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**ANALYSIS OF THE APPLICABILITY AND EFFECTIVENESS OF MODERN JUDICIAL INSTRUMENTS IN THE  
TRANSFER OF SEIZED AND FORFEITED ASSETS**



Organización de los  
Estados Americanos

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## INTRODUCTION

Currently, the emerging creation of organisms specialized in the administration of assets in Latin America forms part of States' efforts to comply with the various international recommendations put forward by the Financial Action Task Force (FATF),<sup>1</sup> the Model Regulations of CICAD/OAS<sup>2</sup>, the United Nations Model Law on In Rem Forfeiture<sup>3</sup>, as well as the studies and analyses carried out by the BIDAL Project of CICAD/OAS in the documents denominated as "Document on Fair Practices on the Administration of Seized and Forfeited Assets" and of " Normative Aspects for the Creation and Development of specialized bodies in the Administration of Seized and Forfeited Assets".

In that sense, it has been promoted that the administration of the assets be charged to the efficient and transparent specialized organisms, and that the safeguarding, custody, and filing of the assets not constitute a cost to the states, but rather a responsible form of administration which may generate resources in the search for the self-sustainment of the forfeitures and decommissions system and so ensure the conservation and the value of the assets until the corresponding judicial decision is concluded.

As a means to that end and in parallel to the initiative of the creation and administration of those organisms, some States have devised modern judicial instruments to facilitate the transfer of seized and forfeited assets among which lie the figures of the abandonment and the anticipated sale of the assets, improving the effectiveness of States' administration of said assets.

On the other hand, designing and constructing the auction or sales procedures as they pertain to assets forfeited by judicial sentence also forms an important part of the proceedings and a way of allocating the resources obtained, in accordance to the internal normative of each particular State for the strengthening of law enforcement institutions, the prevention and treatment of drug addiction, and the prevention of crime. It also constitutes an important source of finances for the maintenance of the assets' administration system.

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<sup>1</sup> Especially those referred to recommendations 4 and 38

<sup>2</sup> Article 7, Administration of Seized Assets

<sup>3</sup> Chapter VII, Asset Administration and Destination

## **OBJECTIVE**

In the light of these considerations, and with the aim of analyzing the factual propositions of its applications and measuring the efficiency and problems associated to the effective application of modern judicial instruments for the transfer of assets, the Forfeitures Subgroup of GELAVEX establishes the imperativeness of identifying those countries which count with these instruments.

The study on the applicability and effectiveness of these modern instruments will allow an analysis for countries who find themselves in the process of developing their internal asset administration systems to count on a reference document dealing with the creation and improvement of internal proceedings for the proper application of said instruments.

## **METHODOLOGY**

The coordination of the Subgroup on Forfeiture and International Cooperation, in coordination and collaboration with the Director of the BIDAL Project, will analyze the legislature of each country including the modern judicial instruments for the transfer of seized and forfeited assets. To that effect, a questionnaire will be circulated with the aim of identifying and analyzing information related to the proposals to be carried out for its proper application and to the problems associated with the effective implementation of the legal instruments, such as compliance with guarantees to bona fide third parties and the originator/competent authority of the measure whether it be administrative or jurisdictional, among other questions.

Nevertheless; this document will develop these issues in a general manner, from the perspective offered by various studies and international instruments in order to generate the questions that will be circulated and so that countries may have a guide to be able to answer the aforementioned questionnaire.

## **ANALYSIS OF THE JUDICIAL INSTRUMENTS: ABANDONMENT, ADVANCED SALE AND THE SALE OF FORFEITED ASSETS**

In the XXXIX Meeting of the Group of Experts for the Control of Money Laundering, held in September 2014 in Uruguay, the Sub-Working Group on Forfeiture and International Cooperation, within the framework of the group's strategic planning, defined the development of the theme "Disposal Processes for Seized and Forfeited Assets" as one of its lines of actions. In order to work in this line of action, the "Creation of a reference to support the seized and forfeited asset administration offices in the processes of disposing such assets" was included as part of the 2014-2015 Work Plan. The general theme of asset administration has been treated in various documents within GELAVEX, and these offer important recommendations available to all member States, such as the "Document on Best Practices in Seized and Forfeited Asset Administration" and the document "Normative Aspects for the Creation and Development of Specialized Entities in the Administration of Seized and Forfeited Assets" which also includes the "Normative Guide for the Creation and Development of Asset Administration Entities", among others. The recommendations outlined in these documents become fundamental tools for asset administration, for example; the necessity of having a competent body for asset management, the importance of having specific legislation for the administration and management of assets and procedures, planning prior to the embargo, having sufficient resources for asset administration, implementing information systems for registering and tracking assets, respecting the rights of third parties in the proceedings, forecasting to assume responsibility for damages to be paid, after legal action by a person for loss or damage to property, among others. Some of these topics have also been addressed within the framework of the disposition of seized and forfeited assets or have an impact on that topic. For the foregoing reasons, it is considered important to give a concrete overview and delimit the work, in order to design this "reference" but focused on identifying and analyzing modern legal instruments for the disposition of seized and forfeited assets. In this regard, it is first important to define the term "disposition" which in a legal sense implies the transfer of a right in rem (real right) of one patrimony to another<sup>4</sup>.

Thus, disposition can be understood in a broad or strict sense, ultimately inclusive of all the ways in which property can be transferred, but for the effects of the present analysis the term

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<sup>4</sup> According to Wikipedia; The Free Encyclopedia. .

disposition is understood as a sale. Assets coming from organized crime that are seized by competent authorities are varied, and in many cases criminal proceedings may extend over many years, generating problems related to the management, administration, and conservation of the assets. "..., as changes take hold, the number of assets seized, either preventively or definitively, also increases. When the forfeiture of assets is ordered through a final judgment, which dictates the definitive forfeiture of the assets and the transfer of ownership to the State, the State disposes of the assets in accordance with the law. Assets seized preventively create more problems, and their growing numbers have seriously challenged many countries that do not know what to do with them..."<sup>5</sup>

Faced with this situation, in order to recover administrative costs and to ensure that assets maintain their value, or at the very least do not depreciate, the competent authorities who administer these assets require special and specific legislation related to the management and administration of these assets. Accordingly and in a concrete way, they need legal, administrative, and procedural tools to facilitate their work, in order to offer efficient and transparent management in the stages of seizure and forfeiture. Therefore, some of these authorities have begun to strengthen their domestic systems, incorporating ways of making assets available from the seizure stage, such as implementing abandonment and integration in different systems of sales under certain assumptions; as well as the sale or auction of assets in the forfeiture stage.

## **1) Abandonment**

Article 9 establishes. On Forfeiture of assets, products or instruments, in paragraph 4, the assumptions on which the legally competent authority could order final forfeiture: a) If, after a reasonable period of time has elapsed since the seizure of the asset, the identity of the owner, author or participant in the fact cannot be established, they have abandoned the property; b) When a reasonable period of time has elapsed, after finalizing or closing the criminal proceedings without those who could claim a legitimate legal interest in the assets having made some attempt to remove them. In addition, let it be clarified that compliance with due process is necessary so that any interested party can assert their rights. On one hand, the document on Best Practices on Seized and Forfeited Asset Management, BIDAL

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<sup>5</sup>Asset Management Systems in Latin America and Best Practices Document on the Management of Seized and Forfeited Assets, Isidoro Blanco Cordero and General Secretariat of the OAS, pp. 14 and 15.

