavagem de Dinheiro).

Each year authorities from more than 60 institutions and bodies from the Executive, Legislative and Judicial branch gathers to establish goals and actions for the next year's strategy. The accomplishment of those goals and actions is monitored by the GGI-LD. The policies derived from ENCCLA involve not only money laundering offences but all predicate offences, including corruption.

Since the 2008 edition, three Working Groups meet on the days preceding GGI-LD Plenary meeting. The Operational and Strategic Working Group is responsible for identifying new trends and threats of money laundering which will receive primary concern on the ENCCLA activities.

Some of the results of goals and actions of ENCCLA are:

- The creation of the National Training Program on Anti-Corruption and AML techniques - PNLD - a training program for public officials and private sector;
- The creation of the National Data Base on Clients of Financial Institutions;
- The creation of the National System of Seized Assets - a database which contains information of seized assets on criminal procedures of Federal and State Courts;
- The design of a Laboratory against Money Laundering - which uses Information Technology and scientific methodology to optimize judicial proceeding on money laundering cases.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If applicable, please identify/describe the liaison officer positions within your law enforcement authorities

Have you ever assessed the effectiveness of the measures adopted to facilitate the exchange of personnel and other experts?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

232. Subparagraph 1 (f) of article 48

1. States Parties shall **cooperate closely** with one another, consistent with their respective domestic legal and administrative systems, to **enhance the effectiveness of law enforcement action to combat the offences covered by this Convention**. States Parties shall, in particular, take effective measures:

...

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of **early identification of the offences covered by this Convention**.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

The Federal Prosecutor General (MPF) exchanges information with agencies in other countries for the rapid identification of crime, both those covered by the UNCAC as of any other nature. Specifically in relation to international crimes of corruption, this exchange occurs in an ongoing basis, in particular by the OECD Working Group on Bribery in International Business Transactions.

Please attach the text(s)

PGR Ordinance No. 356, July 20, 2010:

THE FEDERAL PROSECUTOR GENERAL, in exercise of his powers, on the basis of arts. 6., § 1., 26, I, and 49, paragraph XXII of Complementary Law No. 75, May 20, 1993, resolves to:

Designate the regional prosecutors of the Republic WELLINGTON CABRAL SARAIVA and MONICA GARCIA NICIDA and federal prosecutors ADRIANA MELO Zawada and MARCELLO DE OLIVEIRA PARANHOS for Miller, under the coordination of the first, to establish working group for the representation of the Federal Public Ministry on issues related to Inter-American Convention against Corruption of the Organization of American States (OAS Convention), the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organization for Economic Cooperation and Development (OECD Convention) and the United Nations Convention against Corruption (UN Convention).

ROBERTO SANTOS MONTEIRO GURGEL

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under

review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Recently, the Federal Prosecutor General received from Argentina, via the Office of the Comptroller General, a report of a possible case of transnational bribery involving Argentine authorities and a large Brazilian company. The report was received through direct assistance from agencies of both countries in order to deepen investigations in Brazil.

Other MLA requests for information on possible transnational bribery cases were also sent to the Russian Federation, to Dominican Republic, to Italy and to Bolivia.

Have you ever assessed the effectiveness of the measures adopted to exchange information and coordinate administrative and other measures taken for the purpose of early identification of offences established in accordance with the Convention?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

233. Paragraph 2 of article 48

2. With a view to giving effect to this Convention, States Parties shall consider entering into **bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies** and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

Has your country entered into bilateral or multilateral agreements or arrangements on direct cooperation with law enforcement agencies of other States Parties? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable bilateral or multilateral agreement(s) or arrangement(s) or other measure(s)

Please cite the text(s)

As described in previous items, Brazil maintains several bilateral treaties on mutual legal assistance (MLA), with broadly shaped scope.

Some examples are the treaty-based cooperation with Portugal, Canada, Peru, China, South Korea, France, Italy, United States, Cuba, Spain and Colombia.

Brazil also ratified the Protocol of San Luis, which facilitates mutual legal assistance in Mercosur, and the OAS Convention on MLA (Nassau Convention).

If there are no treaties applicable, reciprocity should make the assistance possible.

Please, refer to items on Article 46 for a full list of cooperation treaties and agreements.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Does your country consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention? (Check one answer)

(Y) Yes

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If applicable and available, please provide information on mutual law enforcement cooperation provided or received using this Convention as the legal basis

If applicable and available, please provide information on mutual law enforcement cooperation provided or received making use of international or regional organizations

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

234. Paragraph 3 of article 48

3. States Parties shall endeavour to **cooperate** within their means **to respond to offences covered by this Convention committed through the use of modern technology.**

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Brazil is a part of several networks for international legal cooperation, the most active and technologically advanced of those being the secure communication system of the Organization of the American States for Mutual Legal Assistance and Extradition Matters, also known as "Groove". Also, the Brazilian Central Authority for international legal cooperation in criminal matters, the Department for Assets Recovery and International Legal Cooperation - DRCI, counts on modern resources to cooperate with its international counterparts. Those include massive use of e-mails and other communication systems, like the abovementioned "Groove", as well as state-of-the-art videoconference facilities.

It should be mentioned that Brazil is a part of the Egmont Group of Financial Intelligence Units - FIUs, through which the Brazilian FIU, the Council for the Control of Financial Activities - COAF exchanges information with its international counterparts.

