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CICAD

Secretariat for Multidimensional Security

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STRUCTURE OF THE STUDY

RIGHTS OF BONA-FIDE THIRD PARTIES AND VICTIMS

Structure of the Study

Rights of Bona-Fide Third Parties and Victims

1) BACKGROUND

At the XXXVII Meeting of the Group of experts for the Control of Money Laundering (GELAVEX) held from September 17th to September 18th, 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 54th ordinary session of CICAD, which was held from December 11th to December 13th 2013, 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 Meeting of GELAVEX, held on May 22nd and May 23rd 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 Meeting of GELAVEX, which was held on the 25th and 26th 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 to the plenary and approved ([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 56th ordinary session of CICAD, held in Guatemala City, Guatemala, from November 19th to November 21st 2014, the Technical Assistance Program's Proposal, the Strategic Plan 2015-2017 and the Working Plan 2014-2015 were approved by the Commission ([CICAD/LAVEX/doc.2162/14](#)), and the Subgroups began the designated activities, whose results will be presented at the XL Meeting of GELAVEX to be held on May 19th and 20th 2015.

2) JUSTIFICATION

The seizure of assets of illicit origin is considered one of the most effective instruments against organized crime and money laundering and its connected crimes. Therefore, a wide range of international, regional and bilateral agreements contain mechanisms which mention the need for States to have adequate legislation permitting them to proceed in the freezing, seizure, and forfeiture of certain assets.¹

In turn, the theme is continuously discussed in a variety of international forums, while a large number of international organizations – like some of the 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 international standards, implement them accordingly, and gain the ability 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 to certain limitations which should be respected, as is the case in the rights of bona-fide third parties and victims.

Such limits are based on the fact that when it is time to freeze, seize, or forfeit the proceeds and/or the instrumentalities of crime,² the State shall observe inherent principles of restorative justice and the right to property, with the aim of avoiding 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 a plausible extent, the damages suffered by the victims. In this sense, some States assign 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, experts and any other persons involved in the process who deserve 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 forfeiture) shall be notified and have the right to be heard.³ However, the rights claimed by third-parties are treated in a

¹ 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.

² 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 fake 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 rem*, which means, in relation to the assets, independently of the persons with which are related.

³ Frequently, such requisite is accomplished when the State sends a notification to those considered to possibly have some legitimate 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 an specific way to those who are

myriad of ways, for example: i) in cases of forfeiture realized in the criminal process it is frequent that the process is concluded (which can take decades) before the supposed bona-fide third party has the opportunity to revise his/her rights; and ii) in cases of forfeiture without condemnation, the claims of the third-parties are often considered since the initial phases of the process.

To illustrate this example: the forfeiture of an instrumentality of crime (such as the car used to rob a bank) and the seizure of the instrument 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. However, 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 agreements and recommendations do not detail aspects that could assist bona-fide third parties and victims in having 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 judicial 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

To identify the legal gaps which make it hard for Member States of the OAS to obtain firm sentences of forfeiture of assets of illicit origin in which the rights of the bona-fide parties and victims are respected according to 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 agreements ratified by the Member States of the OAS which mention the need to respect the rights of bona-fide third parties and victims;

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

3.1.3) To provide a 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.,:

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).

- i) that the situational diagnostics on forfeiture 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 forfeiture 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 theoretical 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, information needs to be gathered that takes into consideration:⁴ i) the **international standards** about the rights of bona-fide third parties and victims⁵; ii) **bilateral and regional agreements**; iii) **legislation** of Member States and Permanent Observers of the OAS⁶; 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 E C	JAN	F E B	M A R	A P 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														

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

⁵ 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 practices and other documents conducted in the context of the Expert Group for the Control of Money Laundering of the OAS/CICAD.

⁶ Since information sources will be considered, among other documents, the answers received by the questionnaire circulated by the Working Subgroup on International Cooperation and Seizure ([CIDAD/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](#)).

i) International standards

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

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Article 6: 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, proceeds or instrumentalities; b) the claimant cannot be imputed with participation, collusion, or involvement with respect to illicit traffic or other serious offense which is subject to the proceedings; c) the claimant lacked knowledge and was not intentionally ignorant of the illegal use of the property, proceeds or instrumentalities, or, if he/she had knowledge, did not freely consent to its illegal use.

Note: Articles 6 and 9 are dedicated to preventative measures and to the forfeiture of property, 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](#))

Page 10. Mechanisms should be developed so that whoever has a judicial interest in forfeited assets may request from the Court a modification of a forfeiture order or the release of those assets with referral to adequate controls. To this purpose, national legislation should clearly establish *bona fide* third party rights in relation to property subject to seizure 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 forfeiture proceedings.

Definitive forfeiture by a judgment or formal resolution will not befall on the effects or instruments belonging to a *bona fide* third party not responsible for the criminal offense. For such effects, emphasis is placed on the importance of bringing third parties to the criminal proceedings so that they may assert their rights over the seized assets, because failure to make an appearance may cause procedural errors to be committed that could impair the factual foundation of the forfeiture of assets 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 assets, products or instruments to the claimant will proceed upon accreditation and conclusion that: a) The claimant has legitimate interest with respect to the assets, products or instruments; b) the claimant cannot 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 assets, 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 assets, 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 forfeiture; e) the claimant made all reasonable steps to prevent the unlawful use of the assets, products or instruments.

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

Article 6. Basis for *in rem* forfeiture. *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 regards to the property listed in Article 6 legitimizes such property, with the exception of the rights of bona-fide third parties.

Article 42. Disposal of property. Property declared forfeited under the provisions of this Law may be used to:
a. Finance programs that provide care and compensation to victims of illegal activities.

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 impairment to the rights of bona fide third parties: (a) property laundered, (b) proceeds from, 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 equivalent 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 are 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 required by Recommendation 4 (confiscation and provisional measures) 4. 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 regime to counter terrorist financing, 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 (...) allows the victim of the crime to

be partially or fully compensated, even when the proceeds were moved to a different part of the world.

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 impair 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 which is party to article 13 of this Convention, State Parties shall, to the extent permitted by domestic law and if so required, give priority consideration to returning the confiscated property or proceeds of crime to the requesting State Party so that the State may compensate the victims of the crime or return such property or proceeds of crime 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, particularly in cases of intimidation or threat of retaliation. 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, permit 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.

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 human trafficking

Article 6 - Assistance to and protection of victims of human trafficking 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 human trafficking, particularly, 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 human trafficking, 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 human trafficking, 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) Adequate housing; b) Counselling and information, particularly as regards their legal rights, in a language that the victims of human trafficking 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 human trafficking, particularly 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 human trafficking while they are within its territory. 6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of human trafficking the possibility to obtain compensation for damages suffered.

Article 7 - Status of victims of human trafficking in recipient 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 human trafficking to remain in its territory, temporarily or permanently, in appropriate cases.

Article 8 - Repatriation of victims of human trafficking 1. The State Party of which a victim of human trafficking 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 human trafficking 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 any victim of human trafficking 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 human trafficking.

III. Prevention, cooperation and other measures

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

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 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 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 and 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 imposing, 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. State 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 1. 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.

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. 3. 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.

iii) Legislation

COUNTRY	RIGHTS OF VICTIMS AND BONA-FIDE THIRD PARTIES
Antigua & Barbuda	<p>GAFI</p> <p>123. While the terms of imprisonment may be considered proportionate, they could be made more dissuasive if they were accompanied by stiff fines. Additionally, a compensation scheme could be established for the payment out of terrorist funds of compensation to the victims of terrorism.</p> <p>138. While the terms of imprisonment are for relatively long periods, given the gravity of terrorist offences, the Government of Antigua and Barbuda should consider making the sanctions more prohibitive by including large fines and an obligation to compensate victims.</p> <p>212. Apart from the provision enabling a third party to assert his interest in terrorist property, the PTA does not afford the third party protection consistent with Article 8 of the Terrorist Financing Convention. Mechanisms have not been provided whereby funds derived from seized property can be used to compensate the victims of terrorist offences.</p> <p>226. Given the gravity of terrorist offences and the likely extent of harm to innocent third parties, administrative or legislative provisions should be made requiring the compensation of victims.</p> <p>163. The MLPA provides for bona fide third parties claiming an interest in property to apply to the Court to have the property excluded from a forfeiture or freeze order. Under section 13 of the POCA, third parties may seek a declaration from the Court of the interest in forfeited property. The PTA does not provide for bona fide third parties to have their interest in property excluded from seized property. Nonetheless, the Court is required to give every person appearing, who has an interest in the property, an opportunity to be heard.</p> <p>181. The PTA should make express provision for bona fide third parties to have their interest in property excluded from seized property.</p>
	<p>Merida's Convention * No data was found.</p>
	<p>Palermo's Convention * No data was found.</p>

	<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>
<p>Argentina</p>	<p>GAFI</p> <p>167. When pronouncing a sentence, the criminal judge has the power, under section 23 of the Criminal Code (CC), to confiscate assets. That section establishes that —In all cases sentence be given for crimes foreseen in this Code or in special criminal laws, such sentence shall order the confiscation of things that have served to commit the unlawful act and of the things or gains that are the product or the benefit of the crime, to go to the national State, of the provinces or the municipalities, except for the rights of restitution or identification of the victim and of third parties. It is therefore possible to confiscate property that has been laundered or which constitute the proceeds from instrumentalities used and intended for use in ML and predicate offence crimes. For FT this is more limited, as it would apply only within the limited extent to which FT is criminalised. Confiscation does not apply for property of corresponding value. Nor does the law specifically cover indirect proceeds of crime, including income, profits or other benefits from the proceeds of crime. Also, as insider trading and market manipulation are not criminalised, it is not possible to freeze/confiscate in such cases.</p> <p>169. The last two paragraphs of section 23 of the Criminal Code set forth: —The judge shall adopt, from the beginning of court proceedings, sufficient injunctions to ensure the confiscation of the real estate property, goodwill, warehouses, transportation, IT, technical and communication elements, and any other asset or equity right that may be presumably subject to the confiscation for being instruments or property related to the crimes under investigation. —The same scope could be shared by the injunctions aimed at ending the commission of the crime or its effects, to avoid the consolidation of its benefit, or to hinder the impunity of its participants. In all cases, rights of restitution or indemnification of the victim and third parties shall be protected.</p> <p>172. According to section 23 of the Criminal Code, the rights of restitution or indemnification of the victim and bona fide third parties shall be protected.</p> <p>199. Section 23 of the Criminal Code establishes that the restoration or compensation rights of injured or bona fide third parties shall be safeguarded. Section 14 of Law 25 246 also provides the right to appeal freezing measures.</p> <p>682. With regard to the fines that may be imposed on financial entities, Article 41 of the FEA states that the BCRA shall regulate its application, taking into account the following aspects: the gravity of the breaches, the potential damages caused to third parties, the benefit for the offender, and the entities’ minimum capital. The maximum amount of fine, which can be imposed by the BCRA, is not determined by the law, but by a resolution of the BCRA Board of Directors. This decision has never been made available to supervised entities, which affects the dissuasiveness of the sanction. The assessment team was provided with this information:</p>

financial entities are punishable with a fine from ARS 10 000 (USD 2 500) to ARS 200 000 (USD 25 000). The level of the fine that the BCRA can impose on banking and foreign exchange institutions is very low, particularly considering the size of certain Argentinean banks. In addition, it is worth noting that entities supervised by the BCRA are only punishable after repeated failure. The BCRA is not allowed to publish / disclose supervisory sanctions, as it undermines their dissuasiveness.

782. Section 54 could also precipitate an action founded on the ignorance of the legal doctrine against companies created to disguise real ownership as follows: —The actions of company hiding the performance of out-of-company purposes constitute a mere means to violate the law, the public order or the good faith, or to prevent **third-party** rights, shall be directly attributed to the partners or the comptrollers that made it possible, who shall be limitlessly, jointly, and solidarily liable for the damages caused.

785. For all legal persons in Law 19 550; however, failure to re-register limits the enforceability of appointments, resignations and dismissals. They could be enforced between members/partners but not before **third parties**; however, third parties can enforce them against the company and its partners/members (section 12).

Convention of Merida

Article 32: In estimate, Argentina possesses legislation that permits it to protect witnesses, experts, and **victims**. However, the inclusion of corruption offences is not automatic, and so it is advisable that Argentina should consider taking this into account in a possible legislative reform, with the extension of the witness protection programme, directly including corruption offences and harm done to the public administration.

Article 34: The Law on Ethics in the Public Service (No. 25,188) provides for the nullity of administrative acts issued in a situation of conflict of interests. In that regard, article 17 establishes that: “Whenever the acts committed by the subjects of article 1 are covered by the provisions of articles 13, 14 and 15, they will be void ab initio, without prejudice to the rights of bona fide **third parties**. In the case of the issuance of an administrative act, it will be void ab initio under the terms of article 14 of Law 19,549.” Other possible consequences of an act of corruption are: liability for damages; returning things to the state that they were in before commission of the crime (article 29 of the Criminal Code); and the inadmissibility of tenders.

