

# Questionnaire relating to the *Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* (Evidence Convention)

Responding State:

Brazil

## I. General Feedback

1. How does your State rate the general operation of the Evidence Convention?

(b) Good.

2. How does your State rate the useability of the HCCH publications developed to assist users of the Evidence Convention (the Practical Handbook on the Operation of the Evidence Convention ([Evidence Handbook](#)) and [Guide to Good Practice](#) – The Use of Video-Link)?

(b) Good.

*“The need for use of such publications has not arisen in the recent years.”*

3. What work could be carried out by the PB to facilitate the acceptance of accessions to the Evidence Convention (e.g., providing additional information or facilitating direct communication between your Central Authority and new Contracting Parties)?

*“The PB could always exhort contracting parties to accept accessions as soon as a new country ratifies the Convention, as well as periodically do so for as long as they have not done so.”*

4. Does your State’s Central Authority have a manual or electronic case management register or system that is used to track incoming requests under the Evidence Convention?

(b) Yes – electronic for incoming and outgoing.

5. If your State’s Central Authority has oversight for outgoing requests, please indicate if there is a system used to track the progress of these.

(a) Yes – electronic.

## II. Scope of the Convention

6. In the previous five years\*, has your State experienced any difficulties in interpreting the scope of the Evidence Convention?

\*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

(d) No.

7. Does your State consider the Evidence Convention mandatory or non-mandatory?
- (a) Mandatory.
8. Has your State adopted “blocking statutes” or laws which are known by any other description, which prevent evidence being taken in the territory of your State for use in foreign proceedings other than under the Evidence Convention (or other international instrument)?
- (b) No.
9. Has your State received or submitted requests for the taking of evidence in connection with arbitration proceedings?
- (b) No.
10. Have any decisions relating to the use of the Evidence Convention in arbitration proceedings been rendered by the judicial authorities of your State?
- (b) No.

### III. Operation of the Convention

#### A. Chapter I – Preparing, transmitting and progressing Letters of Request

Requesting State refers to the State from which a Letter of Request is, or will be, issued.  
Requested State refers to the State to which a Letter of Request is, or will be, addressed.

11. As the **requesting State**, how are Letters of Request transmitted?
- (b) Via the Central Authority to the Central Authority of the requested State.
12. As the **requesting State**, do the authorities of your State use the recommended Model Form?
- (b) Yes, sometimes.
13. Does your State consider further work on the Model Form would be beneficial? For example, a review of the Model Form with a view to including video-link and the preparation of guidelines outlining how to complete the Model Form.
- (a) Yes.  
*“The suggestions presented in the question are good. Also, the current Portuguese version of the form (which apparently is not official, but is used at least in Portugal and Brazil) requires an improvement in that many requesting parties confuse the field “Summary of the complaint” for a summary of the requested measure itself (because the translation of the field into Portuguese is “Summary of the demand”), and then they repeat the requested measure in the “Evidence to be obtained” field, resulting in a situation where there is no explanation about the judicial proceedings, and the evidence sought is described twice.”*
14. As the **requested State**, do the authorities of your State send an acknowledgement of receipt for a Letter of Request?
- (b) No.

15. During the past five years\*, as the **requested State**, has your State received a Letter of Request that is non-compliant?

\*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

(a) Yes.

15.1. If the answer to Q15 above is “yes”, why was the request non-compliant?

(f) The request did not comply with the content requirements under Article 3.

(g) The request did not comply with the translation requirements under Article 4.

(h) Other.

*“Sometimes we are forced to refuse requests involving deadlines (video-link participation of a witness in a hearing, for example) because the procedure for complying with letters of request in Brazil, including the mandatory judicial phase under Brazilian law, usually takes at least 180 days. Therefore, when the request is received less than 180 days prior to the deadline, we return it to the requesting party indicating the need for amendment.”*

16. As the **requested State**, does your State provide advance assistance to foreign judicial authorities to prepare a Letter of Request to be sent under the Evidence Convention?

(a) Yes.

*“Whenever foreign judicial authorities send us questions on that matter (usually by email), we give them orientation and are happy to do so.”*

17. As the **requested State**, does your State provide advance assistance to legal representatives to prepare a Letter of Request to be sent under the Evidence Convention?

(a) Yes.

*“We do, but only if those legal representatives are authorized forwarding authorities designated by the contracting party in question under the Convention (we check that on the respective country profile on the Convention website).”*

18. Once your State has received a Letter of Request, do your State’s judicial authorities rephrase, restructure, and / or strike out objectionable questions or offensive wording in order to execute a Letter of Request (also known as “blue-pencilling”)?

(b) No.

19. As the **requested State**, can the execution of a Letter of Request that has been received be challenged?

(a) Yes.

*“Any interested parties can challenge letters of request before the Brazilian Superior Court of Justice, but only on procedural (including due application of the Convention) or “public order” grounds. They cannot do it in relation to the merit (the judicial content) of the foreign judicial proceedings.”*

19.1. If the answer to Q19 above is “yes”, is the requesting authority or the interested party permitted to respond to the challenge?