Project, in Chapter III, since 2009, incorporated abandonment, in point 2. Forfeiture of abandoned or unclaimed assets in the process and gives it the same treatment as that described in the Model Law, i.e., recommending the same budgets. On the other hand, the Normative Guide for the Creation and Development of Asset Management Agencies, presented at the November 2012 meeting of the Group of Experts for the Control of Money Laundering, also addressed the issue “Of assets abandoned or unclaimed in the process.”; in the following manner: “. . . . The competent judicial authority shall declare the abandonment of assets and, therefore, forfeiture, extinction, loss or deprivation of the domain in favor of the State, in the following circumstances: 1. When a default in the process of extinction, loss or deprivation of domain is declared. 8 2. When a default in the criminal proceedings by a competent judicial authority is declared. 3. When more than three months of finalizing or closing criminal proceedings have passed without those who may have a legitimate legal and economic interest in the assets having made any attempt to claim them. The action of the interest party to bring any claim will expire, and the asset management agency will be able to dispose of the assets, subject to the previous authorization of the competent authority who heard the case. 4. When three months have passed after the seizure or confiscation of the asset and the identity of the author or participant of the crime cannot be established or has effectively abandoned the assets, resources, elements and utilized transportation means. In this case, prior to the declaration of abandonment, a publication in an official journal with national circulation is required to the effect that any interested party may present themselves in the process to assert their rights.”

The Normative Guide raises one more assumption; “Unclaimed Assets. Once the return of the affected assets has been judicially ordered with precautionary measures, and if said assets have not been claimed within one month, these shall be declared, by the competent judge or court, in abandonment and so to the definite custody of the Organism for the Administration of Assets, whose proceeds shall go to the Special Fund and be directed in accordance to the law.” From the foregoing, it is clear that in any of these presuppositions, it is necessary that for asset abandonment to be ordered, the competent authority should determine that the person entitled to claim such assets has not presented him/herself in the process of removing the assets, and even when the authority knows that the assets have been seized in a criminal proceeding or in rem forfeiture; the above, in order to not become indefensible. Additionally it is noted that a coincidence between that which the Model Law establishes and the Document on Best Practices may exist, with the difference that the latter specifies a time period. It is very important to emphasize that both documents include in the

first assumption, the owner of the asset as the interested party. 9 The Normative Guide includes an additional assumption, which extends the “court order for return if the assets are not claimed within a reasonable period” and requires a declaration of abandonment prior to the decree of forfeiture. As a result, abandonment forms a fundamental tool in so much as it provides asset management agencies with the availability of assets without having to wait until the criminal or in rem forfeiture proceedings have finalized, for those instances of criminal cases where the author or participant is unknown or in those in which default is decreed during the proceedings, as well as those cases where assets related to some illicit activity are found and whose belonging is unknown. Compared to the other assumptions, this is also fundamental, because even if and when there is judgment, if the same are not withdrawn in a determined period of time in the domestic legal system, they will not indefinitely be left as a burden to the competent authority but rather, following a period of time, be able to be declared abandoned and may proceed with their disposal.

## **2) Advanced Sale**

Considering that in many cases judicial proceedings extend for a long period of time and generate their own problems related to management, administration and maintenance of the seized assets, a best practice among some specialized agencies has been to implement the practice of advanced sale of the seized assets under certain previously defined assumptions. In that regard; the Document on Best Practices in Asset Forfeiture from the Financial Action Task Force (FATF), establishes as a recommendation for an ideal asset forfeiture regime, the following; “g) The law grants the Courts the authority to order the sale, even in cases where the assets are perishable or depreciate quickly. h) There exists a mechanism which allows the sale of assets with the consent of the owner.” 10 For its part, the document “Asset Management Systems in Latin America and Best Practices Document on the Management of Seized and Forfeited Assets”, cites the following: “It bears reiterating that the general rule must be the preservation of seized assets during the length of the proceedings. However, there are exceptions and the sale of the assets may be authorized in special cases. In fact, once the assets have been entered in the inventory, and if they can be legally sold, their transfer or sale may be authorized even before a judgment has been issued, as long the assets meet a number of conditions which we will analyze in the next paragraph. To accomplish this, there should be an asset transfer process based on the principles of



transparency, speed, productivity, economy and honesty (Art. 5 Decree 1461 of 2000, Colombia; Art. 31 Mexico Law)<sup>6</sup>

The Model Regulations on money laundering offenses related to illicit drug trafficking and other serious crimes, in its article 6, regulates “Precautionary measures on assets, products or instruments” indicating that the order of seizure or preventive confiscation will be dictated in order to preserve the availability of the asset, product or instrument. Then, article 7 of the same Regulation, which is composed of various points, designates the specialized administrative authority as the responsible party in the administration and reasonable preservation of the economic value of assets subject to precautionary measures and in a specific manner indicates, in point 4.: “The specialized administrative authority may order the liquidation of assets that are perishable or susceptible to near-term deterioration; assets whose maintenance or administration may be excessively onerous; and assets whose maintenance would cause a significant diminution in their value”<sup>7</sup>

For its part, the Document on Best Practices on Seized and Forfeited Asset Management, in Chapter III The Loss of an Object Product or Instrument of crime, point 1. Powers of disposition and auction over assets seized in advance has treated the advanced sale or auction of seized assets, perishable or moveable, with the authorization of the competent authority.

This document also indicates that the authorization for advance sale is based on the fact that the action will preserve the value of assets to prevent their deterioration and the loss of their commercial value, or in the case that there is the possibility of loss or destruction of the property because of its excessive or burdensome administration. The G-8, group of industrialized countries with major influence around the world, in its document on best practices for forfeited asset management, has also incorporated the topic of advanced sale. This document establishes, “that there should be legislation to regulate procedures that allow, under conditions laid down in domestic law, the sale of perishable rapidly depreciating assets, such as ships, planes, cars, animals, and farm crops. States have to assess, also,

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<sup>6</sup> Reference pg. 56.

<sup>7</sup> Aspectos Normativos para la Creación y Desarrollo de Cuerpos Especializados en Administración de Bienes Incautados y Decomisados; GELAVEX, pág. 101

the possibility of authorizing the sale prior to the trial of the assets that are too expensive to maintain. ...”<sup>8</sup>

As can be observed, various international organizations have recommended that domestic legal systems establish the possibility of selling assets in advance under special circumstances, even expressly defining the types of assets in this regard. But they have also introduced other parameters that can be valued to justify the approval of the advance sale, such as occurs when it is determined that the assets can depreciate rapidly, deteriorate, be destroyed, or are costly to maintain. However, the implementation of this measure involves a number of aspects that must be considered, because if left unaddressed, could mean limitations such that this important tool is not effective or even subject to acts of corruption and abuse of the measure.

### **3) Sale of Forfeited assets**

Different internal systems can define the forms of having assets seized, with one of the options being disposal by sale, as well as determining the fate of the proceeds from the sale of those goods. Through the sale of forfeited assets the State can recover administration costs and in some cases, profit from the proceeds of the sale, which can be transferred in accordance with provisions, to benefit of the preventive and active system against money laundering, drug trafficking and in the fight against organized crime in general. On the subject, the previously-mentioned Model Regulation on crimes of money laundering, in article 11, subparagraph (b) establishes: “Any time that assets, products or instruments are seized in accordance with Article 9, that should not to be destroyed and are not harmful to the public, the court or the competent authority may, in accordance with the law: c) Sell them and transfer the product of that disposition to any public entity that has participated directly or indirectly in its confiscation or preventive seizure or forfeiture. ...” The Document on Best Practices and the Normative Guide for the Creation and Development of Asset Management Systems previously-mentioned, has also pointed to “auction or sale” as a form of disposition of forfeited assets.

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<sup>8</sup> G8 Best Practices for the Administration of Seized Assets. Lyon G-8 / Rome Group. Criminal Subgroup on Judicial Affairs. The final version is from April 27, 2005. Cited in Normative Aspects for the Creation and Development of Specialized Agencies in the Management of Seized and Forfeited Assets. GELAVEX. Pp. 9 and 10.