Palermo’s Convention

94. Article 14, on the disposal of confiscated proceeds of crime or property, provides that when acting on the request for confiscation made by another party under article 13, States parties shall, to the extent permitted by their domestic law and if so requested, give priority consideration to returning the confiscated proceeds or property to the requesting State, so that it can give compensation to the victims of crime or return such proceeds or property to their legitimate owners. This provision reinforces the provisions of article 25, which requires States parties to establish appropriate procedures for compensation of, and restitution to, victims of offences covered by the Convention.

	<p>95. Providing information on whether such return of confiscated proceeds or property was possible under their domestic legal system, 53 States indicated that their national legislation permitted it. Some of them mostly referred to bilateral agreements but also to multilateral treaties reported that they were parties to agreements or arrangements with other States dealing with the disposal of proceeds or property confiscated upon request from another State.</p> <p>96. Sixteen States reported having concluded agreements or arrangements dealing with the sharing of confiscated proceeds of crime in accordance with paragraph 3 (b) of article 14, which requires States parties to give special consideration to concluding agreements on sharing with other parties, on a regular or case-by-case basis, confiscated proceeds of crime or funds derived from such proceeds.</p>
<p>Bahamas</p>	<p>GAFI</p> <p>86. The Attorney General’s (AG) Office has also initiated a ‘Swift Justice’11 pilot project in which the AG’s Office is committed to a policy of ‘swiftly caught, swiftly tried, swiftly punished’. Towards this end, the approach to cases involves collaboration between the institutions and agencies within the criminal justice system and the involvement of victims and their families. Concretely, this requires a team effort between the police, the parole department, the courts, the prisons and the AG’s Office to work together in a seamless fashion.</p> <p>25. Restraint orders can be made under the POCA (section 26(4)) and freezing orders under the ATA (section 9(2)). The powers of confiscation are complemented by extensive investigatory and seizure powers under the POCA, FIUA and the DDA. The rights of bona fide third parties are protected under both the POCA and the DDA.</p> <p>191. The rights of bona fide third parties are protected under section 15 of the POCA, whereby such parties may apply to the Court to assert an interest in the realizable property, provided that the parties can prove that they were both uninvolved in the Defendant’s criminal conduct and that they acquired the interest for sufficient consideration and in the absence of any knowledge or suspicion that the property represented the proceeds of crime.</p>

248. The rights of bona fide third parties are provided for under section 9(8) of the ATA in cases of freezing applications under that Act. They are also protected in relation to retention orders under section 26(5) of the POCA. The IO(EAM)A does not provide this protection.

393. The POCA provides protections for innocent third parties at section 15 and at section 47. The DDA provides protections in the case of forfeitures at section 33. There does not appear to be statutory protections under the Pre-clearance Act and the ECR. The Courts have the power to void contracts under section 13 of the POCA.

473. The above provision does not include a requirement for the consideration of making an STR if the institution is unable to carry out CDD measures. However, paragraph 32.3 of the CBB AML/CFT Guidelines states that where a prospective client fails or is unable to provide adequate evidence of identity or in circumstances in which the licensee is not satisfied that the transaction for which it is or may be involved is bona fide, an explanation should be sought and a judgement made as to whether it is appropriate to proceed with the business relationship and as to what other steps can be taken to verify the client's identity and whether or not a report to the FIU ought to be made.

Merida's Convention* No data was found.

Palermo's Convention * No data was found.

Barbados

GAFI

886. There is no general statutory authority to share confiscated assets. However, with respect to forfeited terrorist-related funds, section 10 (1) of the ATA provides that the Government of Barbados may, pursuant to any agreement with any other State, share any such funds with that State on a reciprocal basis. There is also a power to dedicate funds received in this way for the

compensation of **victims** of terrorist offences (subsection (2)).

10. Relevant forfeiture/confiscation powers are provided for under POCA, MLFTA, and DAPCA. POCA has a comprehensive forfeiture/confiscation regime which is however restricted to a narrow range of offences. The scope of forfeiture provision under the MLFTA, while substantially wider does not allow for the forfeiture of instrumentalities, and is limited to money laundering convictions. The forfeiture/confiscation regime under DAPCA covers only drug related offences. POCA contains the most comprehensive provision for freezing/restraining property which can only be activated by a narrow range of criminal acts. There are two freezing provisions under MLFTA. Powers of search and seizure exist under POCA and DAPCA. Production or inspection orders are available under POCA. Monitoring orders can be sought under POCA and the MLFTA. Effective protection of **bona fide third part** rights consistent with the Palermo Convention is provided under the statutory scheme under POCA.

11. There is no specific legislative authority in Barbados to freeze terrorist funds or other assets of persons designated by the United Nations in accordance with S/RES/1267(1999). However, the DPP can invoke relevant provisions of the ATA or POCA to effect restraint of property. An application for a freezing order may be made ex parte under the ATA. There is no authority to restrain/freeze, forfeit or confiscate terrorist-related property under POCA, since terrorist acts and terrorist financing are scheduled offences. The forfeiture scheme under the ATA is similar to that under MLFTA. There is no statutory power to authorize access to funds required to be frozen pursuant to the UN Sanctions Committee listing. Protection of **bona fide third party** rights is included in the ATA. No terrorist funds have been discovered in Barbados.

151. It is also noted that the regimes under both DAPCA and POCA require a linkage with the specific offence committed. However, the former provides very little detail on the process to be followed in the forfeiture proceedings (unlike the POCA framework), although there is some protection of third party rights under section 47(3) [see paragraphs 201 – 204 below for details].

160. Additionally, POCA makes specific provision for certain vital aspects of the restraint regime. Where circumstances warrant, the Court may, at the DPP's request, provide for the proper management and preservation of the restrained property by giving appropriate directions to the Public Trustee or any other person; and the Court also has power to order that the defendant's or other person's reasonable living and business expenses, and costs of legal representation, be met out of the property (section 32(1)(g), (2). There is also jurisdiction to revoke or vary the order (sections 38(a), 39). **Third party** rights are also addressed (see paragraphs 201 – 204 below for details).

163. Subsection (2) makes some provision for **third party** rights, management of the property and payment of reasonable expenses. It differs from the provision under the MFLTA (section 13), however, in that, under the latter, a freezing order can target a person who has been charged, or one who is about to be charged, as long as the DPP presents charges within 7 days. Under POCA, Freezing orders may only target charged or convicted individuals.

167. Powers of search and seizure as preparatory steps to restraint or forfeiture are conferred under POCA. Section 25 empowers police officers to apply to a magistrate for a warrant to enter and search land and premises for property reasonably suspected to be "tainted

property”, with aims of seizure. The property can thereby be preserved for any future restraint or forfeiture proceedings. In line with other POCA provisions, the seizure regime is admirably controlled: the preconditions to be met by the police in the warrant application, the logistics of execution of the warrant, preservation of the seized property, accountability of the executing officers, protection of **third party rights** etc., are all detailed (sections 26-30).

188. The examiners are, however, somewhat uncomfortable with one aspect of the approach to accessing information from the Government entities covered by section 6A(4) of the MLFTA. While it is accepted that there is a statutory duty on the FIU Director (under section 22A) to treat with any information received confidentially and only for legitimate purposes, there is no recognition in the legislation that a Government entity may have **bona fide** reasons for declining to supply requested information. The entity may be under a duty of non-disclosure (or otherwise restricted in the manner of disclosure) with regard to certain material it possesses. This could arise, for instance, from cooperation agreements with foreign counterparts or agencies, or the application of legal professional privilege. In such circumstances, there should be a provision, analogous to that under section 57 of POCA, allowing the head of the entity some latitude in responding to the FIU Director’s request. This concern will become even more pronounced when “all public institutions and departments” are brought within the ambit of section 6A(4), as proposed by the Government.

189. Effective protection of **bona fide third party** rights is provided under this statutory scheme, consistent with the requirements of the Palermo Convention.

192. **Third party** rights are also safeguarded under section 10, since the Court is mandated to consider a number of factors before granting a forfeiture order, including the rights and interests of third parties, and any hardship that the operation of the order may cause any person. Moreover, while the Court has power to set aside transfers made to insulate the offender against forfeiture, the bona fide purchaser for value acting without notice of the illegality will be protected (section 12). Finally, where a conviction is subsequently quashed, or a forfeiture order set aside, the Public Trustee is authorised to restore the property, or its value to the affected parties (section 14).

196. Under section 14, the Court is empowered to forfeit property. In making the order, the Court has a wide discretion to issue directions to (a) determine disputes as to the ownership or other interest in the property; and (b) dispose of the property (subsection (4)). There is also specific provision under subsection (5) for the person affected by the forfeiture order (potentially someone other than the offender) to apply to the Court for the opportunity to pay a pecuniary sum in lieu of property deprivation. Some bona fide third party rights can therefore be addressed under these broad powers.

211. The authorities should consider reviewing the forfeiture/confiscation regime to ensure that all serious offences are covered; the various statutes are rationalized as far as possible to provide greater certainty in application. Specific attention should be given to adjusting the MLFTA forfeiture scheme so as to incorporate appropriate balancing features in keeping with recent case law. Further there should be greater particularity on various aspects of any approach, including factors to be taken into account by the court before issuing orders; coverage of instrumentalities; **bona fide third party rights**; variation/discharge of orders.

238. Protection of **bona fide third party** rights is envisaged by section 8(3)(b), (c) of the ATA [notice of freezing order to known interested parties; opportunity to be heard in Court]; section 8(5)(b) [disposal of funds by Court to determine disputed claims and proper administration]; and section 8(8) [freezing order shall not prejudice the rights of any third party]. Protection of third party rights in the context of POCA restraint/forfeiture orders is dealt with in section 2.3 of this report.

475. The Ministry's guidelines provide in paragraph 72 that in the event of failure to complete verification of any relevant verification subject and where there are no reasonable grounds for suspicion, any business relationship with or one-off transaction for the applicant for business should be suspended and any funds held to the applicant's order returned until verification is subsequently completed (if at all). Funds should never be returned to a **third party** but only to the source from which they came. If failure to complete verification itself raises suspicion, a report should be made to the AMLA for determination as to how to proceed. There is no requirement for the business relationship to be terminated.

468. The Ministry of Economic Affairs and Development's guidelines provide that generally verification should, whenever possible, be completed before any transaction is completed unless it is necessary for sound business reasons to open an account or carry out a significant one-off transaction before verification can be completed. In such cases, stringent controls should be applied to ensure that any funds received are not passed to **third parties**.

515. Financial institutions should be required to satisfy themselves that the third party is regulated and supervised in accordance with Recommendation 23, 24 and 29.

516. Authorities should consider advising financial institutions about countries from which **third parties** that meet the conditions of being regulated and supervised and comply with CDD requirements can be based.

Merida's Convention * No data was found

Palermo's Convention * No data was found

Belize	<p>GAFI</p> <p>776. ii. to compensate victims who suffered losses as a result of serious crimes, terrorism or other unlawful activity;</p> <p>8. The MLTPA, the Misuse of Drugs Act (MDA) and the Financial Intelligence Unit Act (FIUA) provide for the confiscation of property that constitutes proceeds from, instrumentalities used or intended to be used in connection with the commission of ML or TF. Definitions of proceeds of crime and proceeds of drug trafficking in the MLTPA and the MDA respectively allow for confiscation to apply to property directly or indirectly derived from proceeds of crime including income, profits or other benefits and property held or owned by a third party. Provisional measures to restrain dealing, transfer or disposal of property include restraining orders and the detention and seizure of terrorist cash under the MLTPA and attachment orders under the FIUA. There is no provision to facilitate the making of an ex parte application for the seizure and detention of terrorist cash. Measures to provide for the identification and tracing of property include production orders, search and seizure orders, monitoring orders and interception of communications orders under the MLTPA, the MDA and the FIUA. There are adequate provisions for the protection of the rights of bona fide third parties. There has been ineffective implementation of the seizure, restraint, and confiscation regime.</p> <p>154. Section 65 of the MLTPA shields the rights of bona fide third parties who may be adversely affected by the grant of an order under Part IV of the Act. Section 65 (1) states that the measures and sanctions established under Part IV of the MLTPA shall apply without prejudice to the rights of bona fide third parties.</p> <p>155. Section 65 (2) of the MLTPA further provides that a third party's lack of good faith may be inferred from the objective circumstances of the case. Moreover, where an order is granted ex parte under sections 39 (restraining order) and 49 (forfeiture order) a bona fide third party may apply to revoke or vary the order under section 47 (4) of the MLTPA. A bona fide third party may, pursuant to section 52 of the MLTPA, apply to claim an interest in any property forfeited under section 49 of the Act.</p>
	<p>Merida's Convention * No data was found</p>
	<p>Palermo's Convention * No data was found</p>

<p>Brazil</p>	<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 Party 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 insofar as their respective laws regulating 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 allow. 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 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 the rights of these 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</p>
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the international legal cooperation in criminal matters between Brazil and Panama)

"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)

"The rights claimed by the victims and bona fide third parties over such assets will be respected." (Art. 19.3 of the Agreement on international legal cooperation in criminal matters between Brazil and Surinam)

"The Parties shall assist each other insofar 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. The actions previously mentioned in this paragraph may include the temporary unavailability of such proceeds or instruments of crime while a trial in another procedure is awaited." (Art. 17.2 of the Agreement on international legal cooperation in criminal matters between Brazil and Ukraine)

"The rights claimed by third parties in good faith over those assets will be respected." (Art. 15.2 of the Agreement on international legal cooperation in criminal matters between Brazil and Honduras)

"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)

"The rights claimed by third parties in good faith over those assets will be respected." (Art. 18.2 of the Agreement on international legal cooperation in criminal matters between Brazil and the United Kingdom)

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

172. The AML Law specifically provides for the protection of the rights of bona fide third parties (art.7). Additionally, there are general provisions, applicable to all criminal offences, which allow third parties who have been affected by a seizure measure to bring an interlocutory appeal for judicial review (CPC art.129-133). Movable or immovable assets which are (intended) instrumentalities or evidence will not be returned to a bona fide third party until the final disposition of the case. However, in all other cases, a bona fide third party may apply for and obtain the return of assets at any time during the proceedings. Although in general, the disposition of immovable assets is to be decided at the end of the case, bona fide third parties are able to overcome this presumption by bringing a writ of mandamus (CPC art.130).

