



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

Organization of American States

P. 202.458.3000  
[www.oas.org](http://www.oas.org)

**INTER-AMERICAN DRUG ABUSE  
CONTROL COMMISSION**

**CICAD**

Secretariat for Multidimensional Security

**XL GROUP OF EXPERTS FOR THE CONTROL OF MONEY LAUNDERING  
MAY 19-20, 2015  
Washington, D.C.**

**OEA/Ser.L/XIV.4.40  
CICAD/LAVEX/doc.10/15  
May 14, 2015  
Original: Spanish**

## **Structure of the Study**

### **Rights of Bona-Fide Third Parties and Victims**



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

INTER-AMERICAN DRUG ABUSE  
CONTROL COMMISSION

**CICAD**

Organization of American States

P. 202.458.3000  
[www.oas.org](http://www.oas.org)

Secretariat for Multidimensional Security

## Structure of the Study

### Rights of Bona-Fide Third Parties and Victims

#### 1) BACKGROUND

At the XXXVII Meeting of the Expert Group for the Control of Money Laundering (GELAVEX) held from September 17<sup>th</sup> to September 18<sup>th</sup>, 2013 in Brasília, Brazil, the Plenary Session of the Group asked the Executive Secretariat of CICAD (ES/CICAD) to design a technical assistance program for Member States of the OAS, in order to increase international cooperation regarding asset recovery ([CICAD/LAVEX/doc.23/13](#)).

Subsequently, at the 54<sup>th</sup> ordinary period of sessions of CIDAD which was held from December 11<sup>th</sup> to December 13<sup>th</sup> in Bogotá, Colombia, this initiative was supported and approved by the Commission ([CICAD/doc.2072.13rev.1](#)).

The first draft of the program's proposal ([CICAD/doc.16/14](#)) was presented during the XXXVIII Reunion of LAVEX, held between May 22<sup>nd</sup> and May 23<sup>rd</sup> of 2014 in Washington, DC (USA). The proposal was welcomed with pleasure by the present delegations, which recommended that ES/CICAD culminate the design of the program and present it before the Plenary Session at the XXXIX Reunion of the LAVEX, which was held between the 25<sup>th</sup> and 26<sup>th</sup> of September in Montevideo, Uruguay ([CICAD/LAVEX/doc.14/13](#)).

Accomplishing this mandate, the Technical Assistance Program's Proposal on International Cooperation regarding Asset Recovery ([CICAD/LAVEX/doc.3/14](#)) was presented and, also, approved by the Plenary ([CICAD/LAVEX/doc.22/14](#)).

In the same way, the Group has approved the Strategic Plan 2015-2017 ([CICAD/doc.19/14](#)) and the Working Plan 2014-2015, which establishes that the Working Subgroup in International Cooperation and Seizure will dedicate itself to support the ES/CICAD in the realization of a study about the rights of bona-fide third parties and victims in the context of the Technical Assistance Program regarding Asset Recovery ([CICAD/LAVEX/doc.22/14](#)).

At the 56<sup>th</sup> ordinary period of sessions of CICAD, held in Guatemala City, Guatemala, from November 19<sup>th</sup> to November 21<sup>st</sup>, the Technical Assistance Program's Proposal, the Strategic Plan 2015-2017 and the Working Plan 2014-2015



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

INTER-AMERICAN DRUG ABUSE  
CONTROL COMMISSION

**CICAD**

Organization of American States

P. 202.458.3000  
[www.oas.org](http://www.oas.org)

Secretariat for Multidimensional Security

were approved by the Commission ([CICAD/LAVEX/doc.2162/14](#)), and the Subgroups began the designated activities and whose results will be presented at the XL Reunion of GELAVEX to be held between May 19<sup>th</sup> and 20<sup>th</sup> of 2015.

## 2) JUSTIFICATION

Seizure of assets of illicit origin is considered one of the most effective instruments against organized crime and money laundering and its connected crimes. Through it, a broad number of international, regional and bilateral treaties have mechanisms which mention the need for the States have correct legislation to proceed to the freezing of certain assets, as well as their confiscation and seizure.<sup>1</sup>

In turn, the theme is continuously discussed in a variety of international forums, and a large number of international organizations – like some strategic partners of GELAVEX – have published guides and best practices with the objective of offering tools to serve as reference, so that countries can adjust their internal laws to the international standards, implement them accordingly and become able to provide mutual legal assistance.

However; even if the seizure of assets of illicit origin is essential to reduce the economic power of criminal organizations and to damage their organizational structure, international standards frequently make reference, besides, to certain limitations which should be respected, such as in the case of the rights of bona-fide third parties and of victims.

Such limits are based on the fact that when it is time to freeze, confiscate or seize the proceeds and/or the instrumentalities of crime<sup>2</sup>, the State shall observe inherent principles of restorative justice and the right to property, with the aim to avoid

---

<sup>1</sup> Between them, in an international scope, the highlights are: the United Nations Convention against Transnational Organized Crime and its Additional Protocol against Transnational Organized Crime to Prevent, Suppress and Sanction Human Trafficking; the Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances, as well as the United Nations Convention against Corruption. In the Inter-American scope, the Inter-American Convention on Mutual Legal Assistance and the Protocol of Mutual Legal Assistance – Mercosur, can be mentioned.