## **ANALYSIS OF RESPONSES TO THE QUESTIONNAIRE ON ASSET DISPOSAL**

In accordance with the methodology set forth by this analytical document, the member States received the questionnaire by way of the Executive Secretariat with the objective of completing it and forwarding their answers to the Subgroup for Forfeiture and International Cooperation and to the Director of the BIDAL Project, who received eleven responses from the States of Argentina, Bolivia, Brazil, Costa Rica, Honduras, México, Panamá, Paraguay, Peru, Uruguay, and Venezuela.

The tabulation and analysis of the answers was carried out as such, making it possible to determine the countries which count on their internal orders, and who possess the judicial instruments for disposal, advanced sale, sale of forfeited assets, and the proposals for their application and the problems associated with the effective application of these instruments.

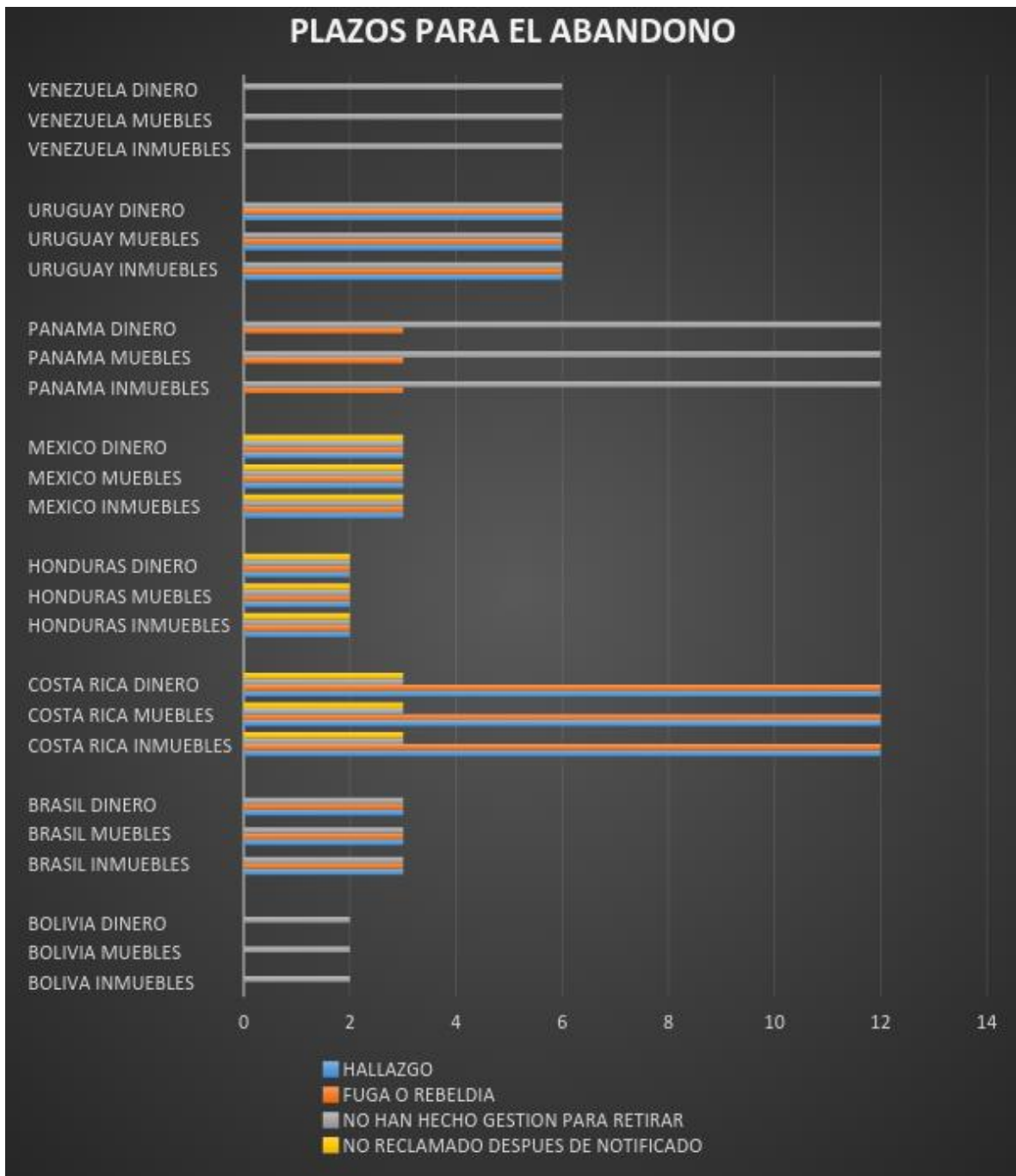
Nonetheless, it is important to point out that this document will only make reference to that information which is most relevant to the planned objectives. The remainder of the answers to the questionnaire may be found in Annex N°2.

### **ABANDONMENT**

Concurrently with the collected information, it was possible to identify that 73% of the countries have developed the figure for abandonment on average within the last 15 years in relation to the forfeited and seized assets. These countries are Bolivia, Brazil, Costa Rica, Honduras, México, Panamá, Uruguay and Venezuela.

Said figure has been applied to all types of assets (movable, immovable, and currencies), and principally when the accused HAS PRESENTED NO MOTION TO RETRIEVE the concerned asset through a competent authority, following the case of a DEFAULT.

In this sense, every order observes a variety of time lapses to apply the figure, depending on the factual supply from which it draws, not exceeding that of twelve months.



In 38% of the cases, the task of initiating the process of abandonment is charged upon the Public Prosecutor and upon the entity specialized in the management of the assets.

Likewise, that of verifying the prerequisites and declaring abandonment corresponds to the judge.

It is worth noting that, during the process of declaring abandonment, Uruguay is the sole state indicating that it does not necessary issue a notice through mass media so that any party may claim the assets.

The orders have also contemplated time-lapses for the affected individuals to appear in the process to reclaim the assets, with the majority of countries falling within an allowance of 3 months, and, in that sense, all but Panama proceed with the declaration of abandonment even with real guarantees over the assets.

On the Other hand, the following problems have been identified to engulf the effective application of this figure, namely when it pertains to the following:

**Bolivia:** Delays in trials are not prioritized in this process.

**Brazil:** The process is long. Though the objective of article 123 of the CPP is to avoid the lengthy holding of assets during cases of returning them following a firm sentence (guilty or absolvent) when the interested person does not appear to retrieve them within a reasonable period - 90 days-, the proceeding for declaring the abandonment of the assets must be lengthened to the guidance of rules of the Civil Due Process Code - articles 1.142 through 1.158 dealing with the succession 'in suspension' (herança jacente in Portuguese) and 1.159 through 1.169 dealing with the absentees' assets. As a result, only after the judicialization of a civil cause of vacant succession to the proceeds of the unclaimed assets' sale, and not before 5 years have passed without the appearance of a successor to the goods in the scope of the succession proceedings, may the state declare the forfeiture observing article 1.143 of the CPC and 1.822 of the Civil Code.

**Costa Rica:** The Judicial Authority must wait a year from the declaration of default before it may declare forfeiture as a result of abandonment.