Restitution of seized property is authorised where it is established that it belongs to a **bona fide third party** or the **victim** (CPC art.118-120).

177. There are some specific circumstances in which property may be confiscated without a conviction. First, anyone who commits an illicit act is legally obligated to indemnify the **victim** (Civil Code art.927). The property generated from the illicit act may thus be confiscated through a civil judicial procedure instituted by the **victim** or the government. Second, a public agent or third party who obtains illicit economic advantage detrimental to the public Treasury and the public interest may, in addition to facing criminal charges, be subject to an —Administrative Improbability Action which could result in the confiscation of any assets/funds that were added to the perpetrator's estate as a result of an act of administrative probity (Law 8429/1992 art.12 (I-II)). The Administrative Improbability Action has a civil nature, and its initiation, conduct and judgment do not depend on a criminal action or a criminal conviction. Third, instrumentalities of crime may be confiscated without a conviction.

1055. Brazil has established an asset forfeiture fund, the National Penitentiary Fund (FUNPEN) into which the proceeds from the sale of confiscated property are deposited (Criminal Code art.45, para.3; Complementary Law 79/1994 art.1-2(IV)). FUNPEN was established within the jurisdiction of the Ministry of Justice, with management assigned to the Department of Penitentiary Affairs. FUNPEN resources shall be applied to: the construction, reform, expansion and improvement of criminal facilities; penitentiary service maintenance, training and development; implementation of educational, training, rehabilitation and work programs for prisoners and inmates; social assistance programs for crime victims; legal assistance programs for the dependants of prisoners and inmates; the maintenance of shelters for the victims of domestic crimes; and research in the area of criminology (Complementary Law 79/1994 art.3; Decree 1093/1994).

174. In the case of immovable assets being seized, the Judge shall order this coercive measure to be registered at the Notary Public for Real Estate Registry as a legal mortgage on the property (CPC, art.128; Decree-Law 3240/1941 art.4, para.2). A legal mortgage is a real right of guarantee by means of which the immovable asset starts to serve as collateral for the effectiveness of the confiscation penalty. Its enrolment in the Notary Public for Real Estate Registry publicises the act, thereby giving notice to third parties who, if they subsequently acquire the property, shall not qualify as **bona fide** acquirers. A confiscation penalty can also be ensured by the substitution of the legal mortgage by security in cash or public debt titles (CPC art.135, para.6). Such a security is also a legal instrument destined to the guarantee for the meeting of future obligations.

164. In cases where a crime has been perpetrated against the public finances (including Money Laundering), property may be seized in the course of a police investigation or penal action, without a hearing. This power extends to assets that were donated after the perpetration of crime, including assets in the possession of **third-parties** that were acquired deliberately or

with gross negligence (Decree-law 3240/1941).

207. Brazil does have measures in place for unfreezing the funds/assets of someone inadvertently affected by a freezing mechanism upon verification that they are not a designated person/entity. Such persons (i.e. **bona fide third parties**) may bring an application under the CPC for the restitution of assets frozen by provisional measures (CPC art.118; AML Law art.7; Criminal Code art.91). However, the assessment team was not provided with any information to confirm that such measures operate in a timely manner.

211. The measures to protect the rights of **bona fide third parties** which are described above in section 2.3 of this report also apply to freezing in the context of terrorist-related assets.

1051. Article 8 of the AML Law provides that, upon request of a competent foreign authority, the judge shall order the seizure or detention of assets, rights and valuables resulting from the crimes committed abroad referred to in the AML Law, with no prejudice to rights of **third parties**. Although the AML Law does not set out a process for giving effect to this provision, the Brazilian authorities were able to provide an example of how the process works in practice. In 2005, Paraguay sent an AML request to Brazil, based on the MERCOSUR Protocol. The defendant was accused of stealing, money laundering and criminal association. Paraguay requested seizure of a property worth more than USD 11 million which was purchased by the defendant in Brazil, on the border with Paraguay. In 2006, a Brazilian Judge ordered the property to be frozen, pending the final determination of the case in Paraguay. The property remains frozen, and the Brazilian authorities have decided to promote an early restraint order to sell the property, so as to preserve its real value.

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

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

CHAPTER IV

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

Merida's Convention

CHAPTER III

THE EFFECTS OF A GUILTY VERDICT

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

I. The forfeiture, in favor of the Union, of any assets, rights and valuables resulting from

	<p>any of the crimes referred to in this Law, due provision being made for safeguarding the rights of a victim or a third party in good faith;</p> <p>CHAPTER IV ASSETS, RIGHTS, OR VALUABLES RESULTING FROM CRIMES COMMITTED ABROAD Paragraph 2 In the absence of an international treaty or convention, the assets, rights or valuables seized or detained upon request of a competent foreign authority or the proceeds resulting from their detention shall be evenly divided between the Country that makes the request and Brazil, safeguarding the rights of victims or third parties in good faith.</p> <p>THE PRESIDENT OF THE REPUBLIC Law. 7.560/1986. I hereby state that the National Congress has decreed and I sign the following Law: Article 4. Any and all assets of economic value, seized in connection with narcotics trafficking or used in any way in illicit activities of producing or trading drugs of abuse, or which have been acquired with funds derived from those offenses and lost in favor of the federal government, shall constitute FUNAD’s funds. However, this procedure shall respect the rights of victims or third parties in good faith and shall be executed after final judicial or administrative decision.</p>
	<p>Palermo’s Convention 94. Article 14, on disposal of confiscated proceeds of crime or property, provides that when acting on the request for confiscation made by another State party under article 13, States parties shall, to the extent permitted by their domestic law and if so requested, give priority consideration to returning the confiscated proceeds or property to the requesting State, so that it can give compensation to the victims of crime or return such proceeds or property to their legitimate owners. This provision reinforces the provisions of article 25, which requires States parties to establish appropriate procedures for compensation of, and restitution to, victims of offences covered by the Convention. 95. Providing information on whether such return of confiscated proceeds or property was possible under their domestic legal system, 53 States indicated that their national legislation permitted it. Some of them mostly referred to bilateral agreements but also to multilateral treaties reported that they were parties to agreements or arrangements with other States dealing with the disposal of proceeds or property confiscated upon request from another State. 96. Sixteen States reported having concluded agreements or arrangements dealing with the sharing of confiscated proceeds of crime in accordance with paragraph 3 (b) of article 14, which requires States parties to give special consideration to concluding agreements on sharing with other parties, on a regular or case-by-case basis, confiscated proceeds of crime or funds derived from such proceeds.</p>
<p>Bolivia</p>	<p>GAFI 2.3.1 Description and Analysis recommendation 3 Art. 71 and 71 (bis) of the Bolivian Penal Code provide for the confiscation of resources and</p>

	<p>assets directly or indirectly resulting from the laundering of illicit proceeds acquired from the date of the earliest of the acts which have justified his conviction, and resources and assets derived directly or indirectly from the offense, including income and other benefits that may have been obtained therefrom and non-convicted, unless the owner proves to have acquired them by actually paying a fair price or change of corresponding benefits its value. We should add that the rights of bona fide third parties are protected.</p> <p>Merida’s Convention Protection of witnesses and reporting persons (arts. 32 and 33) Bolivian law provides for measures to protect witnesses, experts and victims in Act No. 004, Act No. 260 (Act on the Public Prosecution Service) and Act No. 458. Protected persons are not relocated in Bolivian territory since such a measure would not be appropriate in the case of the Plurinational State of Bolivia. Technological means may be used to protect the identity of witnesses. Furthermore, in order to preserve evidence for the trial while protecting the identity of the witness, the judge may order the production of evidence in pretrial proceedings in the presence of the parties that may participate in those proceedings. The Plurinational State of Bolivia has not concluded any agreements with other States on the relocation of protected persons. The participation of victims in proceedings is regulated by the Constitution (art. 121), the Code of Criminal Procedure (art. 11) and the Act on the Public Prosecution Service (art. 68). 2.4. Technical assistance needs to improve implementation of the Convention Bolivia has expressed interest in receiving technical assistance in the area of protection of witnesses, experts and victims, in particular, summaries of best practices, training programs for authorities responsible for programs protection of witnesses and experts, on-site assistance from an expert, and agreements and type contracts. (art. 32) 2.4. Technical assistance needs identified to improve implementation of the Convention The Plurinational State of Bolivia has expressed interest in receiving technical assistance in relation to the protection of witnesses, experts and victims, in particular, summaries of best practices, training programmes for the authorities responsible for programmes for the protection of witnesses and experts, on-site assistance provided by an expert and model agreements and contracts (art. 32). Articles 71 and 71 bis of the Criminal Code and article 255 of the Code of Criminal Procedure establish that seizures shall be carried out without prejudice to the rights of bona fide third parties.</p> <p>Palermo’s Convention * no data was found.</p>
<p>Canada</p>	<p>There are not specific dispositions related to victims in Canada. Regardless, Section 4 of the Compartment Regulations of Forfeiture Properties 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>

GAFI

260. The actual sentence imposed will reflect the purpose and principles of sentencing set out in sections 718 and following of the Criminal Code. The purpose of sentencing is to contribute to respect for the law and maintenance of a just, peaceful and safe society by imposing just sanctions that denounce unlawful conduct, deter the offender and others from committing offences, separate the offenders from society where necessary, assist in rehabilitating offenders and provide reparation for harm done to **victims** or to the community. The fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and degree of responsibility of the offender.

294. There are checks and balances in the ability to seek such funding since the property is theoretically dissipated by such orders. Subsection 462.34(4) requires an order unless "... the judge is satisfied that the applicant has no other assets or means available for the purposes set out in this paragraph and that no other person appears to be the lawful owner of or lawfully entitled to possession of the property." This means that if the applicant has other assets or means or if there is a lawful owner of the relevant property the court cannot dissipate that property to fund the applicant's expenses. Of course, it is often difficult for the Attorney General to prove that the applicant has other assets in cases where the accused is particularly adept at hiding his or her criminal proceeds. The authority to seek funded legal expenses out of seized or restrained proceeds of crime is further circumscribed by subsections 462.34(5) to (5.2) of the Criminal Code. If there is a lawful owner (i.e. a **victim**) of the relevant property, the court should not dissipate that property to fund the applicant's expenses. Finally, the court may, but is not required to, consider the applicable legal aid tariff rate in releasing funds to cover legal expenses under Criminal Code Section 462.34(5).

297. Victims of crime and forfeiture. **Victims** may not have a direct and valid interest in the property that is targeted for forfeiture simply because their property had been laundered long before the seizure and forfeiture issues developed. Those victims have an interest in the criminal but not a specific interest in property targeted for forfeiture. As a result they will not have standing to challenge the forfeiture order. This issue is addressed by sections 738 and 740. It is further ameliorated by subsection 462.49 of the Criminal Code, which continues and gives priority to any Act of Parliament respecting restitution to or compensation of victims. The Criminal Code does contain restitution to persons affected by crime provisions in sections 738 to 740. As a result, victim restitution and forfeiture effectively coexists in Canada.

310. Canada should improve its mechanisms for collecting, maintaining and analyzing confiscation data. It should consider authorizing a study to identify why the IPOC Unit seizures and forfeiture numbers are decreasing, and why there is a large gap between the amount of property seized for forfeiture and the amount of property actually forfeited. Canada should consider ways to combat the dissipation of criminal proceeds and offence-related property to criminals for use as legal, business and living expenses even in non-victim cases. The Criminal Code should provide a specific process to properly obtain income tax information in the investigatory stage that is not limited to investigations of drug, organised crime, terrorist and

Merida's Convention

Protection of witnesses and reporting persons (arts. 32 and 33)

The Criminal Code requires the court to consider a victim impact statement at the time of sentencing an offender. The victim impact statement allows victims to participate in the sentencing of the offender by explaining to the court and the offender how the crime has affected them.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

Canada has taken several measures to make acts of corruption relevant in legal proceedings. Where a person exercising statutory authority acts for an improper purpose or in bad faith, including acts of corruption, his or her decisions or actions can be challenged in court by way of an application for judicial review. At the federal level, the legal framework governing government contracts includes a number of federal statutes and regulations, international and domestic agreements as well as policies, directives and guidelines, to address corruption, including ineligibility of corrupt individuals, business entities and organizations for further contracts. In addition, a court may order restitution to a victim in a criminal proceeding.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

The mechanisms for identification and freezing criminal assets are set forth in the Criminal Code under section 462.3 — Part XII.2 — Proceeds Of Crime. Under section 462.37 of the Criminal Code, the court may order the forfeiture of any property, including property located outside of Canada, that it finds, on a balance of probabilities, is the proceeds of crime and that the offence was committed in relation to that property. If the court does not find that the offence was committed in relation to the property concerned, but finds beyond a reasonable doubt that the property constitutes proceeds of crime, the court can still forfeit the property. In cases where the property cannot be forfeited due to being transferred to a bona fide third party, located outside of Canada or commingled with other property and therefore difficult to divide, the court may order a fine of an equivalent amount. Section 490.1 extends forfeiture to instrumentalities of the offence.