<sup>2</sup> In this case, there is no need to make reference to the “objects” of crime (*objetum sceleris*) since such assets result from the criminal conduct itself, as is the case, for example, of money or fake passports and narcotic drugs. As such assets are illicit *per se*, usually their destruction occurs without giving relevance to determine the guilt or innocence of their possessor or proprietary, or third parties. For example, if one kilogram of cocaine is found in a certain residence, the substance will be destroyed even if the owner of the house or his/her tenant have acted in bona-fide, for example, by keeping the suitcase of a relative, without knowing that inside it there was the drug. In the case that the third-party knew the existence of the substance and also had been payed to keep it, the State will continue with its seizure and destruction in the same way, without any kind of restitution. Which means, as it is about the buying-selling of an illegal substance, its seizure is considered to be of a preventive nature and operates *in tem*, which means, in relation to the assets, independently of the persons with which are related.



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

INTER-AMERICAN DRUG ABUSE  
CONTROL COMMISSION

**CICAD**

Organization of American States

P. 202.458.3000  
[www.oas.org](http://www.oas.org)

Secretariat for Multidimensional Security

abuses to the ones who find themselves unconnected to the criminal activities and possess legitimate rights to the assets.

On the one hand, States should consider the need to repair, to the extent possible, the damages suffered by the victims. In this way, some States create funds and specific programs to reimburse, as far as possible, those who suffered damages of different natures. Such initiatives sometimes include the protection of witnesses, informers, repentant, experts and any other persons involved in the process who deserve a special protection.

On the other hand, the third parties who have a legitimate interest in the assets (like commercial partners and investors of a company subjected to seizure) shall be notified and have the right to be heard<sup>3</sup>. However, the rights claimed by third-parties are treated in different ways, because, for example: i) in cases of seizure conducted in the criminal process it is frequent that the process is concluded (which can take decades) before that the suspected bona-fide third party has the opportunity to reanalyze his/her rights; y ii) in cases of seizure without conviction, the claims of the third-parties are often considered since the very first phases of the process.

To illustrate this example, the seizure of an instrumentality of crime (such as the car used to rob a bank) and the confiscation of the vehicle which may have been used without the knowledge or permission of the owner, without the owner being heard in the first phases of the process can be considered. Besides, it would be possible to consider a case in which the third party knows the bad intentions of the person who will drive his/her vehicle, but argues to be a bona-fide third party; it is hard to prove probationary means to demonstrate his/her guilt (including the guilt *in vigilando*).

In this context, it is observed that the international treaties and recommendations do not detail aspects that could assist the bona-fide third parties and victims to have their rights respected (as, for example, concrete definitions about who should be considered in both cases and the specific proceedings about how it should be acted in the applicable legislation). Such gaps generate delays in the legal proceedings, probationary difficulties, loss of rights to those to whom they would legally correspond, as well as the lack of means to hold responsible those who have not acted in an innocent way in certain cases and to compensate those who have suffered damages and losses.

### **3) GENERAL OBJECTIVE**

---

<sup>3</sup> Frequently, such requisite is accomplished when the State sends a notification to those considered to possibly have some legit interest in the asset to be seizure. However, it is complicated to identify to whom notify, together with what should be appropriate, besides of communicating the case in a specific way to those who are possible to identify, to notify in a broad way to the general population, through appropriate media (as newspapers, newsletters and internet (UNODC; The World Bank. Manual to Asset Recovery: an oriented guide to professionals, p.146).



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

INTER-AMERICAN DRUG ABUSE  
CONTROL COMMISSION

**CICAD**

Organization of American States

P. 202.458.3000  
[www.oas.org](http://www.oas.org)

Secretariat for Multidimensional Security

To identify the legal gaps which make it hard for Member States of the OAS to obtain firm sentences of seizure of assets of illicit origin in which the rights of the bona-fide parties and victims are respected according to the international standards and to promote the adoption of mechanisms which permits them to reduce such difficulties.

### 3.1) SPECIFIC OBJECTIVES

3.1.1) To compile the main international treaties ratified by the Member States of the OAS in which the need to respect the rights of bona-fide third parties and victims is mentioned;

3.1.2) To conduct a study about how the Member States of the OAS implement these international treaties and recommendations regarding seizure and respecting the rights of bona-fide third parties and victims.

3.1.3) To provide document to serve as an input for the products to be carried out by the ES/CICAD in the context of the Program on International Cooperation regarding Asset Recovery, i.e.,:

- i) that the situational diagnostics on seizure systems consider the lack of regulations and specific proceedings about safeguarding the rights of bona-fide third parties and victims;
- ii) that the dispositions regarding asset recovery and seizure incorporate mechanisms that orient the States about how they should act in order to guarantee that the rights of bona-fide third parties and victims are respected;
- iii) that the repository of structured information incorporates information that can serve as a reference to States facing existing challenges;
- iv. that the training courses include technical questions and practical simulations that help to train the participants about the need to respect the rights of bona-fide third parties and victims.

