



17th St. & Constitution Avenue N.W.  
Washington, D.C. 20006  
United States of America

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P. 202.458.3000

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**NON-CONVICTION BASED FORFEITURE  
NICOLA SUTER. FINANCIAL CRIMES ADVISOR  
U.S DEPARTMENT OF STATE**

It is hugely beneficial to be able to listen to the experience of so many experts in the field of money laundering and asset recovery, especially as many of you have been working to establish and refine your asset recovery systems for far longer than we have in the Eastern Caribbean, where non-conviction based forfeiture in particular is a relatively new concept.

Only four years ago, no country in the Eastern Caribbean had non-conviction based forfeiture legislation, or what we call civil recovery or civil forfeiture legislation. Conviction based forfeiture or criminal forfeiture had been introduced in all EC countries over a decade before, but had rarely, if ever, been used.

When I arrived in the Eastern Caribbean in 2010, the result of the regions lack of emphasis on asset recovery was made very quickly apparent to me. My husband and I took our family on holiday to a small, outlying Caribbean island. As we approached the bay on the ferry, a typical Caribbean village came into view, dotted with chattel houses and waterfront markets, and on the edge of the bay, with a commanding view of the whole village sat a vast and very conspicuous white building.

We were lucky enough to be collected by the local police sergeant who had agreed to take us on a tour of the island. As we started our tour, I asked the officer what the building was. He explained to me that it belonged to the local drug trafficker.

I was surprised by how casually he explained this, and far more surprised when he told me that he had no plans to do anything about it. Fast forward a few months and I had a better understanding of why: this sergeant was the only police officer on the island. He regularly patrolled the shore at night and often made arrests, but he only ever succeeded in arresting local boys who worked for the jefe de la pandilla. There was no chance of these boys informing on their boss, or their lives, and the lives of their family would obviously be in danger.

In a way that will be only too familiar to most of you in this room, this trafficker had reached a level of success that afforded him the ability to distance himself from his criminal activity. He delegated the dirty work further down the chain, to young men in the community, who no doubt also hoped to one day live in a mansion and drive a hummer

Unlike what you might experience in the US or the UK, drug traffickers in the Eastern Caribbean did, and occasionally still do, flaunt their wealth, a clear sign that they either didn't know about, or didn't fear asset recovery proceedings.

To carry out an operation to arrest the trafficker on this island would undoubtedly have required manpower, resources, surveillance, possibly forensic analysis of his finances, all of which were beyond the capacity of the police and the FIU at that time.

This situation was far from unusual in the Caribbean and summed up a regional problem that could only be addressed by finding a way to tackling serious organised criminals by taking away the incentive to commit crime in the first place and the enabling factor: the profit.

In 2012 the Bureau of International Narcotics and Law Enforcement Affairs commenced a project to introduce non-conviction based forfeiture legislation in the Eastern Caribbean. Their reasons for deciding to take on this rather challenging project were these:

First and foremost, convicting drug traffickers and other serious organised criminals simply wasn't proving to be enough. Everyone here knows that OCG's exist to make a profit. Most criminals expect that at some point in their career they may spend time in prison.

Unfortunately the EC was learning the hard way what happens when the criminals are incarcerated without also seizing their criminally acquired assets: it left criminals in a position to continue their operations from prison, with family members or associates either assisting or taking charge of the operation in their absence. The bottom line was that the criminal was no longer on the street, but the criminal activity continued to flourish.

The second unhappy consequence of failing to take the proceeds of crime out of the system, has been the dramatic increase in criminals using the proceeds of crime to diversify into legitimate businesses, amassing extreme

wealth and, commanding respect within not only the criminal but, alarmingly within the wider community. This problem has proved particularly dangerous in the very small island states of the Caribbean.

Just as I had witnessed on my holiday, criminals getting rich and living large off the proceeds of crime was luring young Caribbean people out of school and into criminal gangs. The Eastern Caribbean islands were starting to lose some of the things they held most dear, the safety and security of their young people and their strong sense of community.

Increasingly life is getting harder and more austere for Caribbean citizens. Allowing criminals to keep the trappings of their wealth now more than ever, is not only obvious in such small and tight knit communities, it is becoming increasingly frustrating and demoralizing for its citizens, and it bringing the whole criminal justice system into disrepute.

Finally, the decision promote civil forfeiture in the region was taken because non-conviction based forfeiture or criminal forfeiture on its own was not tackling the problem. In a region hampered by delays in the criminal justice system, and limited resources, conviction based forfeiture wasn't always effective, and in many situations it was not even possible.

So, the first step in the project was to introduce the legislation. The biggest challenge to introducing this law was convincing the Government of each country that it was a good idea.

I'm not sure if you have ever googled civil forfeiture in your spare time but if you do, you will see that, on the internet anyway, civil forfeiture has a bit of a bad rap.. Lots of stories about Grandma had her car seized after her grandson borrowed the car and was caught smoking a joint inside etc.