COLOMBIA

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”.

GAFI

1.5 .. Overview of strategy to prevent money laundering and terrorist financing

- **Strategies and priorities AML / CFT: [...]** - Protection of witnesses, victims and others involved in criminal proceedings, civil servants, Decree 261 of 1991.

[...] In exercising its functions, the Attorney General's Office must ask the judge to exercise the functions of control that guarantees the necessary measures to ensure the appearance of the accused in criminal proceedings, the preservation of evidence and the protection of the community, especially the **victims**.

Specifically in the field of criminal procedure the matter is regulated in Article 82 of the Code of the branch which provides:

Also without prejudice to the rights of **victims and bona fide third parties**, the confiscation of criminal assets whose value corresponds or is equivalent to direct or indirect proceeds of crime proceed, when it is not possible to locate these, material identification or affectation or unnecessary by the seizure in the terms provided in the preceding paragraphs.

Article 83. Precautionary Measures on property subject to confiscation. Materials will be taken as measures to ensure the seizure and confiscation work, and legal in the suspension of the device :

The above measures will come when grounds to infer that the assets or resources are the direct or indirect result of an intentional crime, its value is equal to the product, which have been used or are intended to be used as a means or instrument in an intentional crime, or which constitute the material object of the same, except that must be returned to the taxpayer, **victims** or others.

Among the features that protrude from the figure is found its real character, as also independent of criminal actions that may have potential for pursuing and even can operate without having established criminal liability of any person. Expressly contemplates the possibility of making effective in equivalent or "replacement value" goods. And finally it has expressed some length regulated mechanisms of due process that protects the rights of bona fide third parties that may be affected.

Specifically in the field of criminal procedure the matter is regulated in Article 82 of the Code of the branch which provides:

"Forfeiture shall proceed over the assets and resources which are the direct or indirect proceeds of crime and which belong to the criminally responsible individual, or over those utilized and destined for utilization in intentional crimes as means or instruments for their perpetration, without prejudice to the rights held over them by passive parties or **bona fide third parties**.

“When goods or resources, direct or indirect proceeds of crime, are mixed or cloaked under assets of lawful origin, forfeiture shall proceed to the estimated value of the illegal asset, except when under such conduct a second crime was carried out; under the latter case, confiscation will be held to encompass the entirety of the assets under question.

“In the case that the material location or identity of assets which are the direct or indirect product or crime is undeterminable, and also without prejudice to the rights of victims and bona fide third parties, forfeiture shall proceed over assets of the criminally responsible individual whose value corresponds or is equivalent to that of the aforementioned unlawful assets.

“Once the forfeiture is decreed, the goods shall pass in definitive form to the Attorney General of the Nation’s office through the Special Fund for the Administration of Assets, except when the legislature demands a different destination or their destruction.

“For the purposes of forfeiture, the scope of ‘assets’ shall be understood to encompass all of those which are susceptible to monetary assesment or over those subject to property rights, material or immaterial, moveable or immovable, tangible or intangible, as well as those documents or instruments which manifest ownership over said assets.”

Merida’s Convention

Protection of witnesses and reporting persons (arts. 32 and 33)

Act No. 418 of 1997 establishes a framework for the protection of witnesses, victims and those involved in the trial and officials of the prosecution service, and creates a protection programme for those persons, under the responsibility of the Office for Protection and Assistance of the Public Prosecutor’s Office. Although experience has been gained in applying this framework to cases involving drug offences, there is little experience in applying it to cases of corruption. There are no binding international agreements on the international relocation of witnesses.

Articles 11(c) and 102 of the Code of Criminal Procedure regulate and supplement the criminal procedure as regards the full compensation of victims in a criminal trial. There is operational experience in implementing this law, although not yet in corruption offences. Furthermore, Act No. 610 of 2000 and the Anti-corruption Statute govern tax liability proceedings, in which the assets of officials who have, by their action or omission, damaged State assets are scrutinized, regardless of whether their conduct constitutes a criminal offence. The Anti-corruption Statute amended article 401 of the Criminal Code, and at present compensation for damage or reimbursement of misappropriated assets is provided for as a ground for mitigating punishment.

2.3. Challenges in implementation

Consider entering into agreements or arrangements with other States for the relocation of witnesses, experts and victims (art. 32(3));

Palermo’s Convention * No data was found.

Colombia

Costa Rica	<p>GAFI</p> <p>1.5. Overview of strategy to prevent money laundering and terrorist financing</p> <ul style="list-style-type: none">• Strategies and priorities AML / CFT: [...] - Protection of witnesses, victims and others involved in criminal proceedings, civil servants, Decree 261 of 1991. <p>[...] In executing its functions the Attorney General's Office must ask the judge to exercise the functions of control guarantees the necessary measures to ensure the appearance of the accused in criminal proceedings, the preservation of evidence and the protection of the</p>

community, especially the **victims**.

Meanwhile, and specifically in the field of criminal procedure the matter is regulated in Article 82 of the Code of the branch which provides:

Also without prejudice to the rights of **victims and bona fide third parties**, the confiscation will proceed on the assets of the criminally liable whose value corresponds or is equivalent to to direct or indirect asset, proceed of crime, when these is not possible the location, identification or materials affectation or unnecessary by the seizure on the terms provided in the preceding paragraphs.

Article 83. Precautionary Measures on property subject to confiscation. Materials will be taken as measures to ensure the seizure and confiscation occupation, and as legal as the suspension of the device to:

The above measures will come when grounds to infer that the assets or resources are direct or indirect result of an intentional crime, its value is equal to the product, which have been used or are intended to be used as a means or instrument will have a intentional crime, or which constitute the material object of the same, except that must be returned to the taxpayer, **victims** or others.

Among the features that protrude from the figure found its real character, as also independent of criminal actions that may have potential for pursuing and even can operate without having established criminal liability of any person. Expressly contemplates the possibility of making effective in assets equivalent or "replacement value". And finally it has expressed some length regulated mechanisms of due process that protects the rights of bona fide third parties that may be affected.

For its part, specifically in the field of criminal procedure the matter is regulated in Article 82 of the Code of the branch which provides:

"The confiscation will proceed on asset and resources criminally responsible that are from or are direct or indirect proceeds of crime, or those used or intended for use in intentional crimes as a means or instruments for the execution, without prejudice on rights that are over them taxpayers or **third parties in good faith**.

When assets or resources, direct or indirect proceeds of crime are mixed or undercover with assets of lawful origin, confiscation will proceed to the estimated value of illegal, except product with such conduct another offense is set up, because in this last event will proceed on the all of the property involved in it.

Also without prejudice to the rights of victims and **bona fide third parties**, the confiscation proceed on criminally responsible goods whose value corresponds or is equivalent to real direct or indirect proceeds of crime, when these not possible location, identification or materials affectation or unnecessary by the seizure on the terms provided in the preceding paragraphs.

Decreed the confiscation, assets will ultimately shape the Attorney General's Office through the Special Fund Asset Management, unless the law provides for their destruction or different disposition.

For the purposes of forfeiture shall be deemed for goods all who are capable of economic assessment or which may devolve ownership rights, tangible or intangible, movable or immovable, tangible or intangible, as well as documents or instruments that reveal the right over them. "

Merida's Convention

Protection of witnesses and reporting persons (arts. 32 and 33)

Act No. 418 of 1997 establishes a framework for the protection of witnesses, victims and those involved in the trial and officials of the prosecution service, and creates a protection programme for those persons, under the responsibility of the Office for Protection and Assistance of the Public Prosecutor's Office. Although experience has been gained in applying this framework to cases involving drug offences, there is little experience in applying it to cases of corruption. There are no binding international agreements on the international relocation of witnesses.

Articles 11(c) and 102 of the Code of Criminal Procedure regulate and supplement the criminal procedure as regards the full compensation of victims in a criminal trial. There is operational experience in implementing this law, although not yet in corruption offences. Furthermore, Act No. 610 of 2000 and the Anti-corruption Statute govern tax liability proceedings, in which the assets of officials who have, by their action or omission, damaged State assets are scrutinized, regardless of whether their conduct constitutes a criminal offence. The Anti-corruption Statute amended article 401 of the Criminal Code, and at present compensation for damage or reimbursement of misappropriated assets is provided for as a ground for mitigating punishment.

2.3. Challenges in implementation

- Consider entering into agreements or arrangements with other States for the relocation of witnesses, experts and victims (art. 32(3));

Palermo's Convention * No data was found.

	<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"> a) The claimant has a legitimate interest in the assets, products or instruments. 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. 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. 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. e) The claimant did everything reasonable to prevent illegal use of the assets, products or instruments. " <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>Chile</p>	<p>GAFI</p> <p>2. Legal System and Related Institutional Measures</p> <p>2.6. Description and Analysis</p> <p>d) The Local Public Prosecutors and Deputy Prosecutors, who are the operational units of the Regional Prosecutor carry out research work, and exercise public legal action and protection for victims and witnesses.</p> <p>In funding for research, there exists, for every regional prosecutor a special fund for this purpose. In turn, care units for victims and witnesses of each regional prosecutor, have budget items for financing travel expenses of witnesses and experts to be used for evidence in a trial for laundering or terrorist financing. When these investigations have international connections, costs associated with research are increased considerably, which has an impact on the overall budget for all types of investigations of each regional prosecutor.</p> <p>Recommendation 32</p>

	<p>Statistics</p> <p>So, with regard to cases pending statistics, statistics on ongoing investigations, and formally charged, prosecuted and convictions, henceforth the public prosecutor will be the body responsible for it. In the body, through the Division of Research, Evaluation, Control and Management Development of the National Prosecuting Authority, statistical information is maintained for a series of criminal cases. The data is obtained mainly from the base called SAF (System Support Tax), in which is recorded all the relevant background for the management and processing of the case (prosecutor in charge, date of receipt of the case, the state of research, data on victims, suspects, the accused, steps taken, etc).</p> <p>2.3.1. Description and Analysis</p> <p>In connection with the confiscation of property of third parties in good faith, without prejudice to their eventual seizure and confiscation, the general rules are applicable to your connection, which tend to protect and establish grievance procedures or third-party proceedings, aimed at recovering assets. In this sense, article 45 of Law No. 20,000 notes that all those provided or acquired by third parties knowing the destination or origin shall be confiscated, it is concluded that the seizure of the goods supplied is excluded or acquired by third parties in good faith, unless regarding the applicable hypothesis of culpable money laundering.</p> <p>2.4.1. Description and Analysis</p> <p>The rights of bona fide third parties are protected by the laws in force in Chile.</p>
	<p>Merida's Convention</p> <p>Criminalization and law enforcement</p> <p>The right of victims and witnesses to receive adequate protection during the course of criminal proceedings, one of the most important innovations of the new criminal procedure, is recognized at the constitutional level and is regulated by various legislative instruments, chiefly the Code of Criminal Procedure and the Constitutional Act relating to the Organization of the Public Prosecution Service. The latter entrusts the National Prosecutor with the issuing of the instructions necessary to ensure that victims and witnesses are adequately protected and establishes specialized units within the Public Prosecution Service and each regional prosecution office. The Chilean authorities have indicated that, to date, they have applied legislation on witness protection only in exceptional cases.</p> <p>Palermo's Convention * no data was found.</p> <p>The Attorney General's Office has a department to protect victims of all offenses, including money laundering.</p>
<p>Dominica</p>	<p>Merida's Convention</p> <p>Protection of witnesses and reporting persons (arts. 32 and 33)</p> <p>The absence of legislation or a program for protection of witnesses, experts, and victims, as</p>

well as for protection of whistle-blowers, was noted. There is a bill on witness protection.

The following recommendations were made, by article:

Article 32: Take all legislative and institutional measures to protect witnesses, experts, and victims. Promote the approval of the Witness Protection Bill currently in Parliament. Take suitable measures to permit victims to present their views and concerns in criminal proceedings.

2.4. Technical assistance needs identified to improve implementation of the Convention

- Article 32: Summary of good practices and lessons learned; model legislation; legal advice; on-site assistance by an anti-corruption expert; model agreements and arrangements; capacity-building programs for authorities responsible for establishment and management of programs for protection of witnesses, experts, and victims.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

There is no regime to manage confiscated assets, nor a comprehensive regime to manage seized assets. The system of confiscation in Dominica is based on criminal conviction and on the value of the proceeds of crime, and consequently includes assets transformed into other assets, intermingled with assets from legitimate sources, and income of other benefits derived from assets. The rights of bona fide third parties are regulated only in relation to confiscation and seizure for offences of money-laundering.