### 4) METHODOLOGY

To conduct the study, ES/CICAD will gather information that takes into consideration<sup>4</sup>: i) the **international standards** about the rights of bona-fide third parties and victims<sup>5</sup>; ii) **bilateral and regional agreements**; iii) **legislation** of the

<sup>4</sup> A first draft on such gathering of information can be consulted in the Annex 1 of this document.

<sup>5</sup> Regarding international standards, it will be analyzed international and regional conventions; the dispositions about the matter made in the recommendations of GAFI, as well as the guides, better



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

INTER-AMERICAN DRUG ABUSE  
CONTROL COMMISSION

**CICAD**

Organization of American States

P. 202.458.3000  
www.oas.org

Secretariat for Multidimensional Security

Member States and Permanent Observers of the OAS<sup>6</sup>; iv) **principles**, v) **doctrine**; and vi) **jurisprudence**.

#### 4) TIMELINE OF ACTIVITIES

ACTIVITIES		MONTHS													
		2014				2015									
		S E P	O C T	N O V	D I C	E N E	F E B	M A R	A B R	M A Y	J U N	J U L	A U G	S E P	O C T
1	Approval by GELAVEX	■													
2	Approval by CICAD			■											
3	Gathering information				■	■									
4	Design and translation of the first draft						■	■							
5	Publication of the first draft								■						
6	Presentation of the draft during the XL Meeting of GELAVEX and submit for discussion									■					
7	Design of the second draft in consideration of feedback received										■				
9	Publication of the second draft											■			
10	Period during which delegations submit comments												■		
11	Writing and translation of the provisional document												■		
12	Presentation of the document during the XLI Meeting of GELAVEX for discussion and approval													■	
13	Publication of the final document														■

practices and other documents conducted in the context of the Expert Group for the Control of Money Laundering of the OAS/CICAD.

<sup>6</sup> Since information sources will be considerable, among other documents, the answers received by the questionnaire circulated by the Working Subgroup on International Cooperation and Seizure ([CICAD/doc.4.14](#)) in the context of the "Supplementary Study on the procedures and/or criteria of international cooperation in the Sharing of Seized Property" ([CICAD/doc.10/14](#)).



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

**INTER-AMERICAN DRUG ABUSE  
CONTROL COMMISSION**

**CICAD**

Organization of American States

P. 202.458.3000  
[www.oas.org](http://www.oas.org)

Secretariat for Multidimensional Security

INTERPRETATIVE NOTES	
1	In the XXXIX Meeting of GELAVEX (held from September 25-26 in Montevideo) the Plenary approved the Work Plan 2014-2015 and the proposal of the Technical Assistance Program on International Cooperation regarding Asset Recovery.
2	In the CICAD 56 <sup>th</sup> period of ordinary sessions, held in Guatemala City, Guatemala from November 19-21, 2014, CICAD approved these documents.
3,4	The ES/CICAD, together with the coordination of the Sub-Working Group on International Cooperation and Forfeiture, guided by the Delegations of Costa Rica and Brazil, drew up the first draft.
5,9,13	The documents will be published in the OAS/CICAD webpage.
7	Following the presentation of the draft, the delegations present will have the opportunity to share their experiences on this subject and put forth suggestions.
10	Following its publication, delegations will have until <b>August 7, 2015</b> to submit comments.
12	Following the presentation of the draft, delegations present will have the opportunity to comment and the document will be submitted for approval.

## Amendment 1: Progress in relation to gathering information

### i) International standards

#### MODEL REGULATIONS CONCERNING LAUNDERING OFFENSES CONNECTED TO ILLICIT DRUG TRAFFICKING AND OTHER SERIOUS OFFENSES ([CICAD/OAS, 1999](#)):

-

#### **Article 10: Bona Fide Third Parties**

1. The measures and sanctions referred to in Articles 6 and 9 shall apply without prejudice to the rights of bona fide third parties; 2. In accordance with the law, proper notification shall be made so that all those claiming a legitimate legal interest in property, proceeds or instrumentalities may appear in support of their claims; 3. A third party's lack of good faith may be inferred, at the discretion of the court or other competent authority, from the objective circumstances of the case; 4. In accordance with the law, the court or other competent authority shall return the property, proceeds or instrumentalities to the claimant, when it has been demonstrated to its satisfaction that: a. the claimant has a legitimate legal interest in the property,





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

Organization of American States

P. 202.458.3000  
[www.oas.org](http://www.oas.org)

INTER-AMERICAN DRUG ABUSE  
CONTROL COMMISSION

**CICAD**

Secretariat for Multidimensional Security

proceeds or instrumentalities; b) no participation, collusion or involvement with respect to illicit traffic or other serious offenses which are the object of the proceedings can be imputed to the claimant; c) the claimant lacked knowledge and was not intentionally ignorant of the illegal use of the property, proceeds or instrumentalities, or if he had knowledge, did not freely consent to its illegal use.