(b) No.

20. As the **requesting State**, can the sending of a Letter of Request abroad be challenged?
- (a) Yes.  
*“Parties in the judicial proceedings can challenge letters of requests before the courts that issue them or before appeal courts.”*
21. As the **requested State**, which authority is generally responsible for informing the requesting authority of the time and place of the execution of a Letter of Request (Art. 7)?
- (a) Central Authority.
22. During the past five years\*, as the **requested State**, has your State received a request specifying a particular method or procedure for taking of evidence (e.g., how witnesses are to be examined)? (Art. 9(2))
- \*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.
- (a) Yes.  
*“Under that category, the most common requests we receive are those aiming for the collection of DNA samples.”*
23. As the **requested State**, does your State require the requesting State to reimburse costs?
- (b) Yes, sometimes.
- 23.1. If the answer to Q23 above is “yes”, please indicate circumstances where reimbursement is sought.
- (a) Fees paid to experts and interpreters (Art. 14(2))  
(b) Costs occasioned by the use of a special procedure (Art. 14(2))  
(d) Costs incurred by employing an examiner (Art. 14(3))
24. As the **requested State**, who may make a request for a Letter of Request to be withdrawn?
- (a) Requesting authority.
25. As the requested State, does your State reject a Letter of Request seeking discovery if it is too broad?
- (c) Not applicable, Article 23 declaration.

## **B. Chapter I – Execution of a Letter or Request – Witness Examination**

All questions directed towards the Contracting Party operating as the requested State.

26. As the **requested State**, how is a hearing conducted for Chapter I requests?
- (a) Before a Judge, Magistrate, Special Master, or other court official.
27. Does your State require the Letter of Request to include specific questions to be used during the taking of evidence?
- (b) No.

28. In your State, are hearings public or private?
- (b) Private.
29. In your State, is a witness provided with a copy of questions / matters contained in the Letter of Request in advance of a hearing?
- (c) No.
30. In your State, what are the requirements for documents that are to be presented to a witness?
- (d) No requirements.
31. In your State, are documents produced by the witness during the taking of evidence authenticated by the court or authority?
- (b) No.
32. In your State, can representatives of the parties who attend the taking of evidence ask additional questions and / or cross examine the witness?
- (b) No.
33. In your State, is an oath or affirmation administered to the witness before the taking of evidence?
- (a) Yes.
34. In your State, can the witness be subject to further examination?
- (a) Yes.
- 34.1. If the answer to Q34 above is “yes”, is a second Letter of Request required?
- (a) Yes.
35. Does your State have sanctions for the non-appearance of a witness?
- (a) Yes.  
*“Witness may be forcefully taken to testify, and be fined regarding the costs of delaying the procedure.”*
36. During the past five years\*, as the **requested State**, is your State aware of a person requested to give evidence invoking privilege?
- \*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.
- (c) No.
37. Does your State require interpreters in the taking of evidence to be certified?
- (a) Yes.

38. In your State, how is witness testimony transcribed?

(e) Other.

*“Each judicial unit responsible for taking the testimonies does it their own way. Mostly they do so by recording through video and sending back a CD. We have been asking them to do it in writing, in order to make it easier for the foreign authorities to translate the contents.”*

#### IV. Use of Information Technology

In 2019, the PB circulated a questionnaire on the use of information technology in relation to the operation of the Evidence Convention. That survey was concluded prior to the start of the COVID-19 pandemic. The questions below seek information from Contracting Parties on the use of technology and in light of the pandemic.

39. Does your State’s Central Authority accept Letters of Request to be transmitted electronically?

(b) No.

40. Does your State allow the taking of evidence by video-link under Chapter I?

(a) Yes.

41. Does your State allow the taking of evidence by video-link under Chapter II?

(d) Not applicable.

42. Does your State use the Model Form for video-link evidence?

(b) No.

43. What challenges has your State faced regarding the use of information technology under the Evidence Convention?

(a) None.

44. Has your State adopted any new information technology measures to facilitate the operation of the Evidence Convention, particularly in response to the COVID-19 pandemic?

(a) Yes.

*“Among the measures adopted by courts (not specifically adopted to facilitate to the operation of the Convention, but that end up helping it) are the notification of parties via email or WhatsApp and the widespread use of online hearings (video conference using Zoom, Teams, Google Meets, etc.).”*

45. In your State’s opinion, what topics could the PB explore further (e.g., for the purposes of training, seminars, or conferences) in relation to the use of information technology under the Evidence Convention?

*“We think the first and foremost measure in that realm would be to exhort contracting parties to accept electronic transmission of requests to begin with. Measures to facilitate the use of evidence in the requesting state (e.g. sending the testimonies in writing to facilitate translation) should also be encouraged.”*

46. In your State's opinion, what further work could the PB do on the use of information technology under the Evidence Convention?

- (b) Other.  
*"See above."*

47. In addition to the Evidence Convention, is your State party to any bilateral, regional, or multilateral agreements that provide rules for the taking of evidence abroad?