- Article 31: Paragraph 1: Regulate confiscation of assets “destined for use”. Paragraph 2: Regulate seizure or freezing of the proceeds and instruments of all crimes of corruption; consider extending the 7-day term of a freezing order. Paragraph 3: Comprehensively regulate management by the competent authorities of seized, frozen, or confiscated assets, including more complex assets, and create the pertinent capacities. Paragraph 8: Consider the possibility of requiring an offender to prove the legal origin of the alleged proceeds of crime or other assets liable to confiscation in cases of corruption. Paragraph 9: Ensure mechanisms to protect the right of bona fide third parties in the system of confiscation and seizure or freezing for all offences, not only for crimes of money-laundering.

Palermo’s Convention * No data was found

El Salvador

In the case of El Salvador, article 12 of the Criminal Procedure Code contains the definition of victim; which covers;

- “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 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.”

GAFI

256. (III.12) Salvadorian regulations provide warnings for the protection of good faith third party rights specific of the crimes related to terrorism and financing thereof, in accordance with the standards of the Convention for the financing of terrorism, being the main specific regulating text the Law of terrorism acts in Article 36. 3. a, 37. 9, 37.10, and, 39, all regardless of the application of this benefit regulated in CC in its Articles 126.2 and 127.1.

205. (3.5) The country’s ordering provides warnings, concretely reflected in Article 127 of the CC and Article 23 of AML for the protection of the rights of good faith third parties

224. Article 36 states that with all instruments and corresponding entry registration granted without charge inter vivos or mortis causa, of which the purpose is to place goods beyond the scope of the measures concerning seizure and confiscation provided in this Law shall be null regardless of respecting good faith third party rights.

Merida’s Convention

Protection of witnesses and reporting persons (arts. 32 and 33)

El Salvador has adopted an act on the protection of victims and witnesses and a victim and witness protection program; it has also established evidentiary rules that permit witnesses to give testimony in a manner that ensures their safety. The participation of victims in appropriate stages of criminal proceedings is provided for by article 106 of the Code of Criminal Procedure.

Law enforcement

With regard to law enforcement, it is recommended that El Salvador:

- Establish a procedure for bona fide third parties that applies to forfeiture (art. 31, para. 9)

Article 127 of the Criminal Code provides that confiscation is without prejudice to the rights of **bona fide third parties**; however, no such provision is in place with respect to forfeiture.

- Establish a procedure for bona fide **third parties** that applies to forfeiture

(art. 31, para. 9)

Ecuador

Ecuador recognizes and guarantees the right to property in their public, private, community, state, associative, cooperative, mixed forms, the same must comply with social and environmental function (Art. 321 Constitution Republic Ecuador).

Similarly, in Art. 23 *ibid*, prohibits all forms of confiscation and expropriation contemplated in order to implement plans for social development, sustainable management of the environment and collective welfare, fair evaluation, compensation and payment in accordance with the law.

Regarding the rights of victims, Article 78 of the Constitution of the Republic of Ecuador states:

"Art. 78. The victims of criminal offenses shall enjoy special protection, their victimization shall be guaranteed, particularly in obtaining and evaluating the evidence, they shall be protected from any threats or other forms of intimidation. Mechanisms for reparation shall be adopted and will include, without delay, the knowledge of the true facts and restitution, compensation, rehabilitation, guarantees of non-repetition and satisfaction violated law be adopted. A system of protection and assistance to victims, witnesses, and procedural participants shall be established."

This constitutional provision seeks to guarantee the right to truth and justice, protection and assistance, to integral reparation of the damage caused, unless they also become victim to the failings of the criminal proceedings.

Art. 69 of the Code of Criminal Integral COIP, in relation to restrictive penalties of the property, in its second paragraph, provides for criminal forfeiture, noting that it follows in all cases of fraud and befalls property that is a tool, product or revenue of the crime. Further indicating that no forfeiture will occur in any culpable offenses.

The third section of paragraph e) of paragraph 2 of Art. 69 provides that if convicted and sentenced within criminal proceedings for money laundering, terrorism and its financing, and related crimes subject to controlled substances listed if such property, funds and assets, products and instruments cannot be forfeited, or the judge shall confiscate any property owned by the convicted, for an equivalent value, even if this right will not be linked to the crime.

In the case of the preceding paragraph, the forfeited movable and immovable assets are definitively transferred to the institution responsible for the Real Estate Administration and Management of the State, which may, in turn, dispose of these assets for regularization.

In Art. 11 of the Integral Criminal Code, the rights of the victim in criminal proceedings are established, as is the adoption of mechanisms for reparation of the damage including, without delay, the knowledge of the truth of the facts, the restoration of injured right, compensation, guarantee of non-repetition of the offense, satisfaction of the violated right, and any other form of additional relief as may be justified in each case.

Article 77 of COIP refers to full compensation for damages, noting that "the integral reparation

shall lie in the solution which objectively and symbolically restores, as far as possible, the victim's state prior to the commission of the crime and the satisfaction of the victim, eliminating the effects of the crime. Their nature and amount depend on the characteristics of the crime affected, legally and the damage.

The integral restitution is a right and a guarantee to bring the resources and actions to restore and receive compensation in proportion to the damage"

In turn, Article 78, concerning mechanisms for integral reparation, in item 1 and 2, determines:

"1. Restitution: applies to related restoration of liberty, family life, citizenship or nationality, return to the country of previous residence, employment recovery or property and on Restoration of cases political rights ".

"3. The compensation of material and moral damages:

They relate to compensation for any loss incurred as a result of a criminal offense and is economically measurable. "

Finally, Article 112 of the Law on Narcotic Drugs and Psychotropic Substances, determined with respect to property restitution, states: "If the accused owner of the seize assets is acquitted, the assets will be returned by CONSEP when provided by the Judge, once the precautionary measures are canceled.

The institutions to which the assets have been delivered will return them in the condition these were at the time of receipt, except for normal wear and legitimate use. If there are damages, they must repair or cover the compensation set by the judge, unless these are a result of unforeseen circumstances or force majeure.

The money or value represented in the monetary or banking, financial, or commercial instruments which were seized shall be returned in national currency, according to the quotation of the free market for the purchase of currency seized from the date of the return, with respective current interests legally set by the Board of the Central Bank of Ecuador.

The measures for compensation shall proceed in the case damages might arise.

GAFI

Finally, it should be noted that Ecuadorian law provides for the protection of the rights of bona fide third parties, as established in Article 215 of the Criminal Code, in verbis;

(...) "Without prejudice to the guarantees of due process and the right to defense; the actions of the prosecution, the judiciary, the Judicial Police and other institutions and officials involved in the preliminary investigation, shall be kept in reserve for external parties and the general

	<p>public, without prejudice to the right of the victim, and the persons to whom it is investigated and their lawyers, to have immediate, effective and sufficient investigations. "</p> <p>The criminal procedural regime Ecuador has does not seem to allude directly to third parties in good faith. The only warranties that exist, from a general point of view are those of due process (Art.76 of the Code of Criminal Procedure), as well as established by the Constitution (arts. 75-76 and 323). (Art.76 of the Code of Criminal Procedure) as well as those established by the Constitution of the Republic (arts. 75-76 and 323) constitution.</p> <p>There is no specific protection regime for bona fide third parties in the current Ecuadorian law or other general measures.</p> <p>Since there are no specific measures on freezing, guarantees to third parties in good faith, etc. the measures are inadequate in terms of monitoring compliance with legislation and regulations.</p> <p>Merida's Convention * no data was found.</p> <p>Palermo's Convention * no data was found.</p>
<p>United States</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 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>

GAFI

193. The law permits the intentional element of the terrorist financing offense to be inferred from objective factual circumstances. There is however very little case law on any of these offenses to assess this issue properly. The small amount of litigation surrounding sections 2339A and 2339B revolves around the constitutional validity of the provisions as well as whether allegations under these provisions can form the basis of civil compensation claims by the **victims**.

226. Forfeiture provisions at the state level typically relate to “racketeering” offenses. They generally follow the line of the federal forfeiture laws and predominantly have a complementary character. Seizure/confiscation measures in a specific money laundering context obviously only exist in the 38 States that have promulgated anti-money laundering statutes. Of the samples reviewed by the evaluation team, Arizona’s in rem and in personam forfeiture system was of particular interest for its protection of the innocent third party or **victim**, its broad scope and its versatility.

331. There are no legislative or regulatory provisions in place allowing for or regulating the use of the technique of postponing or waiving the arrest of suspects. However, in practice, during the course of long term financial investigations or undercover operations, in many cases, arrests will be deferred for substantial periods of time until sufficient evidence has been obtained to prosecute the full extent of the unlawful scheme and all of the significant participants. Once a suspect is arrested, he or she has a right to a finding of probable cause, to a speedy trial, and to the disclosure of the government's evidence against him. Therefore, unless exigent circumstances exist, such as the possibility of harm to **victims** or the flight of the defendant, the government is usually best served by making arrests according to its own timetable as determined by the coordinated decisions of the prosecutor and the investigators.

220. Civil forfeiture: To protect the interests of innocent property owners who were unaware that their property was used for illegal purposes or of true bona fide purchasers for value, there is the possibility of a “uniform innocent owner” defense. If somebody claims he/she is a **bona fide** purchaser, he/she must be a "purchaser" in the commercial sense, but he/she must also show that at the time of the purchase he/she "did not know and was reasonably without cause to believe that the property was subject to forfeiture." Under that statute, persons contesting the forfeiture must establish their ownership interests and their innocence by a preponderance of the evidence [18 USC 983(d)].

212. Only property belonging to the defendant can be forfeited in a criminal case considering the person’s character of the procedure. Consequently property that belongs to third parties cannot be forfeited criminally, even if the defendants used it to commit the offenses for which they were convicted, except if the **third party** itself is charged and convicted for (aiding and abetting or conspiracy to) money laundering. However, property held by nominees, delegates and persons who did not acquire their interest until after the crime was committed can be

forfeited as property of the defendant.

226. Forfeiture provisions at the state level typically relate to “racketeering” offenses. They generally follow the line of the federal forfeiture laws and predominantly have a complementary character. Seizure/confiscation measures in a specific money laundering context obviously only exist in the 38 States that have promulgated anti-money laundering statutes. Of the samples reviewed by the evaluation team, Arizona’s in rem and in personam forfeiture system was of particular interest for its protection of the innocent **third party or victim**, its broad scope and its versatility.

222. It is interesting to note that, according to some law enforcement authorities, the reinforcement of **third parties’** rights with the introduction of the CAFRA has given rise to abusive practices and generated an increase of disruptive actions, where numerous claims are being filed against the property by family members of the defendant or other proclaimed interested parties in an attempt to negate the forfeiture action and recover the assets. The circumstance that the government is liable for payment of the defendant’s lawyer fee if it loses the case is also considered a restraining factor.

Merida’s Convention

The United States relies on a wide range of protection measures for witnesses and victims. Protection is provided not only to persons that actually testify in criminal proceedings, but also to potential witnesses, as well as the immediate and extended family members of the witnesses and potential witnesses and the persons closely associated with them, if an analysis of the threat determines that such protection is necessary.

From an operational point of view, the protection of witnesses’ and victims’ physical security can be secured through the Federal Witness Security Program, if these persons meet the requirements for participation in that Program. Other procedures are also in place to provide limited protection through financial assistance for relocation.

*Under the U.S. legislation, defenses are available in both civil and criminal forfeiture proceedings to bona fide third parties.

	<p>Palermo's Convention</p> <p>94. Article 14, on disposal of confiscated proceeds of crime or property, provides that when acting on the request for confiscation made by another party under article 13, States parties shall, to the extent permitted by their domestic law and if so requested, give priority consideration to returning the confiscated proceeds or property to the requesting State, so that it can give compensation to the victims of crime or return such proceeds or property to their legitimate owners. This provision reinforces the provisions of article 25, which requires States parties to establish appropriate procedures for compensation of, and restitution to, victims of offences covered by the Convention.</p> <p>95. Providing information on whether such return of confiscated proceeds or property was possible under their domestic legal system, 53 States indicated that their national legislation permitted it. Some of them mostly referred to bilateral agreements but also to multilateral treaties reported that they were parties to agreements or arrangements with other States dealing with the disposal of proceeds or property confiscated upon request from another State.</p> <p>96. Sixteen State reported having concluded agreements or arrangements dealing with the sharing of confiscated proceeds of crime in accordance with paragraph 3 (b) of article 14, which requires States parties to give special consideration to concluding agreements on sharing with other parties, on a regular or case-by-case basis, confiscated proceeds of crime or funds derived from such proceeds.</p>
<p>Grenada</p>	<p>GAFI</p> <p>10. Freezing of funds used for terrorist financing, and funds and assets of specific criminal and terrorist organizations is included within the domestic laws of Grenada. However, there is no provision for the freezing of terrorist funds or other assets of designated persons in accordance with S/RES/1267(1999) and S/RES/1373(2001). There is provision to give effect to foreign freezing orders and a need for clear guidance to be issued to financial institutions concerning their obligations in taking action for freezing accounts in relation to the circulated lists of terrorists and/or terrorist organizations. While the TA provides for application by affected persons to have restraint orders varied or discharged, there is no explicit provision authorizing access to funds or other assets that were frozen via restraint orders in accordance with S/RES/1452(2002). The rights of bona fide third parties are protected. While the Attorney General has the exclusive authority to de-list proscribed organizations and terrorists listed in the Schedule to the TA, there is no requirement that these procedures are publicly known. Furthermore, there is no mechanism available where victims of offences committed under TA are compensated consistent with the Terrorist Financing Convention. No terrorist funds have been discovered in Grenada.</p> <p>170. Forfeited cash is required to be paid to the Confiscated Assets Fund established under</p>

section 57 of POCA 2003. The law states that payments for the purposes of paying compensation or costs awarded under POCA can be made from this fund. It does not provide a mechanism where victims of offences committed under the TA are compensated consistent with Article 8 of the Terrorist Financing Convention.