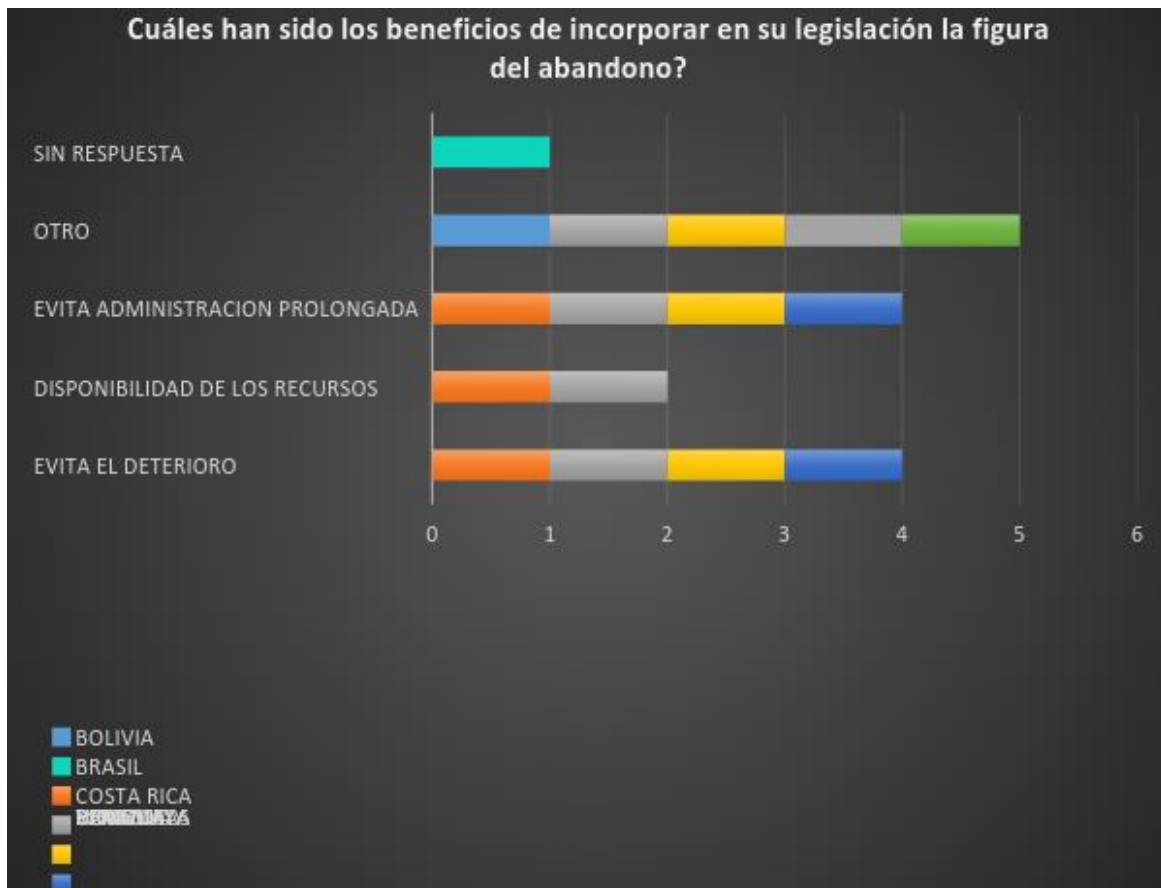
**Honduras:** Given that it is a new process, the procedure has only been applied to cash currency and abandoned sea vessels. A process is pending in regards to air vessels, while one dealing with immovable assets is under discussion. We await the jurisprudence that these sentences might generate, and greater difficulty is awaiting a prudent period for judicial precedents to arise.

**México:** None, under the prospect of carrying out the proceeding in conformity with the regulations governing the declaration of abandonment.

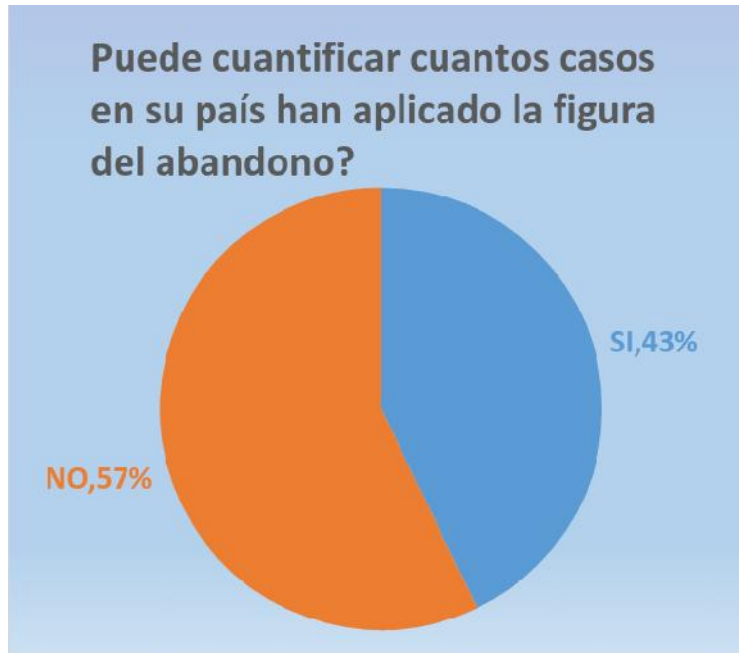
**Panamá:** The CPP has no contingency for cases in which it ignores the whereabouts of the person, who must be personally notified of the date of the forfeiture by abandonment hearing, or for cases in which the identity of the assets' owner is unknown.

**Venezuela:** The advocacy of the involved institutions: Public Prosecutor and Penal Courts of the Republic.

The application of the figure of abandonment has contributed in an important way to the countries, as seen in the following graph.



Finally, on abandonment, it is important to mention that, according to the study, the majority of the countries cannot quantify how many assets have been subjected to said instrument.

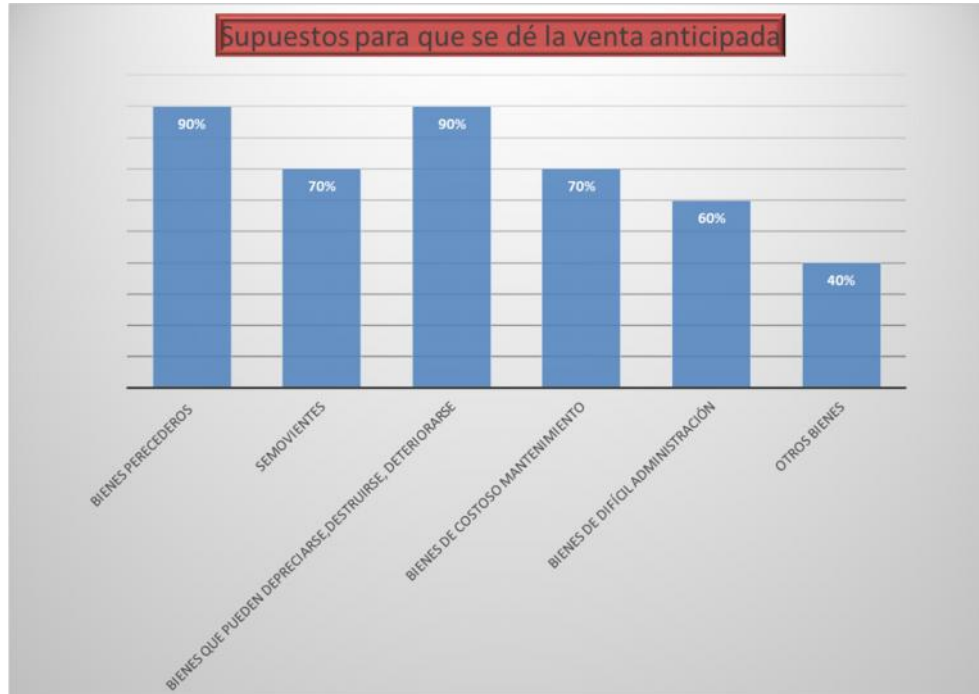


### **ADVANCED SALE**

According to the analyzed data, all countries but Paraguay count with advanced sale in their legislature, counting 91% of the participants to possess this judicial instrument.