**Note:** Articles 6 and 9 are dedicated to preventive measures and to forfeiture of goods, products, or instruments of crime.

#### LEGAL ASPECTS IN THE ESTABLISHMENT AND DEVELOPMENT OF ENTITIES SPECIALIZED IN THE ADMINISTRATION OF SEIZED AND FORFEITED ASSETS ([CICAD/OAS, 2012](#))

Mechanisms should be developed so that whoever has a judicial interest in forfeited goods could request from the Court a modification of a confiscation order or the release of those goods with referral to adequate controls. To this end, national legislation should clearly establish *bona fide* third party rights in relation to property subject to confiscation orders. This may include allowing a person to continue with a trade or a legitimate business that would otherwise be subject to seizure, or authorizing tenants to continue occupying commercial real estate properties. Establishing rapid procedures (i.e., banks, automobile financing companies, etc.) should also be taken into account so that *bona fide* third party interests are recognized from the earliest moment of seizure proceedings.

Definitive forfeiture by a judgment or resolution form will not relapse on the effects or instruments belonging to a *bona fide* third party not responsible for the criminal offense. For such effects there is emphasized the importance of bringing third parties to the criminal proceedings so that they may assert their rights over the seized goods, because failure to make an appearance may cause procedural errors to be committed that could impair the factual foundation of the confiscation of goods or money, by not allowing them to exercise the principle of the right to defense and effective judicial protection that is embodied in the constitutional norms of each country. The return of goods, products or instruments to the claimant will proceed upon accreditation





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

Organization of American States

P. 202.458.3000  
[www.oas.org](http://www.oas.org)

INTER-AMERICAN DRUG ABUSE  
CONTROL COMMISSION

**CICAD**

Secretariat for Multidimensional Security

and conclusion that: a) The claimant has legitimate interest with respect to the goods, products or instruments; b) the claimant is unable to be accused of any type of, or participation in, a crime of illicit trafficking or related crimes subject to the process; c) the claimant was unaware, without negligence, of the illegal use of the goods, products or instruments or when, having knowledge, did not voluntarily consent to use them illegally; d) the claimant did not acquire any right to the goods, products or instruments of the prosecuted person in circumstances that reasonably lead to the conclusion that the right over these would have been transferred to him for the purpose of avoiding possible seizure and confiscation; e) the claimant made all reasonable steps to prevent the unlawful use of the goods, products or instruments.

#### MODEL LAW ON IN REM FORFEITURE ([UNODC, 2011](#))

**Article 6. Basis for in rem forfeiture. The in rem forfeiture shall apply to:** j. Property of legal origin whose value is equivalent to any of the property described in the preceding points, when the right of a third party acting in good faith to the same property is proven.

**Article 8. Legal acts.** No legal act performed in regard to the property listed in Article 6 legitimizes such property, with the exception of the rights of third parties acting in good faith.

**Article 42. Disposal of property.** Property declared forfeited accordance with this Act may be used to: a. Finance programs that provide victims of illegal activities with care and compensation.

#### RECOMMENDATIONS OF THE FINANCIAL ACTION TASK FORCE ([FATF, 2012](#))

**Recommendation 4. Confiscation and provisional measures.** Countries should adopt measures similar to those set forth in the Vienna Convention, the Palermo Convention, and the Terrorist Financing Convention, including legislative measures, to enable their competent authorities to freeze or seize and confiscate the following, without prejudicing the rights of bona fide third parties: (a) property laundered, (b) proceeds from,



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

Organization of American States

P. 202.458.3000  
[www.oas.org](http://www.oas.org)

INTER-AMERICAN DRUG ABUSE  
CONTROL COMMISSION

**CICAD**

Secretariat for Multidimensional Security

or instrumentalities used in or intended for use in money laundering or predicate offences, (c) property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organizations, or (d) property of corresponding value.

**Interpretive note to recommendation 6 (Targeted financial sanctions related to terrorism and terrorist financing)** 2. It should be stressed that none of the obligations in Recommendation 6 is intended to replace other measures or obligations that may already be in place for dealing with funds or other assets in the context of a criminal, civil or administrative investigation or proceeding, as is required by Recommendation 4 (confiscation and provisional measures)<sup>4</sup>. Measures under Recommendation 6 may complement criminal proceedings against a designated person or entity, and be adopted by a competent authority or a court, but are not conditional upon the existence of such proceedings. Instead, the focus of Recommendation 6 is on the preventive measures that are necessary and unique in the context of stopping the flow of funds or other assets to terrorist groups; and the use of funds or other assets by terrorist groups. In determining the limits of, or fostering widespread support for, an effective counter-terrorist financing regime, countries must also respect human rights, respect the rule of law, and recognize the rights of innocent third parties.