- (a) Yes.  
*"Yes, there are many of them. Most commonly used are the Interamerican Convention on Rogatory Letters, the Mercosur 1992 and 2002 Agreements, and bilateral treaties with China, Costa Rica, France, Italy and Spain. The Hague 2007 Convention is also used for that matter sometimes, through requests for specific measures (usually to obtain a person's address or financial/assets information)."*

*For Parties that answered yes to Q47 above:*

47.1. Do any of these agreements provide for the use of electronic means to assist in the taking of evidence (e.g., video-link)?

- (a) Yes.  
*"They do not mention it specifically, but do not preclude it either."*

*For Parties that answered yes to Q47 above:*

47.2. If yes, what electronic means or information technology does your State use in the taking of evidence?

- (c) Video conference.  
 (d) Other.  
*"All the Brazilian Federal Justice courts use electronic proceedings, and many of the state courts too, so it is very common that the providers of the evidence send it through electronic platforms/systems (when providing documents, for example)."*

## V. 2023 Meeting of the Special Commission & Monitoring

48. Does your State have any suggestions that could assist in the promotion, implementation or operation of the Evidence Convention?

- (a) Yes.  
*"1) Exhorting contracting parties to accept accessions that are pending and electronic transmission of requests.*  
  
*2) Exhorting contracting parties to accept requests aiming at obtaining the address of natural and legal persons."*

48.1. If the answer to Q48 above is "yes", please indicate whether the information provided may be published.

- (a) Yes.

49. The PB is in the process of revising the Evidence Handbook and the Guide to Good Practice – The Use of Video Link, with a view to consolidating these publications. Are there any specific topics, suggestions for presentation or formatting, or any other proposals you recommend for inclusion?

(b) No.

49.1. If the answer to Q50 above is “yes”, please indicate whether the information provided may be published.

N/A



## DATA & STATISTICS FOR CONTRACTING PARTIES

### I. Statistics under Chapter I

#### A. Incoming Requests

1. How many incoming Letters of Request for the taking of evidence did your State receive under Chapter I in each of the following years?

2017	35
2018	50
2019	33
2020	32
2021	62
2022	46
Unknown – <i>please explain.</i>	
-	

2. Which three States made the most requests?

Requesting State	Number
Portugal	177
Argentina	26
USA	15

3. What is the average time taken (in months) to execute a Letter of Request in your State?

*“08 months.”*

4. If possible, please provide a breakdown of how long (in months) it took to execute incoming requests.

	< 1	1-3	3-6	6-12	> 12
2017				x	
2018				x	
2019				x	
2020				x	
2021				x	
2022 (if data available)				x	
Unknown – <i>please explain.</i>					
-					

5. How many incoming Letters of Request for the taking of evidence did your State receive via **electronic transmission** under Chapter I in each of the following years?

2017	0
2018	0
2019	5
2020	13
2021	23
2022	14
Unknown – <i>please explain.</i>	
-	

**B. Outgoing Requests**

6. How many outgoing Letters of Request for the taking of evidence did your State make under Chapter I in each of the following years?

2017	23
2018	56
2019	31
2020	40
2021	86
2022	72
Unknown – <i>please explain.</i>	
-	

7. Which States were the subject of the most requests?

Requesting State	Number
Portugal	134
USA	72
Germany	11

8. How many outgoing requests for the taking of evidence did your State make via electronic transmission under Chapter I in each of the following years?

2017	0
2018	0
2019	5
2020	15
2021	20
2022	16
Unknown – <i>please explain.</i>	
-	

**C. Video-Link**

9. How many incoming Letters of Request for the taking of evidence did your State execute under Chapter I in each of the following years?

2017	-
2018	-
2019	-
2020	-
2021	-
2022	-
Unknown – <i>please explain.</i>	
<i>“We do not have this specific information readily available”</i>	

10. How many incoming requests for the taking of evidence did your State execute under Chapter II in each of the following years?

2017	-
2018	-
2019	-
2020	-
2021	-
2022	-
Unknown – <i>please explain.</i>	
<i>“Not applicable”</i>	

## CASE LAW, ADDITIONAL INFORMATION & SUPPORTING DOCUMENTS

### I. Case Law

Please list all your State's judicial decisions that have considered the Evidence Convention since 2014, and provide a link to, or upload, the decision (in PDF format only).

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### II. Additional Documents

Please provide links to and / or any additional information or documentation to support your response (in PDF format only). This may include:

- ⇒ resources for the general public or guidelines for Central or other Authorities' staff;
- ⇒ implementation legislations, recent legislative developments; or
- ⇒ books, articles, or other published work.

*"We provide a website giving Brazilian citizens orientation about the Convention:*

<https://www.gov.br/mj/pt-br/assuntos/sua-protecao/cooperacao-internacional/cooperacao-juridica-internacional-em-materia-civil/acordos-internacionais/convencao-da-haia-sobre-provas>"

## PUBLICATION OF RESPONSES

Please confirm whether your responses to this questionnaire can be published on the HCCH website.

- (a) Yes.