All of the countries apply the figure regardless of the type of asset, be they movable or immovable. One important element to notice is that what is considered by the legislature is that there exist prerequisites to applying the instrument, with the exception of Costa Rica who indicates that assets seized for a violation to Statute No. 8204 (Drugs, Money Laundering, and Terrorist Financing) may be sold in advance solely by virtue of having been seized.

The different prerequisites that the countries have applied and the percentage for each are as follow:



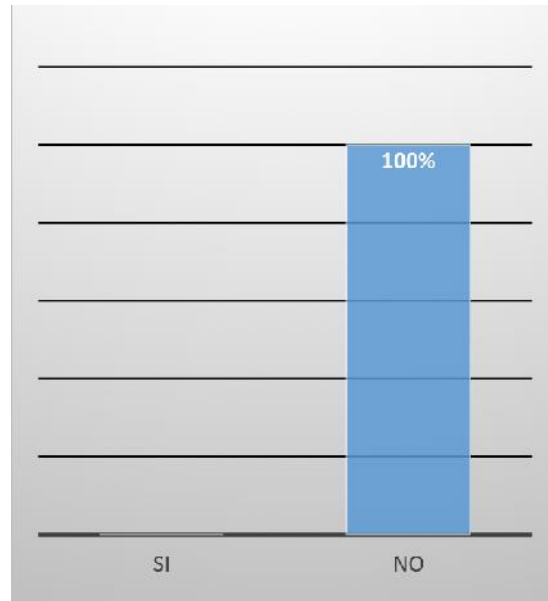
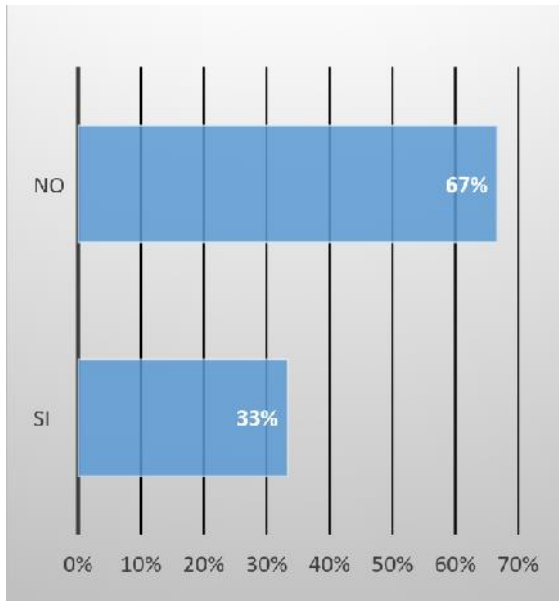
The relevant authority who files for advanced sale in most countries is THE ENTITY SPECIALIZED IN THE ADMINISTRATION OF ASSETS, with a 70% representation in the polled countries. According to the answers given in the questionnaires, it is crucial to count on organs to handle the filing of assets, to the end of avoiding the issues related to their administration.

Contrary to that previously stated in this document, the competent authority responsible for verifying the honoring of the matter at hand and of authorizing advanced sale is the JUDICIAL authority in 60% of the cases, and the ADMINISTRATIVE authority in the remaining 40%.

The authority who executes the process of advanced sale is THE ENTITY SPECIALIZED IN THE ADMINISTRATION OF THE ASSETS in 70% of the cases, while it is the JUDICIAL authority in the remaining 30%.

The study has also considered including data on the situation of the affected under the process of advanced sale, and, as a result, the countries have been consulted on whether these are notified of the process and on whether their consent is required before the sale is carried out. The results were as follow:





Furthermore, 70% of the countries use both APPRAISEMENT BY THE STATE and APPRAISEMENT BY A SPECIALIZED THIRD PARTY to assess the value of the assets to be subjected to advanced sale. 20% of the countries also employ MARKET VALUE to the same end.

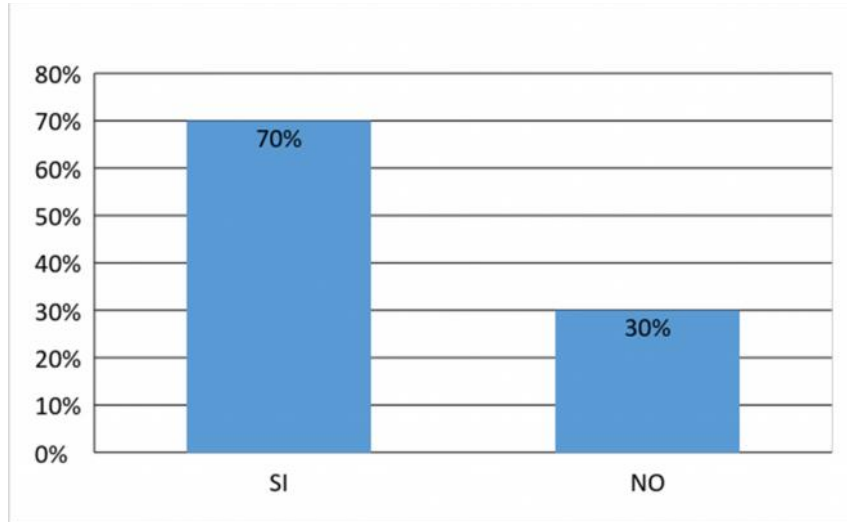
To transfer the right of ownership of the asset to the registry, the countries employ JUDICIAL MANDATE, the ACT OF ADJUDICATION OF THE ASSET, means of PUBLIC NOTARY, STATE NOTARY, and a range of other options. Bolivia, Honduras, Mexico, and Venezuela assert that they count with at least two of those choices.



In the process of advanced sale, it is also necessary to consider third party credit and mortgage lenders and their right to oppose said act, as well as the effects of their opposition. 90% of the countries polled observe the right of these bona fide third parties to oppose, with only Honduras answering to the contrary. Even so, only 20% of the countries consider that the consent of said third parties is necessary before the sale can be carried out. The remaining 80% does not consider it necessary, as the countries in that category guarantee the third parties' right to be reimbursed for the value of the loan.

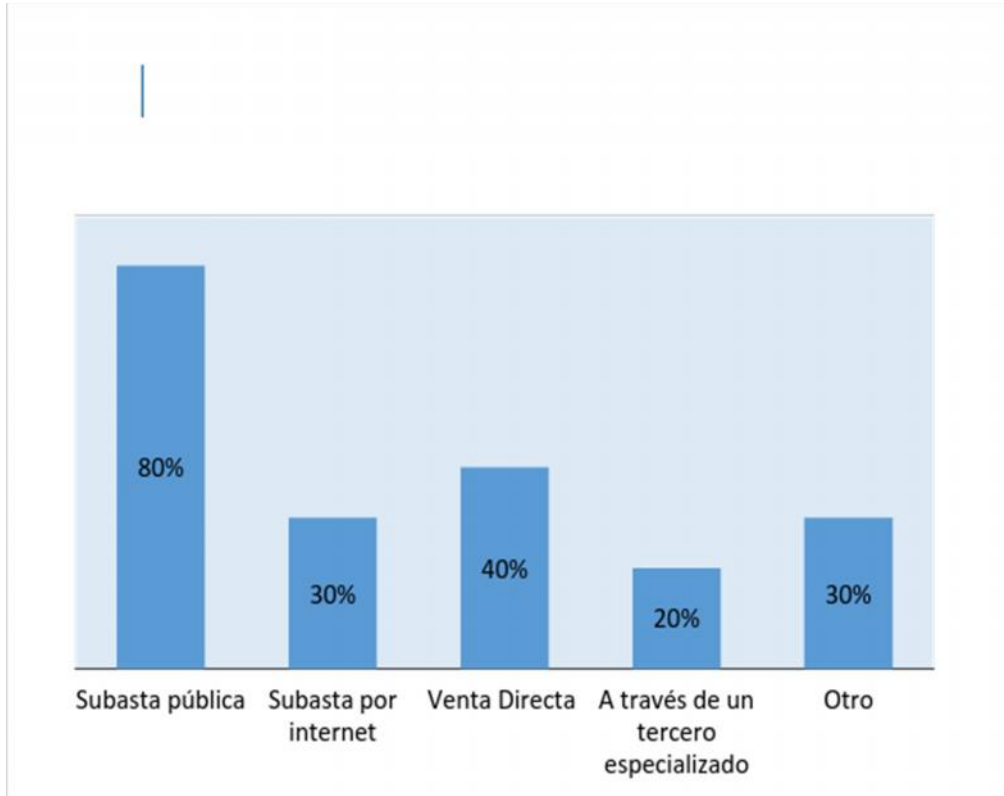
100% of the polled States further indicated that they count with mechanisms whereby they can pay off debts held by third parties on the assets as long as the third parties are determined to have acted in good faith.