**Interpretive note to recommendation 7 targeted financial sanctions related to proliferation (§B, 4, d) (...)** For proposals of designations, the competent authority of each country will apply the legal standard of its own legal system, taking into consideration human rights, respect for the rule of law, and in recognition of the rights of innocent third parties.

**BEST PRACTICES ON CONFISCATION (Recommendations 4 and 38) (FATF, 2010)**

**Page 3 (§ 1°):** A robust system of provisional measures and confiscation (...) may also allow the victim of the crime to be partially or fully compensated, even when the proceeds are moved around the world.



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

Organization of American States

P. 202.458.3000  
[www.oas.org](http://www.oas.org)

INTER-AMERICAN DRUG ABUSE  
CONTROL COMMISSION

**CICAD**

Secretariat for Multidimensional Security

**10.** The following are best practices for jurisdictions to facilitate the development of effective arrangements for coordinating freezing, seizure and confiscation proceedings. d) Enter into asset sharing agreements with other countries. Such agreements should be consistent with the appropriate compensation of victims.

**UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME ([UNODC, 2003](#))**

**Article 12. Confiscation and seizure.** 7. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings. 8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

**Article 13. International cooperation for purposes of confiscation.** 8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

**Article 14. Disposal of confiscated proceeds of crime or property** 2. When acting on the request made by another State Party in accordance with article 13 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.

**Article 25. Assistance to and protection of victims** 1. Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular



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

Organization of American States

P. 202.458.3000  
[www.oas.org](http://www.oas.org)

INTER-AMERICAN DRUG ABUSE  
CONTROL COMMISSION

**CICAD**

Secretariat for Multidimensional Security

in cases of threat of retaliation or intimidation. 2. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention. 3. Each State Party shall, subject to its domestic law, enable 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 defense.

**PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME ([UNODC, 2003](#))**

**II. Protection of victims of trafficking in persons**

**Article 6 - Assistance to and protection of victims of trafficking in persons** 1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential. 2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases: a) Information on relevant court and administrative proceedings; b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defense 3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of: a) Appropriate housing; b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; c) Medical, psychological and material assistance; and d) Employment, educational and training opportunities. 4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care. 5. Each State Party shall endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory. 6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.



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

Organization of American States

P. 202.458.3000  
[www.oas.org](http://www.oas.org)

INTER-AMERICAN DRUG ABUSE  
CONTROL COMMISSION

**CICAD**

Secretariat for Multidimensional Security

**Article 7 - Status of victims of trafficking in persons in receiving States** 1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

**Article 8 - Repatriation of victims of trafficking in persons** 1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay. 2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary. 3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party. 4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory. 5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party. 6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

### III. Prevention, cooperation and other measures

**Article 9 - Prevention of trafficking in persons** 1. States Parties shall establish comprehensive policies,



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

Organization of American States

P. 202.458.3000  
[www.oas.org](http://www.oas.org)

INTER-AMERICAN DRUG ABUSE  
CONTROL COMMISSION

**CICAD**

Secretariat for Multidimensional Security

programmes and other measures: a) To prevent and combat trafficking in persons; and b) To protect victims of trafficking in persons, especially women and children, from victimization.

#### IV. Final provisions

**Article 14 - Saving clause 2.** The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of nondiscrimination.

#### UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ([UNODC, 1988](#))

**Article 5 CONFISCATIONS 8.** The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

#### UNITED NATIONS CONVENTION AGAINST CORRUPTION ([UNODC, 2003](#))

**Article 31. Freezing, seizure and confiscation 9.** The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

**Article 32. Protection of witnesses, experts and victims 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



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

Organization of American States

P. 202.458.3000  
[www.oas.org](http://www.oas.org)

INTER-AMERICAN DRUG ABUSE  
CONTROL COMMISSION

**CICAD**

Secretariat for Multidimensional Security

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. 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; 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. 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. 4. The provisions of this article shall also apply to victims insofar as they are witnesses. 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 defense.

**Article 53. Measures for direct recovery of property** b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

**Article 55. International cooperation for purposes of confiscation** b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final; 9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.





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

Organization of American States

P. 202.458.3000  
[www.oas.org](http://www.oas.org)

INTER-AMERICAN DRUG ABUSE  
CONTROL COMMISSION

**CICAD**

Secretariat for Multidimensional Security

**Article 57. Return and disposal of assets** 1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law. 2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties. c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

**INTER-AMERICAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS ([OAS, 1996](#))**

**Article 13. Search, seizure, attachment, and surrender of property.** In accordance with the provisions of this convention, the requested state shall determine, according to its law, what requirements must be met to protect the interests held by third parties in the items that are to be transferred.