Also, Brazilian bodies have used special investigative techniques such as interception (Object of Law No. 9296 of July 24, 1996), the environmental listening (authorized by Act No. 9034 of May 3, 1995), the controlled delivery (idem) etc.. The Federal Prosecutor has a center for automatic processing of data obtained from investigations with breach of bank secrecy. In the case of money laundering, Brazil has invested in creating data-processing laboratories in several investigative bodies, police and public prosecutors. All these mechanisms can be used in cases arising from international legal cooperation.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

235. Article 49

States Parties shall consider concluding **bilateral or multilateral agreements or arrangements** whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish **joint investigative bodies**. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

Has your country concluded bilateral or multilateral agreements that allow for the establishment of joint investigative bodies or has your country undertaken joint investigations on a case-by-case basis as described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable bilateral or multilateral agreement(s) or arrangement(s) or other measure(s)

Please cite the text(s)

In Brazil, the formation of joint investigative teams is allowed on two multilateral instruments: the UN Convention against Transnational Organized Crime (Palermo Convention, promulgated by Decree No. 5015 of March 12, 2004) and by UNCAC itself (promulgated by Decree No. 5687 of January 31, 2006). In addition, there have been

specific situations of joint investigations, as in so-called cases "Farol da Colina" ("Beacon Hill") and "Absolute Zero" in which prosecutors and police of the Federal Department of Federal Police worked jointly with members of the New York County District Attorney's Office.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If available, please provide information on all joint investigations and joint investigative bodies

There are no other ongoing international joint investigative teams.

Have you ever assessed the effectiveness of the measures adopted to provide for joint investigations and joint investigative bodies?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

236. Paragraph 1 of article 50

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of **controlled delivery** and, where it deems appropriate, **other special investigative techniques**, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

Concerning the investigative methods:

- Law n. 9.296/96 allows for the interception in telephone communications of any kind, in order to compose criminal investigation and criminal procedure instruction; it depends on a competent judge's order, though.
- Law n. 9.034/95 regulates proof means and investigative procedures on illicit acts derived from actions performed by gangs or organized crime of any type. It also provides for the following investigative procedures: controlled action; access to data, documents and fiscal, bank, finance and electoral information; infiltration of undercover policemen in criminal organizations, among others. It also provides for the plea bargaining.

- Complementary Law n. 105/01 states the secrecy breach of financial institutions, before legal decision.

In the Scope of the Federal Prosecutor's Office, Resolution 36 of April 6 2009 provides for the application for and use of telephone intercepts within the scope of the Public Prosecutor's Office, pursuant to Law 9296 of 24 July 1996.

Please attach the text(s)

Please find texts attached.

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review and related court or other recent cases

If available, please provide information (statistics, types of cases, outcome) on related legal (civil, administrative or criminal) cases or other processes. Please provide per annum figures since the year 2003 (or further back, if available)

If available, please provide information on recent cases in which controlled delivery or other special investigative techniques have been used and admitted in court

Have you ever assessed the effectiveness of the measures adopted to allow for the use of controlled delivery and other special investigative techniques, and for the admissibility in court of evidence derived therefrom?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

237. Paragraph 2 of article 50

2. For the purpose of investigating the offences covered by this Convention, States parties are encouraged to conclude, when necessary, appropriate **bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level**. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable bilateral or multilateral agreement(s) or arrangement(s) or other measure(s)

Please cite the text(s)

Please, refer to the items on Articles 46 and 48 above.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

If available, please provide information on recent cases in which bilateral or multilateral agreements or arrangements have facilitated the use of special investigative techniques

Have you ever assessed the effectiveness of the measures adopted to encourage agreements or arrangements to facilitate cross-border cooperation in the use of special investigative techniques?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

238. Paragraph 3 of article 50

3. In the **absence of an agreement or arrangement** as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a **case-by-case basis** and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s) or policy(ies)

Please cite the text(s)

Please, refer back to question 235.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review, including instances when decisions to use special investigative techniques at the international level were made on a case-by-case basis

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(N) No

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.

239. Paragraph 4 of article 50

4. Decisions to use **controlled delivery at the international level may**, with the consent of the States Parties concerned, **include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.**

Is your country in compliance with this provision? (Check one answer)

(Y) Yes

Please cite, summarize and attach the applicable measure(s)

Please cite the text(s)

All of the investigative techniques foresaw by UNCAC are adopted in Brazil. The legal framework for the use of these techniques is spread in several legal acts. For instance, the controlled delivery is based in federal law 9.034/1995 (article 2, item II) and federal law 9.613/1998 (article 4, paragraph 4).

Also, please refer to previous items on law enforcement.

Please attach the text(s)

Please attach summary(ies) in English - obligatory, if the text(s) previously provided are not in one of the following languages: Arabic, Chinese, English, French, Russian or Spanish. Highly desirable if the text(s) previously provided are in Arabic, Chinese or Russian.

Federal law 9.034/1995 (article 2, item II):

Art. 2. At any phase of criminal prosecution are allowed, without prejudice to those already provided by law, the following investigative and evidence production procedures:

II - a controlled delivery, which means the delaying of police interruption of what is supposed to be an action practiced by criminal organizations or linked to it, since this action be kept under observation and monitoring to ensure that the legal action to take place at the most effective moment, considering the evidence proofing and information gathering.

If applicable, please provide copies of draft bills or other measures related to the provision under review which are about to be adopted (e.g. legislation in final formal stages of enactment or legislation pending official publication):

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review

If available, please provide information on recent cases where goods or funds have been

intercepted or allowed to continue intact or removed or replaced in whole or in part

Have you ever assessed the effectiveness of the measures adopted to comply with the provision under review?

(Y) Yes

Would you require any assistance in conducting such an assessment? If so, please describe which assistance would be needed.

Compliance with similar provisions was evaluated by the Financial Action Task Force - FATF/GAFI as regards its 40+9 Recommendations, by the OECD and by the OAS as regards the relevant conventions.