There was certainly a perception in the Eastern Caribbean that civil forfeiture was dangerous slippery slope that it would ultimately lead to a diminishment of the protections afforded to citizens under the Constitution. It took a lot of time to convince our local partners that they could draft their own legislation, which could be robust enough to empower the state to take away the proceeds of crime, but would also ensure that innocent owners of property would be protected.

I often hear that the newly introduced civil forfeiture legislation in the EC is 'UK Law' but that is not the case. The sovereign nations of the EC have their own proud legal system, and they wanted, and deserved their own civil forfeiture law. The approach we took when drafting the legislation was to review the laws from many different jurisdictions and cherry pick the sections we felt were the best.

The final product is similar to the UK, but it also includes elements from other countries including the US, Ireland and Anguilla. This law is not 'UK law' or 'US Law' or anyone else's law. Is unique to the EC, it is their law.

INL not only assisted to draft the legislation, but we invested significant time making sure that it was understood, by attending parliamentary committee meetings to field questions from members of the opposition, attending Parliament to assist the Prime Minister when the Proceeds of Crime Bill was debated, as well as speaking to the police, attorneys, judges and the media.

To date four of the seven EC islands have introduced civil forfeiture legislation, with the 5<sup>th</sup> due to pass the legislation within the next three months.

Having the legislation in place, whilst being a step in the right direction, was of no use unless it was used. Experience had taught us that conviction based forfeiture legislation had gained a reputation for being 'difficult and confusing' and as such had sat on the books for years without ever being applied.

In addition, attorneys and judges lack access to up to date legal texts and case law.

To try and make the introduction of this new legislation less confusing, and to try and avoid misunderstandings and ultimately, bad decisions, we drafted a Guide to the legislation for each country, including relevant case law and precedent legal documents. These Guides are not only used by both the FIU and attorneys, they are also used by Judges and copies have since been placed in the Eastern Caribbean Supreme Court library.

The Eastern Caribbean Supreme Court has also played an integral role in the success of this project. Twice a year, INL partners with the Judicial Education Institute of the Eastern Caribbean Supreme Court to provide training, in the form of mock civil forfeiture trials.

Held at the High Court, resident civil judges preside over mock civil forfeiture hearings, which are presented by regional attorneys. These mock cases are obviously based upon fictional scenarios, but we try and incorporate facts that would be typical in the Caribbean, and challenge the attorneys to argue many of the difficult legal points that they will ultimately encounter in cases in the future.

Having judges preside over mock cases has proven to be not only an effective way of training attorneys but also a way to give the judiciary vital exposure to civil forfeiture legislation at the same time.

The EC is now at the stage of running their own civil forfeiture cases. In addition to training, INL provides on-going support, in the form of

mentoring the FIU and attorneys on their cases, and also ensuring key support is provided to make running these complex cases possible.

One example of this is forensic capability. When we began this project in 2012, the region had no qualified forensic accountants to assist the FIU on complex financial cases. On a few occasions, local accountants had been used to assist with this work, but in addition to being prohibitively expensive, they were not qualified to give opinion evidence in court.

To combat this problem, we have trained one forensic accountant in the EC, who is now an affordable resource for all regional FIU's. Another forensic accountant is soon to be qualified in Saint Vincent in the Grenadines.

Moving forward, we plan to assist the region to set up their own Civil Asset Recovery Divisions to be based within the FIU. These dedicated teams, will not only mean that civil forfeiture cases are prioritised, even though regional FIU's are overworked and desperately under-resourced, but also that these teams build up a level of expertise in the field.

These specialist divisions will also be required to form a regional network. Although each country has its own law, the fundamental principles are the same throughout the EC. It is vital to the success of this work, that financial investigators and attorneys throughout the region work together, and can rely upon each other to provide comprehensive and timely assistance on any matter that requires

Mutual Legal or Administrative Assistance, and also discuss problems, share knowledge and best practice and importantly, provide professional support to each other.

**The good news is that the Eastern Caribbean** is not just paying lip service to this relatively new area of the law.

Last year the Attorney General's chambers in Dominica froze \$1.6 million dollars worth of criminal assets belonging to one of the biggest targets in the region. Saint Vincent and the Grenadines, Antigua and Barbuda and Grenada all progressing cases with a view to freezing well over a further \$15 million dollars in the next six to twelve months.

Last, but certainly not least, INL have worked with our regional partners to amend their Proceeds of Crime legislation to ensure that it is now mandatory for all recovered funds, from both conviction-based and non-conviction based forfeiture, to be used to increase the capacity of their criminal justice systems.

The only way to make sure that this work is sustainable, and ultimately to be able to scale back INL support in future, is to make sure that the whole criminal justice system, from the Coast Guard to Financial Intelligence Units, to the Attorney General's Chambers to the Judiciary all share in forfeited funds.

There is still much to do. As yet, little thought has been given to how to manage seized assets in small island states that currently have no structure in place to manage this work. I am hoping to learn a lot over the next few days that may help us to move forward on this and many other issues in future.

The Eastern Caribbean is only at the beginning of their civil forfeiture journey, but I do think that they are moving in the right direction, and should be proud of the strides they have made so far towards making their countries, and the wider Caribbean community, more secure and prosperous in the future.