**PROTOCOL ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ([MERCOSUR, 1996](#))**

**Submission of Documents and Others Cooperation Measures Article 23** 1. - The competent authority shall record the request for cooperation with regard to inspections and to the delivery of any objects, including among others, documents or background, whether it contains information that justifies the proposed measure. This measure shall be submitted to the procedural and substantive law of the requested State, without prejudice to the provisions of article 15, literal b) The requested State shall, according to its law, resolve any request relating to the protection of the rights of third parties on the objects that are the subject of the measures provided for in the preceding paragraph. 2. - States Parties shall afford one another assistance in accordance with their respective laws, in the procedures relating to insured measures, compensation to victims of crime and collection of fines imposed by a judicial ruling.



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

**INTER-AMERICAN DRUG ABUSE  
 CONTROL COMMISSION**

**CICAD**

Organization of American States

P. 202.458.3000  
[www.oas.org](http://www.oas.org)

Secretariat for Multidimensional Security

**iii) Legislation**

COUNTRY	RIGHTS OF VICTIMS AND BONA-FIDE THIRD PARTIES
<b>Argentina</b>	<p>In domestic legislation there are dispositions related to the victims and third-parties. Article 23 of the Criminal Code of the Argentine Republic: In all cases where sentencing occurs for crimes detailed in the Criminal Code or in special criminal laws, the same will decide the forfeiture of those things which have served to commit the crime and of the things or proceeds which are the product or advantage of crime, in favor of the national State, of the provinces or the municipalities, except the rights of restitution or indemnity of victims or third parties.</p>
<b>Brazil</b>	<p>Agreements on international legal cooperation regarding criminal matters between Brazil and other countries normally have relative dispositions with respect to not only the rights of victims but also those of bona-fide third parties.</p> <p>“In the application of this article, rights and legitimate interests of the Required Part and third parties in relation to the products or instruments will be respected according to the national legislation of the Required Part.” (art. 18.3 of the Agreement on International Juridical Cooperation in criminal matters between Brazil and China)</p> <p>“In the application of this article, the rights of bona fide third parties should have protection in accordance with the laws of the Required Part.” (art.17.3 Agreement on International Juridical Cooperation in criminal matters between Brazil and South Korea)</p> <p>“In the application of this article, the rights of bona fide third parties will be respected.” (art. 6.3 of the Agreement of International Juridical Cooperation in criminal matters between Brazil and Cuba)</p> <p>“The required Part will resolve, according to the legal system, any relative request to the protection of bona fide rights over assets that are object of predicted measures in preceding paragraphs.” (art. 19 Agreement on International Juridical Cooperation in criminal matters between Brazil and Spain)</p> <p>“The Parties shall assist each other in so far as is permitted by their respective laws that regulate the procedure for cases of seizure of proceeds and instruments of crime, restitution to victims of crime and collection of fines imposed for criminal sentences. It includes between the provided actions in this paragraph the temporal freezing of such crime products and instruments, while the trial is expected of another case.”(Art. 19 Agreement on International Juridical Cooperation in criminal matters Between Brazil and United States)</p> <p>The rights claimed by third parties in good faith on those assets or property will be</p>



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

**INTER-AMERICAN DRUG ABUSE  
CONTROL COMMISSION**

**CICAD**

Organization of American States

P. 202.458.3000  
[www.oas.org](http://www.oas.org)

Secretariat for Multidimensional Security

COUNTRY	RIGHTS OF VICTIMS AND BONA-FIDE THIRD PARTIES
	<p>respected." (Art. 25.2 of the Agreement on international legal cooperation in criminal matters between Brazil and Mexico)</p> <p>"When there are identifiable victims, the decision on their rights may precede the division of assets or property confiscated between the Parties." (Art. 27.4 of the Agreement on international legal cooperation in criminal matters between Brazil and Mexico)</p> <p>"Rights claimed by third parties in good faith on those assets will be respected." (Art. 18.2 of the Agreement on international legal cooperation in criminal matters between Brazil and Nigeria)</p> <p>"Where appropriate, and if there are identifiable victims, the decision on the rights of the victim precedes to the division of assets between the parties." (Art. 21.4 of the Agreement on international legal cooperation in criminal matters between Brazil and Nigeria)</p> <p>"The rights claimed by third parties in good-faith on those assets will be respected." (Art. 15 of the international legal cooperation in criminal matters between Brazil and Panama)</p> <p>"When there are identifiable victims, decisions on the rights of the victim may precede the division of assets between the parties." (Art. 17.5 of the Agreement on international legal cooperation in criminal matters between Brazil and Panama)</p> <p>"The rights claimed by the victims and bona fide third parties, such assets will be respected." (Art. 19.3 of the Agreement on international legal cooperation in criminal matters between Brazil and Surinam)</p> <p>"The Parties shall assist each other in so far as is permitted by their respective laws that regulate the procedure for cases of seizure of proceeds and instruments of crime, restitution to victims of crime, and the collection of fines for criminal convictions. They may include actions planned in this paragraph the temporary unavailability of such proceeds or instruments of crime while awaiting trial in another procedure." (Art. 17.2 of the Agreement on international legal cooperation in criminal matters between Brazil and Ukraine)</p> <p>"The rights claimed by third parties in good faith on those assets will be respected." (Art. 15.2 of the Agreement on international legal cooperation in criminal matters between Brazil and Honduras)</p> <p>"When there are identifiable victims, the decision on their rights may precede the division of assets between the parties." (Art. 17.5 of the Agreement on international legal cooperation in criminal matters between Brazil and Honduras)</p>