Taking into account the nature of the assets seized in processes related to organized crime and as a consequence of money laundering, some countries have devised procedures by which to prevent said assets from returning to the hands of the delinquents. The results are the following.



The majority of the countries polled present bidders with prerequisites to participate in a private advanced sale. Half of them require the participants to present criminal and judicial records. Moreover, 50% of the countries keep a registry of bidders to participate in the sales. Another 40% create a new registry for each auction, while 10% creates an exceptional registry dependent upon the type of process.

Additionally, though the most common method by which advanced sales are carried out is by auction, the countries may apply a variety of other proceedings.



Now, in regards to the destination that the polled countries assign to the proceeds of advanced sales, only 10% is distributed in accordance to the internal legislation, while 90% is deposited on seized money accounts until the opportune procedural moment. In Costa Rica, in case that the seized assets have been sold, the proceeds alone will be handed to an authorized entity. Interest or investments produced by said profit will be employed in the form established by the legislation and will not be returned.

The difficulties attributed to the application of advanced sale, as expressed in answers to the questionnaire, have been grouped as follows:

The non-application of the figure by the competent authority or a lack of involvement by the authorities who carry it out, where we have Brazil as a first case and Venezuela as a second.

Deficiencies in the process of advanced sale, such as notifications. This point has been highlighted by Bolivia, Costa Rica, Panama, Peru, and Uruguay.

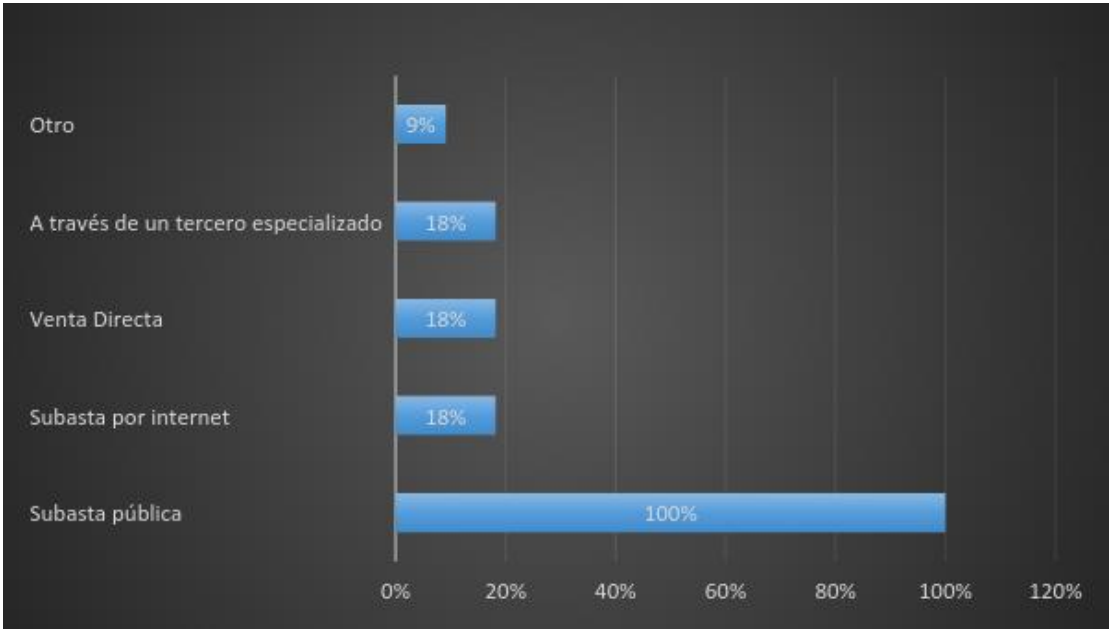
The value of the asset does not make it competitive, as pointed out by Costa Rica

A lack of interest by potential customers, as cited by Honduras.  
Mexico asserts suffering no difficulties.

In spite of the aforementioned difficulties, the existence of a figure of advanced sale and its effective application have contributed to the administration of seized assets in 100% of the countries polled. These countries have stated that advanced sale avoids maintenance costs and prevents the assets from losing value or deteriorating in condition. 67% of the countries have even answered that they could quantify the amount of assets that have been sold in advance.

### SALE OF FORFEITED ASSETS

The totality of those countries polled have stated that they carry out the sale of seized assets and count with a variety of forms and procedures by which to dispose of those assets, with 100% of them resorting to PUBLIC AUCTION. The graph displays the remainder of the procedures used:



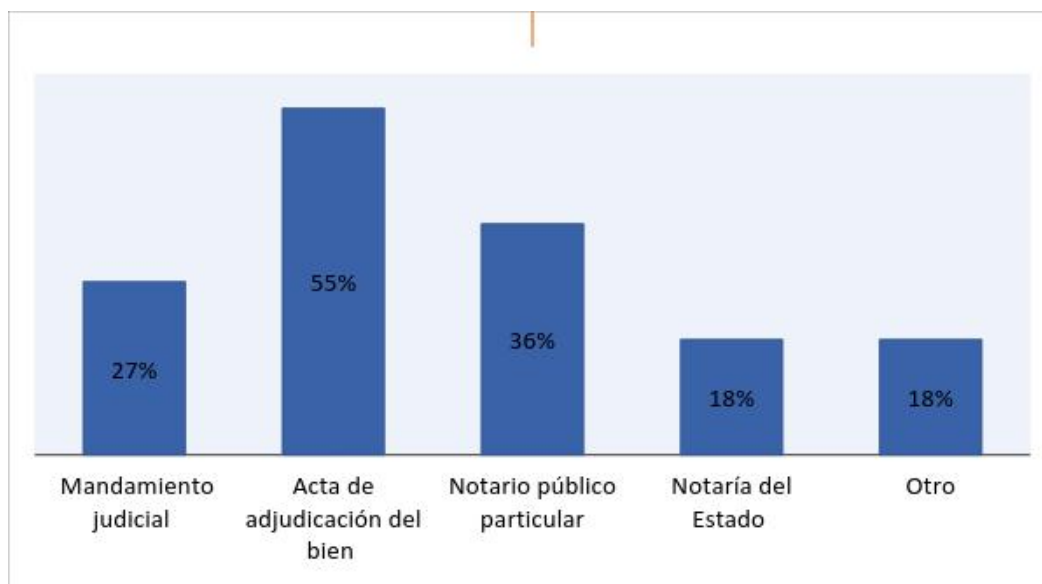
The sale of seized assets is carried out by way of SPECIALIZED ENTITIES IN THE ADMINISTRATION OF ASSETS, STATE ENTITIES, JUDICIAL AUTHORITIES, AND SPECIALIZED THIRD PARTIES. Countries like Brazil and Uruguay execute the process

through one or two of those means, though the majority, 64% in all, prefer ENTITIES SPECIALIZED IN THE ADMINISTRATION OF ASSETS.