The TA should be amended to provide a mechanism where victims of offences committed under the TA are compensated consistent with Article 8 of the Terrorist Financing Convention.

654. Article 16 allows for the Contracting Parties to assist each other to the extent permitted by their own laws in proceedings relating to the forfeiture of the proceeds and instrumentalities of offenses, restitution to the victims of crime, and the collection of fines imposed as sentences in criminal prosecutions. This would also include freezing or restraining the proceeds or instrumentalities pending further proceedings.

9. Provision is made for confiscation, freezing and seizing of the proceeds of crime under the POCA 1992, POCA 2003, and the MLPA. Confiscation of instrumentalities used in or intended for use in the commission of ML or other predicate offences is allowed. Confiscation is not targeted on specific assets as it is value-based. Provisional measures include the freezing and/or seizing of property to prevent any dealing, transfer or disposal of property subject to confiscation. Law enforcement agencies have powers to identify and trace property and the rights of bona fide third parties are protected. At the time of the mutual evaluation visit, the number of cases and the amounts of property forfeited suggest ineffective implementation of the forfeiture and freezing regime.

142. Bona fide third parties are guaranteed protection of their rights by law. POCA 1992, by virtue of section 13 provides that where an application is made for a forfeiture order against property, a person claiming an interest in the property may apply to the Court before such order is made for an order that he was not involved in the commission of the offence and that he acquired the interest in the property for sufficient consideration and that he did not know or had any way of knowing that at the time of acquisition, the property was tainted property.

169. Bona fide third parties also have protection under section 31(8) of the TA. They have an opportunity to be heard by the Court with regard to their ownership in or interest in the property subject of forfeiture following a defendant's conviction for the offence of weapons training. Pursuant to section 21(3) a magistrate may not grant an order forfeiting cash being detained unless a person who is not a party to the proceedings and who claims to be the owner of or otherwise has an interest in any of the detained cash is given an opportunity to be heard.

Merida's Convention * No data was found

Palermo's Convention * No data was found.

<p>Guatemala</p>	<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 also considers a victim, those relatives or dependents who have a direct relationship with the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization."⁷</p> <p>In Guatemala the Attorney General's Office is the principal articulating entity of services of assistance and protection for 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>
	<p>GAFI</p> <p>121. This provision of the ALM Act also does not provide for the confiscation of property and instruments associated with the predicate offence of the ML. Nevertheless, the Criminal Code, Article 60, does stipulate that this is an accessory penalty which involves objects derived from crime or misdemeanor, as well as the instruments with which it may have been committed unless they are the property or a bona fide third party.</p> <p>137. (C.3.5) The rights of bona fide third parties are adequately protected. According to Article 16 of the AML Act: "Measures and sanctions established in Articles 11, 12 and 15 [all of which refer to provisional measures] shall apply without prejudice to the rights of bona fide third parties". For its part, Article 8 establishes definitive confiscation of property "unless it belongs to a third party not responsible for the act". Finally, third parties who claim rights over the property must intervene in the criminal case itself and comply with the conditions laid down in Article 17 of the AML Act which stipulates, inter alia, that it must be shown that the property was not transferred to such person "to avoid possible subsequent confiscation" and that he took "all reasonable measures to prevent the illegal use of the property".</p> <p>166. (C.III.11) (C.III.12) Guatemala possesses legal means to ensure protection for the rights of bona fide third parties, specifically in Article 16 of the AML Act, which in a restrictive provision stipulates that "The measures and penalties referred to in Articles 11, 12 and 15 shall apply without prejudice to the rights of bona fide third parties"; that is to say, with reference to Provisional Measures, Procedures and Cautionary Orders and disposal of property, products or instruments that are the subject of Provisional Measures.</p> <p>118. Confiscation is admissible also when the goods are not owned by the accused or are not in his control, "provided they do not belong to an innocent third party" (first paragraph, Article 8,</p>

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

	ALM Act).
	Merida's Convention * No data was found.
	Palermo's Convention * No data was found.
Guyana	<p>GAFI</p> <p>575. The Palermo Convention has been enacted to an extent through the Criminal Law (Offences) Act; the AMLCFTA and the Fugitive Offenders Act 1988. However, there are gaps in the legislative framework that reduce the level of implementation of the Palermo Convention. These gaps include lack of a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and other entities susceptible to ML; no effective systems to facilitate cooperation and exchange of information internationally and domestically (Article 7); no legislation mandating the creation of a Central Authority with responsibility for facilitating and providing the widest measure of mutual legal assistance (Article 18); no bilateral or multilateral agreements to assist in joint investigations in one or more states and to allow for special investigative techniques such as controlled deliveries (Articles 19 & 20); no measures that offer effective protection of witnesses and assistance to and protection of victims (Articles 24 & 25); and lack of specific training programs for law enforcement personnel from the relevant entities (Article 29). In addition, as indicated in section 2.3 the definition of property in the AMLCFTA liable for confiscation does not include indirect proceeds of crime including income, profits or other benefits from proceeds of crime or property held by third persons. (Article 12(5) of Palermo Convention).</p> <p>10. The AMLCFTA does not include provisions for freezing funds of persons designated by the United Nations Al-Qaida and Taliban Sanctions Committee in accordance with S/RES/1267(1999) or in the context of S/RES/1373(2001). There are also no procedures in place for delisting requests, unfreezing of funds or providing access to frozen funds or providing guidance to financial institutions in relation to S/RES/1267 or S/RES/1373. Guyana can give effect to the freezing mechanisms initiated in other jurisdictions. Section 71 of the AMLCFTA provides for the DPP to apply to the High Court to freeze any account or other property held by or on behalf of any terrorist or terrorist organization. There are measures for restraint orders and production orders and adequate provisions for the protection of the rights of bona fide third parties. The provisions in the AMLCFTA relating to the freezing, seizing and forfeiture of funds of terrorists or terrorist organizations have not been implemented.</p> <p>126. As noted with the freezing of terrorist property, a person affected by the order may apply for revocation of the order under section 71(5) of the AMLCFTA. Where a forfeiture order is made against terrorist property pursuant to section 74, a bona fide third party can successfully claim an interest in the subject property if the Court is satisfied that he has an interest in the property; has exercised reasonable care to make sure the property is not terrorist property; and that the applicant is not a member of a terrorist group. Where the Court is satisfied, the</p>

	<p>applicant’s interest in the property shall not be affected by the forfeiture order and the Court “shall declare the nature and extent of the interest in question” (section 74(2)). Where a person obtains an interest after the property is deemed terrorist property the Court will only make an order under s. 74(2) in respect of that interest where that individual “...is a bona fide purchaser for value, without reason to suspect that the property is terrorist property” (section 74(3)).</p>
	<p>Merida’s Convention * no data was found.</p>
	<p>Palermo’s Convention * no data was found.</p>
<p>Haiti</p>	<p>GAFI</p> <p>157. Third parties in good faith are protected under Haitian law. Requests to have measures to seize or freeze funds lifted can be made at any time by the owner to the court that gave the order. The prosecutor must be consulted in such cases (Article 4.1.2)</p> <p>274. The protection of third parties acting in good faith is not specifically covered by the 2001 law. In practice, it appears that holders of funds may dispute such seizures in court in summary proceedings. Very often, funds that are seized are then returned, for the dual reason that the authorities have infringed upon their powers in this area and the guilt of the holder of funds has not been established.</p> <p>Merida’s Convention * no data was found.</p> <p>Palermo’s Convention * no data was found.</p>
<p>Honduras</p>	<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.⁸</p>

⁸ Mediante la aprobación del Decreto 63-2007.

246. With respect to provisional measures taken pursuant to Article 219 Criminal Procedures Code, bona fide third parties are not protected. In the absence of or prior to a final confiscation order pursuant to Article 64 Criminal Code for such property, bona fide third parties may therefore not appeal a seizing measure.

247. Once a conviction has been issued, the rights of bona fide third parties are protected pursuant to Article 55 Criminal Code and Article 2 AML Law, which expressly exclude property belonging to a third party that was not involved in the commission of the offense in respect to which the confiscation was issued. The determination as to whether a party is bona fide is made pursuant to Article 17 AML Law as outlined above, whereby the burden of proof is on the party.

248. For assets confiscated based on a conviction for terrorism financing, Article 335-H Criminal Code provides that within one year from the date of the notification of the judgment, bona fide third parties may object to the confiscation order to the court which pronounced it. The judge should then rule on the matter within three days.

278. With respect to domestic cases, a confiscate or assets based on a conviction for terrorism financing may be appealed by bona fide third parties within one year from the date of the notification of the judgment. However, in the absence of legal framework to implement UNSCR 1267 and 1373, the criterion cannot be fully assessed.

Merida's Convention * No data was found.

	<p>Palermo's Convention</p> <p>94. Article 14, on the disposal of confiscated proceeds of crime or property, provides that when acting on the request for confiscation made by another party under article 13, States parties shall, to the extent permitted by their domestic law and if so requested, give priority consideration to returning the confiscated proceeds or property to the requesting State, so that it can give compensation to the victims of crime or return such proceeds or property to their legitimate owners. This provision reinforces the provisions of article 25, which requires States parties to establish appropriate procedures for compensation of, and restitution to, victims of offences covered by the Convention.</p> <p>95. Providing information on whether such return of confiscated proceeds or property was possible under their domestic legal system, 53 States indicated that their national legislation permitted it. Some of them mostly referred to bilateral agreements but also to multilateral treaties reported that they were parties to agreements or arrangements with other States dealing with the disposal of proceeds or property confiscated upon request from another State.</p> <p>96. Sixteen State reported having concluded agreements or arrangements dealing with the sharing of confiscated proceeds of crime in accordance with paragraph 3 (b) of article 14, which requires States parties to give special consideration to concluding agreements on sharing with other parties, on a regular or case-by-case basis, confiscated proceeds of crime or funds derived from such proceeds.</p>
<p>Jamaica</p>	<p>GAFI</p> <p>14. The TPA has established a listed entity reporting regime based on the UN Security Council list of designated terrorist entities. This regime requires foreign companies, financial institutions and any entity so designated to report to the DPP. There is no direct provision to freeze the assets of listed entities and the DPP can only apply for a restraint order in the case of a person convicted of or charged with a terrorism offence. The TPA provides for the restraint of applicable property in relation to an offence. The TPA contains provisions for seizing/ restraint orders and forfeiture of property. However there appears to be no provision for forfeiture of property of corresponding value. Applications for restraint orders can be made ex parte and property can be seized under a search warrant. The TPA also contains provisions for the DPP to apply for production and provides protection of the rights of bona fide third parties. The present TPA should but does not have any direct provision to freeze the assets of listed entities. Additionally, there should be provision in the TPA to allow for forfeiture of property of corresponding value.</p> <p>104. Section 10 of DOFPA provides protection of the rights of bona fide third parties with regard to freezing and/or seizing of property. Section 9 of DOFPA authorizes the judge, prior to</p>

	<p>making the forfeiture order to set aside any conveyance or transfer of the property that occurred after the seizure of the property or service of the restraint order, unless the conveyance or transfer was made for valuable consideration to a bona fide purchaser. Similar provisions are contained in section 19 of the CJRA.</p> <p>115. Applications for restraint orders can be made ex parte and property can be seized under a search warrant. Sections 21 and 22 of the TPA also contain provisions for the DPP to apply for production orders. Section 31 of the TPA provides for the protection of the rights of bona fide third parties.</p> <p>Merida's Convention * No data was found.</p> <p>Palermo's Convention * No data was found.</p>
Spain	<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>
Mexico	<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>"Article 43. 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</p>

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.

If there is more than one property in forfeiture, it shall, with due separation, the corresponding statement to each of these.

The judgments in which the invalidity of the forfeiture action is resolved without 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.

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.”

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.

GAFI

281. Mexican laws protect the rights of bona fide third parties consistent with the standards provided under Article 12(8) of the Palermo Convention. Article 40(1) of the Federal Penal Code protects the rights of bona fide third parties by limiting the forfeiture of property owned by a third party to instances in which such third party is covered by any of the concealment provisions. Article 400 of the CFPF deals with cases of concealment and establishes the specific intent required with respect to a third party who has acquired, received, or concealed the proceeds of the crime in which he/she has not participated. In order to prevent being accused of this crime, and to be considered a —bona fide third party, the third party must have conducted due diligence, taken essential precautions and not have known the unlawful origin of the property.

308. The rights of bona fide third parties are protected by legal provisions in Mexico, as previously indicated in the analysis of Recommendation 3

Merida’s Convention * No data was found

Palermo's Convention

94. Article 14, on the disposal of proceeds of crime or confiscated property, provides that when acting on the request made by another State Party in accordance with Article 13, States Parties, to the extent that permitted by domestic law and if so requested, give priority consideration to returning the proceeds of crime or property confiscated to the State party requesting, so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their rightful owners. This provision reinforces the provisions of Article 25, which stipulates that States Parties shall establish appropriate procedures to allow victims of the offenses covered by the Convention to compensation and restitution.