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

**INTER-AMERICAN DRUG ABUSE  
 CONTROL COMMISSION**

**CICAD**

Organization of American States

P. 202.458.3000  
[www.oas.org](http://www.oas.org)

Secretariat for Multidimensional Security

COUNTRY	RIGHTS OF VICTIMS AND BONA-FIDE THIRD PARTIES
	<p>"The rights claimed by third parties in good faith on those assets will be respected." (Art. 18.2 of the Agreement on international legal cooperation in criminal matters between Brazil and the United Kingdom)</p>
<p><b>Colombia</b></p>	<p>Law 793 from 2002 in Colombia, article 3: "If it is not possible to locate or execute the seizure of property subject to forfeiture at the time of the verdict, the judge may order forfeiture of substitute property or assets possessed by the same person and of equal value. This article should not be interpreted in prejudice of the rights of innocent third parties acting in good faith".</p>
<p><b>Costa Rica</b></p>	<p>When it has been shown and concluded that the victim is a bona-fide third party, Law 8204 and Law 8754 establish that all of the measures and sanctions related to seizure and forfeiture of assets linked to infractions of these Laws, will apply without prejudice to the rights of these bona-fide third parties.</p> <p>Article 94 of Law No. 8204, describes what the requirements are that a claimant should meet to be considered a bona-fide third party. This article concretely states:</p> <p>"Article 94.-The court or competent authority shall have the return of assets, products or instruments to a claimant, though it is shown and concluded that:</p> <ul style="list-style-type: none"> <li>a) The claimant has a legitimate interest in the assets, products or instruments.</li> <li>b) The claimant cannot be imputed authorship of any kind or participation in an offense of illicit traffic or related crimes object of the process.</li> <li>c) The claimant did not know, without any negligence, the illegal use of assets, products or instruments or when, having knowledge, did not voluntarily agreed to use them illegally.</li> <li>d) The claimant did not acquire any right to the assets, products or instruments of the accused person, in circumstances that reasonably lead to the conclusion that the right of those would have been transferred for the purpose of avoiding possible seizure and confiscation.</li> <li>e) The claimant did everything reasonable to prevent illegal use of the assets, products or instruments. "</li> </ul> <p>Additionally, Costa Rica has Law 8720, Protection to victims, witnesses and other participants subjected to the criminal process. That law regulates the extra procedural protection measures and its proceedings.</p>
<p><b>United States</b></p>	<p>With respect to victims and third parties, in consonance with Article 14, Paragraph 2, of the United Nations Convention against Transnational Organized Crime, the United States includes in its bilateral agreements on cooperation exchange and permanent asset forfeiture, a</p>



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

**INTER-AMERICAN DRUG ABUSE  
CONTROL COMMISSION**

**CICAD**

Organization of American States

P. 202.458.3000  
[www.oas.org](http://www.oas.org)

Secretariat for Multidimensional Security

COUNTRY	RIGHTS OF VICTIMS AND BONA-FIDE THIRD PARTIES
	<p>reciprocal obligation that signatory countries return all of the income from fraud and theft to the soliciting country for the purpose of compensating victims.</p> <p>This disposition appears in the most recent of the bilateral agreements on permanent confiscation and distribution of assets cooperation that the United States has signed with other governments since 1990.</p>
<b>Guatemala</b>	<p>Also, the Law against Sexual Violence, Exploitation and Trafficking of Guatemala believes that the victim is "a person who individually or collectively suffered harm, physical or mental injuries, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that violate criminal law. It is also considered a victim to relatives or dependents who have direct relationship with the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization."<sup>7</sup></p> <p>In Guatemala the Attorney General's Office is the principal articulating entity of services of assistant and protection to victims and/or witnesses. Article 26 of the Organic Law of the Attorney General's Office instituted the Office of Victims Services. E.g. Sexual crimes.</p> <p>However, Guatemalan domestic norms do not include dispositions related to respecting the rights of victims at the time of signing agreements or arrangements to share assets among States.</p>
<b>Honduras</b>	<p>In Honduras, principles directly related with a focus on the victim have been developed through special legislation, such as the Law against Human Trafficking, Law against Domestic Violence and, to a smaller degree, in the Childhood and Adolescence Code.</p> <p>On the other hand, Honduran legislation provides for the creation of a Witness Protection Program under the direction and coordination of the Attorney General's Office in the year 2007, under the Law of Witness Protection in Criminal Proceedings.<sup>8</sup></p>
<b>El Salvador</b>	<p>In the case of El Salvador, article 12 of the Criminal Procedure Code contains the definition of victim; which covers;</p> <p>"1) Those directly offended by the crime; 2) The spouse, life partner, child or adoptive parent, relatives within four degrees of consanguinity or two degrees of affinity and the testamentary heir, in crimes resulting in the death of the offended; 3) Partners, with regard to crimes that affect a society, committed by those who run, administer or control it, or its managers or by those who may direct or administer a controlled</p>

<sup>7</sup> Article 10 of the Law against Sexual Violence, Exploitation and Trafficking. Order 9-2009.