The value of the seized assets marked for sale is determined by way of APPRAISEMENT BY THE STATE and BY A SPECIALIZED THIRD PARTY. On several occasion, countries use both alternatives, and to a lesser extent have been known to apply MARKET VALUE.

In regards to the rights of bona fide third parties, the legislature of 80% of the consulted countries allows for payment to mortgages and lenders with rights over the forfeited asset. The remainder 20% offers no explanation as to why these rights are not observed.

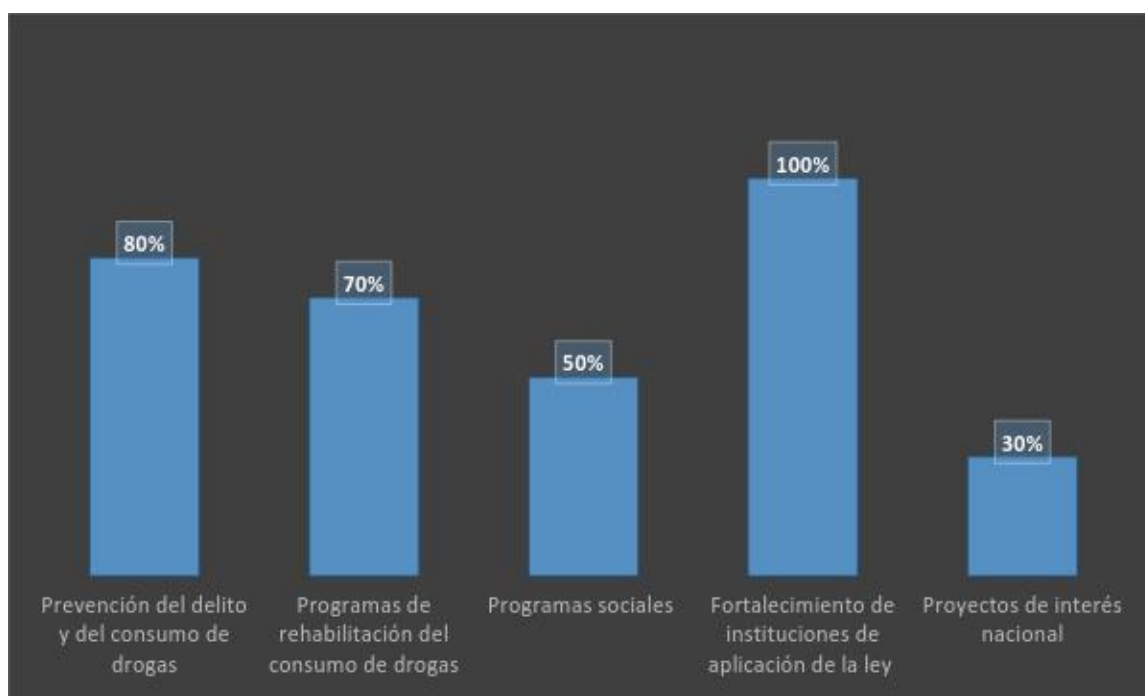
Once the sale of the forfeited assets is concluded, these must be efficiently and securely transferred to the buyers. In that sense, each of the polled countries has brought up one or more methods by which to update in the registry the change in ownership. Those methods are listed as Judicial Mandate, Act of Adjudication of the Asset, and Public Notary or State Notary. They are employed as the following graph portrays.



On the other hand, it is of interest to the States, as has been indicated, to count with mechanisms for achieving an effective recovery of the assets, ensuring the inclusion of measures to avoid the assets from returning to the possession of the criminals who have forfeited them, to their frontmen, or to third parties involved in crime.

For those reasons, it is necessary in 90% of the polled countries to comply with the prerequisites established in the judicial ordainment to participate in the processes of forfeited sales. 70% of the countries keep a registry of bidders who participate in the process. Nonetheless, half of the countries do not demand the presentation of criminal and judicial records before the sale, which differs from the requirements in the process of advanced sale, wherein the majority of the countries demand those records.

The opportunity to sell forfeited assets presents States with multiple benefits for all the reasons which have been listed, which relate to the diffusion of administrative costs and even those of advanced sale. It more so contributes decisively to the empowerment of those systems which fight against organized crime. The following are ways in which the polled countries employ the proceeds of those sales:



80% of the polled countries keep track and control the appropriate use of the previously highlighted directed resources through competent authorities who manage the seized and forfeited assets.

Finally, 70% of the countries can quantify the amount of forfeited assets which have been sold, reflecting the importance of proper control and registry over the sales, and of counting with this instrument and employing it effectively.

## CONCLUSIONS

The BIDAL Project and the GELAVEX Subgroup on Forfeiture, with the support of the Executive Secretariat of CICAD/OAS, has, for several years, been developing documents and reference pieces pertaining to the creation and development of organs specialized in seized and forfeited assets and, in this sense, the present study on the effectiveness and applicability of these modern instruments - namely advanced asset sale, the figure of abandonment, and the disposal of seized assets - will provide information to those countries which find themselves in the process of developing their own systems for the administration of assets and which wish to improve their internal proceedings for their due application.

The study has also allowed us to categorically reaffirm the need to count with said judicial figures within the judicial internal orders to the effect of bestowing the countries' asset administration systems with effectiveness and efficiency.

The application of figures like the abandonment and advanced sale of seized assets contribute a great deal to the optimization of the asset administration system, allowing for a reduction in administrative costs and in prolonged proceedings of the assets; in all, this avoids the deterioration of the assets. Even so the identification of diverse problems associated with the swiftness, notification, communication with third parties, and with the deficiencies of the very system, among other factors, prevents the effective application of said instruments.

On another note, the disposal of forfeited assets through an entity specialized in the administration of seized and forfeited assets, the organism tasked with the process of public auction as the preferred form of sale for reasons of transparency and legality, appears to be the constant in the majority of the polled countries. The proceeds of the sales and the forfeited money appear to lead to the strengthening of law enforcement institutions in the countries, followed by the prevention of substance consumption, treatment programs, the



rehabilitation of individuals suffering from corresponding drug dependency, and, to a lesser extent, to social programs and the national interest.

Lastly, we highlight the importance of the creation of an entity specialized in the administration of seized and forfeited assets that keeps track and controls the assets lent to its supervision. This organism can be the cornerstone upon which the application of these modern judicial instruments can be made more efficient and effective. It would be at the same time responsible for pushing and executing before the competent authorities the application of and adherence to such instruments, becoming an indispensable organism in the process of forfeiting and allocating assets.

## QUESTIONNAIRE

### ABANDONED ASSETS

1. Do your country's domestic legal regulations provide for the abandonment of assets?

YES	
NO	

List the legal norm: \_\_\_\_\_

Date of implementation: \_\_\_\_\_

2. Under what assumptions can your country declare the abandonment of assets?

- a) When after a given period has elapsed since the seizure of the asset, it is not possible to establish the identity of the owner of the asset, author or participant of the fact; (cases of finding)
- b) When after a given period has elapsed since the seizure of the asset, the owner of the asset, author or participant of the fact, has abandoned the asset; (cases of absconding or rebellion of the criminal process)
- c) When after a given period has elapsed, after the criminal process or *in rem* forfeiture process is finalized or closed without those who could claim any legitimate legal interest in the assets made no effort to withdraw them; (
- d) When the assets have been legally ordered to be returned yet remain unclaimed after a given period.
- e) None of the above, explain: \_\_\_\_\_

3. Does your legislation incorporate the possibility of declaring REAL ESTATE assets abandoned ?

YES	
NO	

4. What is the given period of time that your domestic legislation defines in order to declare REAL ESTATE assets as abandoned?