95. In providing information on whether such return of property or proceeds of crime confiscated was possible under their domestic law, 53 States indicated that their national legislation permitted it to. Some of them were mainly related to bilateral agreements but also to multilateral treaties, reported that they were parties to agreements or arrangements with other States which related to the disposition of proceeds of crime or property confiscated upon request by another State. (Mexico is even)

96. Sixteen States reported having concluded agreements or arrangements regarding the distribution of confiscated proceeds of crime under paragraph b) of paragraph 3 of Article 14, which stipulates that States Parties shall consider in particular the possibility of holding systematically or case by case agreements with other States parties to share the confiscated proceeds of crime or funds derived from such proceeds. (Mexico is even)

GAFI * No data was found

Panama

Merida's Convention

Since 2011 the new Code of Criminal Procedure has been entering into force gradually in the different judicial districts. The Office of the Public Prosecutor protects a victim of crime at every stage of a criminal trial, and also any informants, witnesses or collaborators. The relevant provisions include, inter alia, protection against reprisals, the non-disclosure of a person's identity, the listing of court facilities as a witness' official address, an altered or concealed appearance in hearings, the use of technology for interrogation, police protection, safe houses and relocation. Under no circumstances, however, may the measures established in the relevant article be to the prejudice of the accused person's right of defense or of the adversarial principle. Panama does not have a system in place to provide protection for reporting persons ("whistle-blowers").

Freezing, seizing and confiscation; bank secrecy (articles 31, 40)

The Panamanian legal system has measures in place to allow the freezing, seizure and confiscation of property, assets or instruments, and income or benefits obtained from the proceeds of the offences covered by the Convention. This includes assets that have been intermingled with those derived from a legitimate source. Confiscated assets remain at the

	<p>disposal of the Ministry of the Economy and Finance until the case is decided by the competent court. National legislation provides for the reversal of the burden of proof regarding the lawful origin of the alleged proceeds of money-laundering offences only in cases of drug trafficking and illicit enrichment. Seizure and confiscation orders are executed without prejudice to the rights of bona fide third parties. Bank secrecy does not constitute grounds for preventing the prosecution services from requesting that bank, financial or commercial records be made available or seized during the course of their investigations.</p>
	<p>Palermo's Convention * No data was found</p>
<p>Paraguay</p>	<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 which 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> <p>GAFI</p> <p>14. The rights of bona fide third parties are protected by the provisions of the Criminal Code that deal with different types of seizures.</p> <p>215. In accordance with Article 88 of the Criminal Code, when the confiscation order all the rights which third parties may have on the property are extinguished becomes final. However, Article 88 also requires bona fide third parties are adequately compensated in cash by the State.</p> <p>216. Neither the special confiscation of benefits (Article 90) nor the special extended confiscation of property (Article 94) reaches the profits or assets that stop or are owned by a third party who is not the author, participant or beneficiary of the unlawful act. Consequently, a third party could not be affected by such confiscations. While these cases may request a cash payment of equal value, rights of bona fide third parties are duly and explicitly protected.</p> <p>2.4.2. Recommendations and Comments</p> <ul style="list-style-type: none"> • * Implement a system for freezing terrorist assets ex parte and without delay, including the following: [...] - Protecting the rights of bona fide third parties, and - A mechanism to monitor compliance and impose sanctions for non-compliance. <p>Merida's Convention * No data was found</p> <p>Palermo's Convention * No data was found</p>
<p>Peru</p>	<p>GAFI</p> <p>2. 3. Seizure, freezing and confiscation of proceeds of crime (R.3)</p> <p>2.3.1. Description and Analysis</p> <p>Article 102 of the Peruvian Penal Code, as amended by Article 1 of Legislative Decree No. 982 of July 21, 2007, states: "The court shall decide the forfeiture loss of objects of criminal offense or the instruments used it had executed and the effects, whether goods, money, profit or any other product from that infringement, unless there is an independent process for it. "</p>

[...]

The Code of Criminal Procedure and the new Code of Criminal Procedure approved by Legislative Decree No. 957 but subject to a progressive schedule for entry into force will culminate in 2011, provides for the confiscation of goods, property and instruments of the criminal offense without notice. The Peruvian legal system grants the Public Prosecutor adequate powers to identify and trace property that is or may be subject to confiscation or suspected to be proceeds of crime.

The legislation also provides for adequate protection of the rights of **bona fide third parties**, under the terms required by Recommendation analysis.

Merida's Convention

The Peruvian system protects the rights of **bona fide third parties** by conducting a review of seizures, among other procedures.

Palermo's Convention

94. Article 14, on the disposal of confiscated proceeds of crime or property, provides that when acting on the request for confiscation made by another party under article 13, States parties shall, to the extent permitted by their domestic law and if so requested, give priority consideration to returning the confiscated proceeds or property to the requesting State, so that it can give compensation to the **victims** of crime or return such proceeds or property to their legitimate owners. This provision reinforces the provisions of article 25, which requires States parties to establish appropriate procedures for compensation of, and restitution to, **victims** of offences covered by the Convention.

95. Providing information on whether such return of confiscated proceeds or property was possible under their domestic legal system, 53 States indicated that their national legislation permitted it. Some of them mostly referred to bilateral agreements but also to multilateral treaties, reported that they were parties to agreements or arrangements with other States dealing with the disposal of proceeds or property confiscated upon request from another State.

96. Sixteen State reported having concluded agreements or arrangements dealing with the sharing of confiscated proceeds of crime in accordance with paragraph 3 (b) of article 14, which requires States parties to give special consideration to concluding agreements on sharing with other parties, on a regular or case-by-case basis, confiscated proceeds of crime or funds derived from such proceeds.

GAFI

90. Section V of Act 72-02 "Concerning Third Persons Acting in Good Faith", contains provisions for the protection of third parties acting in good faith. These provisions stipulate that the seizing of goods, products or instruments and the freezing of funds related to money laundering, or profit from criminal activities, shall be applied without prejudice to the rights of third parties acting in **good faith**; it also sets time limits on procedures to enable a third party acting in good faith to assert his rights or recover his property, and also includes the case of an asset subject to depreciation.

**Dominican
Republic**

Furthermore, it is recommended that the anti-terrorism act should contain provisions for the protection of the rights of third parties acting in **good faith**.

100. As mentioned above, the Dominican Republic has not criminalized financing of terrorism or included it among serious offences, and has no anti-terrorist act. Although the efforts made to prevent and combat financing of terrorism are acknowledged, it is considered that the provisions of Act 72-02 cannot be applied by analogy to cases of financing of terrorism, particularly since it is not classed as a serious offence. It is therefore necessary for express provisions to be issued that lay down the procedures to be followed (inter alia for return and unfreezing of funds, the measures applicable for protection of the rights of third parties operating in **good faith** and systems of recourse to court or other mechanism against the measures applied, etc.) or that a law specific to financing of terrorism should refer to the procedure laid down in Act 72-02, once financing of terrorism has been classed as a serious offence.

Merida's Convention

Protection of witnesses and reporting persons (arts. 32 and 33)

The Dominican Republic has not adopted measures to protect witnesses or experts who give evidence on corruption offences, or their families or other persons close to them, or persons who cooperate with the judicial authorities, or reporting persons.

With regard to a victim's participation in criminal trials, article 84 of the Code of Criminal Procedure of the Dominican Republic allows **victims** to participate in a criminal trial, including as a complainant.

Section V of the Money-Laundering Act No. 72-02 protects third parties who have acquired rights in **good faith**.

Palermo's Convention * No data was found

GAFI

Saint Kitts and Nevis

37. There are appropriate laws and procedures to provide an effective and timely response to mutual legal assistance requests with regard to the identification, freezing, seizure or confiscation of laundered property from proceeds from instrumentalities that are used or intended for use in the commission of any ML, FT, or other predicate offences. There are arrangements in place for coordinating seizure and confiscation actions with other countries. St. Kitts and Nevis does have a Forfeiture Fund, which is required to be used for the purpose of AML activities and to compensate **victims** of offences committed under the POCA or the Organized Crime (Prevention and Control) Act. There are no provisions in place for the sharing of assets under the ATA and there are also no provisions in the MACMA with regard to the instrumentalities used in or intended for use in the commission of an offence. These deficiencies are also applicable to SR. V.

1139. The Fund is required to be used for the purpose of anti-money laundering activities and to compensate **victims** of offences committed under the POCA or the Organized Crime (Prevention and Control) Act. It should be noted that both the police and the FIU indicated that they expected to benefit from this Fund in the near future.

8. The POCA and the ATA make provision for the confiscation of property which constitutes the proceeds of crime. Provision for the confiscation of instrumentalities with regard to predicate offences is only applicable where the person has absconded. There are forfeiture provisions in the POCA with regard to tainted property. The tainted property can be forfeited on the basis that it represents the proceeds of the offence or where a person is charged but does not show up to answer the charge. The ATA also provides for the forfeiture of property where a person has been convicted of an offence. There is no specific procedure in the ATA for the application of confiscation or forfeiture orders; however the Examiners were of the view that the same procedures used in the POCA would be applicable. Provision is made in both the POCA and the ATA for provisional measures to avoid the disposal, depletion or transfer of property that is subject to a confiscation or forfeiture order. Restraint orders can be applied for ex parte under both the POCA and the ATA. Law enforcement is given the authority to identify and trace property under the POCA, ATA and the FIU Act. There is adequate protection for the rights of **bona fide third parties** under the AML/CFT legislation. To date, there have been no convictions of ML or TF and accordingly no property has been seized, frozen or confiscated.

160. The POCA, the Drugs (Prevention and Abatement of the Misuse and abuse of Drugs) Act and the ATA have made adequate provisions for the protection of third parties rights in keeping with the requirements of the Palermo Convention. While the Acts do not specify bona fide third parties, under the ATA, as well as under the POCA where third parties rights are addressed those parties inevitably have to apply to the Court to assert that right and the inference can clearly be drawn where this is not expressly stated that the Court must be satisfied that they are bona fide third parties. Where applications are made by third parties to vary orders the DPP is entitled to be served notices and to be represented at such applications, which would further ensure that only **bona fide third parties** are recognized. See section 46 of the POCA and section 47A of the ATA.

211. The rights of **bona fide third parties** are protected under the ATA and the POCA. Under section 28(5) of the ATA the Court is entitled to forfeit any record or documents in possession of a person who has been convicted of being in possession of these documents which is likely to be useful to a person committing or preparing an act of terrorism. However if a third party has an interest or is claiming ownership of these records or documents, then that person is given a right to be heard before such an order is made. The order is also stayed until all rights to appeal have been exhausted. Where a person has been convicted of an offence under sections 12, 13, 14, or 15 of the ATA the Court may grant forfeiture orders for property, which that person has in his possession, or control for certain specified purposes.

489. Section 43(5) of the POCA provides for **bona fide third party** rights. The Court in considering whether a forfeiture order should be made under this section will consider the rights and interest of third parties.

159. The ATA provides for the recovery of property that has been earmarked as terrorist property. However such property shall cease to be so earmarked where a person acting in **good faith**, obtains it for good value and without notice that it was earmarked property. Generally this Act allows for more measures to be taken for the identification and tracing of property. The police are entitled to search warrants to search premises, to intercept wire, oral or electronic communications relating to terrorism, production orders in relation to specified materials and in relation to government departments and orders for access to specified businesses. However only the DPP or a police officer authorized by him can apply for a monitoring order in relation to a person's bank account.

Merida's Convention * No data was found

<p>Saint Lucia</p>	<p>Palermo's Convention * No data was found</p> <p>GAFI 294. There is no anti-terrorism legislation to deal with issues of seizing cross border transportation of currency or bearer negotiable instrument related to terrorist financing. Section 15 of the MLPA provides protection for the rights of bona fide third parties. The Court must publish forfeiture orders in a Gazette as a notice to third party with legitimate interest to allow claim to be made in satisfaction of their assertion that their interest was obtained without knowledge of the property being tainted. Section 12 of the POCA also has similar provisions where a third party may make a claim of interest before a forfeiture order is made or within 12 months of the order in proof of the assertion that the property was acquired with adequate consideration and without knowledge of suspicious circumstances which would suggest that the property was tainted and without being involved in the commission of the offence.</p> <p>Merida's Convention * No data was found</p> <p>Palermo's Convention * No data was found</p>
<p>Saint Vincent and the Grenadines</p>	<p>GAFI 144. Sec. 14 of POCA provides for the protection of bona fide third party rights in a manner consistent with the Palermo Convention. This section provides that a person asserting interest in property subject to confiscation the opportunity to apply to the court and prove that he was not in any way involved in the defendant's criminal conduct, that he acquired the interest in the property for sufficient consideration, without knowing of the criminal conduct and in circumstances that he would not have formed a reasonable suspicion, that the property was, at the time he acquired it, property that was involved in or was the proceeds of criminal conduct.</p> <p>Merida's Convention * No data was found</p> <p>Palermo's Convention * No data was found</p>
<p>Suriname</p>	<p>GAFI 112. All property subject to confiscation can be seized and later on confiscated, regardless of whether it is / was held or owned by a criminal defendant or by a third party. Art. 50a.2 of the Penal Code contains some restrictive provisions for the confiscation of the above items in case they do not belong to the convicted person: confiscation is then only possible if the proprietor knew or could reasonable suspect the criminal character (origin, use or destination) of the items, which in itself is a protection of the bona fide third party. The law also specifically provides for further protection of the rights of the bona fide third party (see further on [c. 3.5] for the protection of bona fide third parties). 117. The Surinamese Penal Procedures Code provides ample protection for the rights of bona</p>

**Trinidad
and Tobago**

vide third parties and is fully consistent with the standards of the Palermo Convention. Article 460 of the Penal Procedure Code provides protection in case of seizure and article 461 protections in case of confiscation.