<sup>8</sup> Mediante la aprobación del Decreto 63-2007.



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

**INTER-AMERICAN DRUG ABUSE  
 CONTROL COMMISSION**

**CICAD**

Organization of American States

P. 202.458.3000  
[www.oas.org](http://www.oas.org)

Secretariat for Multidimensional Security

COUNTRY	RIGHTS OF VICTIMS AND BONA-FIDE THIRD PARTIES
	<p>corporation, controlling or linked; and 4) Associations in those crimes that affect collective or diffuse interests provided that the object of the association can be directly linked with those interests.”<sup>9</sup></p>
<p><b>Spain</b></p>	<p>Articles 5, 9c, and 10 of the 4/2010 Law include relative dispositions to respect victims’ rights at the moment of subscribing agreements to share assets between States.</p>
<p><b>Mexico</b></p>	<p>The Constitution of the United Mexican States in the second paragraph of Article 1, states:</p> <p>"Article 1 ...</p> <p>The rules on human rights shall be interpreted in accordance to the Constitution, and with the international treaties of matter, favoring at all times the people with the most extensive protection ... "</p> <p>For its part, Article 20 of the Mexican Constitution, in section C, Sections IV, VI relates the following:</p> <p>"Article 20 ...</p> <p>C. Of the rights of the victim or the victim:</p> <p>IV. That will repair the damage. In cases where appropriate, the Ministry is obliged to seek compensation for the damage, without impaired that the victim or offended can directly request it, and the judge cannot absolve the person sentenced for such compensation if it has issued a conviction.</p> <p>VI. Apply the precautionary measures and necessary arrangements for the protection and restoration of their rights, and ...</p> <p>Similarly, the Federal Forfeiture Law in its Title Two named "competition and Forfeiture Procedure" in its Chapter V entitled "The judgment" mentioned in the last paragraph of Article 43 the following:</p> <p>"<b>Article 43.</b> The judgment shall declare the termination of ownership or inadmissibility of the action. In the latter case, the court shall decide on the lifting of the precautionary measures that have been imposed and the person who will be the return of the same, in accordance with Article 49 of this Law. The court must rule on all matters goods of the dispute.</p> <p>If there is more than one property in forfeiture, it shall, with due separation, the corresponding statement to each of these.</p> <p>The judgments in which the invalidity of the forfeiture action is resolved without</p>

<sup>9</sup> Article 12 from the Criminal Procedure Code of Salvador. Order 733.



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

**INTER-AMERICAN DRUG ABUSE  
 CONTROL COMMISSION**

**CICAD**

Organization of American States

P. 202.458.3000  
[www.oas.org](http://www.oas.org)

Secretariat for Multidimensional Security

COUNTRY	RIGHTS OF VICTIMS AND BONA-FIDE THIRD PARTIES
	<p>prejudice regarding the precautionary security measures for purposes of forfeiture, provisional seizure for purposes of reparations or others that the judicial authority in charge of criminal proceedings agrees.</p> <p><i>In the case of sentencing that declares in rem forfeiture, the Federal Government will be able to opt for conserving the assets and carrying out corresponding payments to third parties, victims or offended parties.”</i></p> <p>From this it is affirmed that in Mexico independent of the existence of an agreement about sharing assets with other States, the internal norms of the country do treat on dispositions related to respecting the rights of victims at the time of signing agreements or arrangements to share assets among States.</p>
<b>Paraguay</b>	<p>The Paraguayan Criminal Code states that protection is afforded to bona-fide third parties, victims of seizure of assets found in their possession to whom an indemnity will be guaranteed on the part of the State. Likewise, victims of the crime are also protected, to those who allow asset damage caused by means of those forfeited assets.</p>
<b>Dominican Republic</b>	<p>The Attorney General’s Office of the Republic has a department for the protection of victims of all infractions, including money laundering.</p>
<b>Venezuela y Jamaica</b>	<p>Both internal systems allow cooperation conventions to share assets to provide for norms related to respecting the rights of victims.</p>
<b>Canada</b>	<p>There are not specific dispositions related to the victims in Canada. Regardless, the Section 4 of the <i>Compartment Regulations of Forfeiture Properties</i> disposes that the agreement to share assets of Canada with foreign countries should not contain terms regarding the use of obtained funds pursuant to the agreement. This will allow States to use the money regarding victims, if that is the application that the State chooses.</p> <p>En Canadá no existen disposiciones específicas relacionadas a las víctimas.</p>
<b>Peru; Bolivia, Uruguay, Chile, Surinam, Haiti y Panama</b>	<p>Currently, national regulations do not include provisions to respect the rights of victims at the time of signing agreements to share assets between States.</p>