ONE MONTH	
THREE MONTHS	
SIX MONTHS	
ONE YEAR	
MORE THAN ONE YEAR	
OTHER	

5. Does your legislation incorporate the possibility of declaring MOVABLE assets abandonment?

YES	
NO	

6. What is the given period of time that your domestic legislation recognizes after which abandonment of MOVABLE assets can be declared?

ONE MONTH	
THREE MONTHS	
SIX MONTHS	

ONE YEAR	
MORE THAN ONE YEAR	
OTHER	

7. Does your legislation incorporate the possibility of declaring the abandonment of MONEY?

YES	
NO	

8. What is the given period of time that your domestic legislation defines after which the abandonment of MONEY can be declared?

ONE MONTH	
THREE MONTHS	
SIX MONTHS	
ONE YEAR	
MORE THAN ONE YEAR	
OTHER	

9. The competent authority that manages or handles the beginning of the declaration of abandonment is:

The asset management entity	
A judge	
The police	
Other	

10. The competent authority that verifies the fulfillment of these requirements and declares an asset abandoned is of which of the following types:

ADMINISTRATIVE	
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JUDICIAL	
POLICE	
OTHER	

11. Is it necessary, during the process of declaring an asset abandoned, to distribute any notification through mass media for an interested or affected party to reclaim their assets?

YES	
NO	

Explain: \_\_\_\_\_

12. What period of time do affected third parties have to present themselves in the process of reclaiming abandoned assets?

ONE MONTH	
THREE MONTHS	
SIX MONTHS	
ONE YEAR	
MORE THAN ONE YEAR	
OTHER	

13. In cases where abandoned assets are registered into the corresponding public record, is it necessary to notify the owner?

YES	
NO	

14. In relation to the previous question, what type of notification is required? More than one selection is allowed.

PERSONAL	
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IN OFFICIAL RECORD	
IN AN OUTLET WITH NATIONAL CIRCULATION	
OTHER	



15. Does the declaration of abandonment of assets come from those which carry security guarantees?

YES	
NO	

Explain: \_\_\_\_\_

16. What are the difficulties associated in your country with ordering a declaration of abandoned assets?

Explain: \_\_\_\_\_

17. What have been the benefits of incorporating abandonment into your domestic legislation?

Explain: \_\_\_\_\_

18. Has implementing tools on abandonment contributed to the administration of seized assets in your country?

YES	
NO	

19. Can the number of cases in your country in which abandonment legislation has been applied be quantified?

YES	
NO	

Number of cases: \_\_\_\_\_

## ADVANCED SALE

1. Does the domestic legal system of your country provide for the advanced sale of seized assets?

YES	
NO	

Copy the legal norm: \_\_\_\_\_

Date of implementation: \_\_\_\_\_

2. Does your legislation incorporate the possibility of declaring the advanced sale of REAL ESTATE assets?

YES	
NO	

Explain: \_\_\_\_\_

3. Does your legislation incorporate the possibility of declaring the advanced sale of MOVABLE assets?

YES	
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NO	
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Explain: \_\_\_\_\_

4. The competent authority that manages or handles the authorization of advanced sales is:

Asset administration authority	
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Judge	
Police	
Other	

4. Under what circumstances is it possible to carry out advanced sales?  
(Multiple options can be selected)

- a) In the case of perishable assets.
- b) In the case of livestock.
- c) In the case of assets which can depreciate or be quickly destroyed.
- d) In the case of assets subject to deterioration.
- e) In the case of assets with costly maintenance.
- f) In the case of assets with difficult administration.
- g) Other assets, Explain: \_\_\_\_\_

5. The competent authority that verifies the fulfillment of these requirements that authorize advanced sales is of which of the following types:

ADMINISTRATIVE	
JUDICIAL	
POLICE	
OTHER	

Explain: \_\_\_\_\_

6. Can an affected party oppose advanced sales?

YES	
NO	

Explain what effects the opposition has: \_\_\_\_\_

7. Is the consent of the affected party needed to proceed with advanced sales?

YES	
NO	

Explain: \_\_\_\_\_

8. What authority executes the process of advanced sales?

The asset administration authority	
A judge	
The police	
Other	

9. How is the value from the sale of the assets determined?

Appraisal by the State	
Market value	
Through a specialized third party	
Other	

10. Once the advanced sale occurs, how is the transfer of ownership at the registry level carried out?

By means of a court order	
By means of an act awarding the asset	
By means of a particular notary public	
By means of a State notary public	
Other	



Explain: \_\_\_\_\_

11. Can *bona fide* third parties with liens or mortgages oppose the advanced sale?

YES	
NO	

Explain what effects third party opposition has: \_\_\_\_\_

12. Is the consent of the *bona fide* third party with liens or mortgage interest required to proceed with the advanced sale?

YES	
NO	

Explain: \_\_\_\_\_

13. Can they cancel or pay the lien or mortgage insurances on seized goods subject to advanced sale?

YES	
NO	

Explain: \_\_\_\_\_

14. In order to participate in an advanced sale of assets is it necessary to comply with the established requirements in the legal system?

YES	
NO	

Indicate the participation requirements: \_\_\_\_\_

15. Is it a requirement in your country for participants in an advanced sale of assets to disclose criminal and judicial backgrounds?

YES	
NO	

Explain: \_\_\_\_\_

16. Is there any record of bidders that participate in the processes of the advanced sale of assets?

YES	
NO	

Explain: \_\_\_\_\_

17. What is the form in which an advanced sale takes place?

Public auction	
Internet auction	
Direct sale	
Through a specialized third party	
Other	

Explain: \_\_\_\_\_

18. The proceeds from an advanced sale are intended to:

Be deposited in the seized money account until the appropriate procedural moment	
Be distributed according to domestic legislation	

Other. Explain:	
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19. What specific difficulties can be identified in your country in exercising the processes of the advanced sale of assets?

Explain: \_\_\_\_\_

20. Has implementing advanced sale mechanisms in your country contributed to the administration of seized assets?

YES	
NO	

## SALE OF FORFEITED ASSETS

1. Which of the following procedures is used in your country for the sale of forfeited assets? (More than one selection is allowed)

Public auction	
Internet auction	
Direct sale	
Through a specialized third party	
Other	

Explain: \_\_\_\_\_

2. The authority that carries out the sale of forfeited assets is:

Asset administration authority	
A state agency	
Jurisdictional	
Police	
Specialized third party	
Other	

Explain: \_\_\_\_\_

3. How is the value of the forfeited assets to be sold determined?

Appraisal by the State	
Market value	
Through a specialized third party	
Other	

4. Can the lien or mortgage insurances on forfeited assets be canceled or paid?

YES	
NO	

Explain: \_\_\_\_\_

5. Once the sale of a forfeited asset occurs, how is the transfer of ownership at the registry level carried out?

By means of a court order	
By means of an act awarding the asset	
By means of a particular notary public	
By means of a State notary public	
Other	

Explain: \_\_\_\_\_

6. In order to participate in a forfeited assets sale is it necessary to comply with the established requirements in the legal system?

YES	
NO	

Indicate the participation requirements: \_\_\_\_\_

7. Is it a requirement in your country for participants in asset forfeiture sales to disclose criminal and judicial backgrounds?

YES	
NO	

Explain: \_\_\_\_\_



8. Are there any records of bidders who participate in the processes of the sale of forfeited assets?

YES	
NO	

Explain: \_\_\_\_\_

9. What is the destination of the money from the proceeds of the sale?  
(Multiple selections allowed)

Crime prevention	
Drug consumption prevention	
Drug consumption rehabilitation programs	
Social programs	
Institutional law enforcement strengthening	
National interest projects	
Other	

10. Does the competent authority who administers the seized and forfeited assets monitor and control the correct use of the resources?

YES	
NO	

Explain: \_\_\_\_\_