Merida's Convention * No data was found

Palermo's Convention * No data was found

GAFI * No data was found

Protection of witnesses and reporting persons (arts. 32 and 33)

The Justice Protection Act, 2000, established the Justice Protection Program to provide protection for witnesses and their family members. Its scope protects witnesses, victims, jurors, judicial officers, legal officers and law enforcement personnel. The offences for which protection is offered include all offences under the Prevention of Corruption Act, 1987, as well as money laundering and larceny. In addition, Trinidad and Tobago is party to the Regional Justice Protection Program established in 1999, consisting of States in the Caribbean Community (CARICOM).

2.2. Successes and good practices

Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:

- The establishment of a Regional Justice Protection Program to provide for the protection of witnesses, experts and victims on a regional basis, facilitating international cooperation.

2.4. Technical assistance needs identified to improve implementation of the Convention

- Good practices/lessons learned with regard to articles 15 (Bribery of national public officials), 16 (Bribery of foreign public officials), 17 (Embezzlement), 18 (Trading in influence), 19 (Abuse of functions), 20 (Illicit enrichment), 21 (Bribery in the private sector), 22 (Embezzlement in the private sector), 23 (Money-laundering), 24 (Concealment), 25 (Obstruction of justice), 26 (Liability of legal persons), 27 (Participation and attempt), 29 (Statute of limitations), 30 (Prosecution, adjudication and sanctions), 31 (Freezing, seizure and confiscation), 32 (Protection of witnesses, experts and victims), 33 (Protection of reporting persons), 34 (Consequences of corruption), 35 (Compensation for damage), 36 (Specialized authorities), 37 (Cooperation with law enforcement), 38 (Cooperation between national authorities), 39 (Cooperation with the private sector) and 42 (Jurisdiction).
- Capacity-building assistance to national authorities with regard to articles 32 (Protection of witnesses, experts and victims), 33 (Protection of reporting persons) and 42 (Jurisdiction).
- Legislative drafting assistance with regard to article 34 (Consequences of corruption).

A conviction for money-laundering may result in a prison sentence of five to ten years, and commission by an organized criminal group or a person using facilities provided by his or her professional activity results in aggravated penalties of ten to twenty years. In addition, all

<p>Uruguay</p>	<p>laundered funds may be confiscated and forfeited with due consideration for the rights of bona fide third parties.</p> <p>Palermo's Convention * no data was found.</p> <p>GAFI</p> <p>2.4 Freezing of funds used for terrorist financing (SR.III)</p> <p>182. Under Article 81 of the Code of Criminal Procedure, the victim of the offense, including the State, can request preventive measures. UIAF advance notice, the judge will determine the freeze as if other precautionary measures. Assuming that the injured party is the State, under Article 81 of Finance tax departmental Montevideo and the rest of the country will be those who submit the request, but once the court's notice. There are concerns about the ease with which these procedures can be applied.</p> <p>183. Under Article 62 of Law No. 14,294 (in line with Law 17,016), the trial judge may, at any time, without prior notice, issue a decision on seizure, freezing or any other precautionary measure to ensure or preserve the availability of property, proceeds or instrumentalities used or intended for use in any of the offenses under this law or related crimes for possible confiscation or forfeiture. This rule applies to cases of terrorism by force provision of Article 8 of Law 17,835. Therefore, this article would enable the authorities to freeze the funds or other assets owned or controlled by persons or entities designated by the Sanctions Committee against Al Qaeda organization and the Taliban or established by Resolution 1267 of the Security Council the United Nations or other countries designated by Resolutions 1267 and 1373 United Nations Security Council, except for the 72 hours of freezing the UIAF can order under Law No. 17,835. Under current legislation it can carry out freeze orders and collect evidence under Resolutions 1267 and 1373 United Nations Security Council. However, this has not been confirmed in practice as cases have emerged. This applies without prejudice to the rights of bona fide third parties as described in Articles 64 and following of Law 14.294 (17.016), who can argue before the judge in the case, a legitimate interest in the property in question.</p> <p>198. Article 62 of Law No. 14,294 does not address explicitly the freezing of assets of third parties. However, Articles 64-66 expressly contemplates the rights of third parties in good faith. Hence, the freezing of assets of third parties seems possible. 3</p> <p>Merida's Convention</p> <p>Protection of witnesses and reporting persons (arts. 32 and 33)</p> <p>Uruguay has various rules and regulations at its disposal concerning the protection of witnesses, victims and reporting persons. In this regard, Decree No. 209/2000 provides a general protection framework and was issued in implementation of article 36 of Act No. 16.707 on citizen safety. Article 8 of Act No. 18.494 on money-laundering provides for witness protection in cases of offences against public administration that occur within the territorial jurisdiction of a specialized court or that involve an amount greater than 20,000 USD. Uruguay has indicated that, in cases outside the jurisdiction of the specialized courts, protection should be ordered by the ordinary courts. Similarly, Act No. 18.315 regulates police protection for witnesses and victims in cases of confidential information, while Decree No. 30/2003 regulates protection for reporting persons where such persons are public</p>
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<p>Venezuela</p>	<p>officials and have reported offences including those established under the Convention. To strengthen the regulatory framework, a preliminary draft law has been prepared that seeks to guarantee administrative and employment protection for persons reporting acts of corruption. It is noted that witness and victim protection is limited in practice to specialized courts with limited territorial jurisdiction and that the country has also identified technical assistance needs in this area.</p> <p>Consequences of acts of corruption; compensation for damage (arts. 34 and 35)</p> <p>Administrative acts arising from an act of corruption may be annulled or invalidated by the administrative dispute tribunal, which is also competent to rule on compensation for damages (arts. 24-25 of the Constitution and arts. 22-24 of Decree-Law No. 15.524). In criminal matters, compensation may be granted to victims of corruption offences (arts. 25-26, 81-83 and 159 of the Code of Criminal Procedure). The Civil Code regulates civil liability for wrongful act by fraud, fault or negligence (art. 1319). Uruguay has provided examples of implementation on this matter.</p> <p>2.3. Challenges in implementation</p> <ul style="list-style-type: none"> • Extend the regulations on cooperation and witness protection in a practical and effective way to all national courts and not only for cases falling within the jurisdiction of specialized courts with limited territorial jurisdiction. Also consider assessing the operational effectiveness of its protection mechanisms for witnesses, experts and victims. <p>Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)</p> <p>Freezing, seizing and confiscation are regulated by Act No. 18.494 (art. 2). Confiscation also applies to the instrumentalities used for, intermingled with or destined for offences established under the Convention. Property may be confiscated where owners fail to provide proof of the legitimate origin of the property in the case of money laundering (art. 6 of Act No. 17.835). The rights of bona fide third parties are guaranteed (art. 5 of Act No. 17.016).</p> <p>Palermo’s Convention * No data was found</p> <p>GAFI * No data was found</p> <p>Merida’s Convention * No data was found</p> <p>Palermo’s Convention * No data was found</p>
<p>Venezuela and Jamaica</p>	<p>Both internal systems allow cooperation conventions to share assets to provide for norms related to respecting the rights of victims.</p>
<p>Peru; Bolivia, Uruguay,</p>	<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>

Chile, Surinam, Haiti and Panama	
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FINAL CONSIDERATIONS

The present study compiles information about the main international agreements ratified by the Member states of the OAS in which there is mentioned the need to respect the rights of the victims and bona fide third parties, as well as the form in which such standards are being implemented in the region. In this sense, the study constitutes an important consultation document and it will be of important use for the development of the products that will be carried out by the ES/CICAD in the framework of the Technical Assistance Program on International cooperation regarding Asset Recovery (Program REACT).

The report of advances presented in the XL Meeting of the Sub-working groups, held in May, 2015 in Washington D.C., defined the targets and the methodology of this initiative and, also, consolidated information about international standards, regional and bilateral agreements, as well as Member States legislation, like that of Argentina, Brazil, Canada, Colombia, Costa Rica, the United States, Guatemala, Honduras, Jamaica, El Salvador, Spain, Mexico, Paraguay, Dominican Republic and Venezuela.

After the meeting, the document was extended by the contributions sent by several delegations and by a compilation of the already existing information complying to the dispositions of the Conventions of Vienna and of Palermo and FATF recommendations. Consequently, and thanks to such a compilation realized by the Delegation of Brazil, the present Study comprises information about Antigua and Barbuda, Argentina, the Bahamas, Barbados, Belize, Brazil, Bolivia, Canada, Colombia, Costa Rica, Chile, Dominica, El Salvador, Ecuador, the United States, Granada, Guatemala, Guyana, Haiti, Honduras, Spain, Mexico, Panama, Paraguay, Dominican Republic, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay and Venezuela.

In general, this study shows the following:

- Most of the countries are provided with dispositions that protect the rights of victims and bona fide third parties. Also, of the norms that were sent to the ES/CICAD it is perceived that there are constitutional, legal and regulatory scopes. This is the case, for example, of Argentina, Brazil, Bolivia, Colombia, Costa Rica, Chile, Dominica, El Salvador, the United States, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, Dominican Republic, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay and Venezuela;
- Barbados, Belize, El Salvador, Granada, Guyana, Haiti, Peru and Saint Lucia contemplate in their legislation norms to guarantee the rights of bona fide third parties and Dominican Republic has highlighted the importance of establishing deadlines for third parties to make claims;
- Canada has improved its mechanisms to achieve the restitution of the rights of victims and the legislation of Spain includes dispositions to respect the rights of victims at the moment of signing

agreements or arrangements to share assets with other jurisdictions. Uruguay, although in a general way provides regulations on the matter, has emphasized the need that the country should receive technical assistance.

- El Salvador has pointed out that in terms of in rem forfeiture in the country rights of the victims are not recognized since such a terminology is typical of penal matters and, therefore, can only be considered in a process where bona fide third parties qualify. In Mexico, however, in cases of in rem forfeiture parts of the proceeds of disposed assets are intended to support or assist the victims or offended.
- In the Bahamas they has begun a project in which mechanisms are established to respect the rights of victims and of bona fide third parties. It is being carried out across the board in collaboration between diverse institutions and organizations of the penal system, and it is provided with the participation of the victims and their families.
- Colombia, Costa Rica, El Salvador and Guatemala indicated that they have created protection programs for the victims, carried out by specialized offices of protection and assistance. For its part, Mexico, Panama, Trinidad and Tobago, Venezuela and Costa Rica have special protection laws for victims of the penal process and, in case of Mexico; such protection is also granted in the process of in rem forfeiture proceedings.
- Some countries also indicated agreements of international judicial cooperation in criminal matter that contain disposals relative to the respect of not only the rights of victims, but also those of bona fide third parties. Brazil has quoted a long list of bilateral agreements and Panama has indicated some of them. For its part, Costa Rica has indicated the date of approval of the international instruments that have been indicated in the study, that they mark the beginning of the link of the country to guarantee the rights of the victims of crimes and bona fide third parties. The United States included in its agreements of exchange of bilateral cooperation and of forfeited assets a reciprocal obligation from which the signatory countries return all the income of fraud and theft to the soliciting country for the compensation intended for the victims.
- It is observed that some countries, like Antigua and Barbuda, incorporate in their legislations measures that allow for the carrying out of administrative or legislative measurements to indemnify victims and bona fide third parties. Barbados, for example, can dedicate funds gotten for crimes of terrorism for the compensation of the victims of these crimes. In the case of Dominica, by means of the implementation of the Convention of Merida, it is incorporating mechanisms to guarantee the rights protection of bona fide third parties in the processed framework of preventive arrest, seizure and forfeiture linked to all crimes and not only to those of money laundering.
- In some countries shortcomings are observed by virtue of the way the matter is regulated or for the absence of dispositions that guarantee the rights of victims and bona fide third parties. In Ecuador, for example, although general measurements exist, one is not provided with a specific protection regime for bona fide third parties in the current legislation and in Guyana there are no measures that provide effective witness protection or assistance to victims.

The preliminary results of the study take the following suggestions from Member States:

- to investigate crimes of money laundering and bearing in mind the violation of rights of the persons possibly identifiable, although the violations are committed during the commission of previous crimes, in view of the provisions in the Convention of the United Nations against the Illicit Traffic of Narcotics and Psychotropic Substances; in the Convention of the United Nations against the Transnational Organized Crime and of its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; in the Convention of The United Nations against the Corruption; in the Inter-American Convention on Mutual Assistance in Criminal Matters and in the Protocol of Mercosur on Mutual Judicial Assistance in Criminal Matters;

- to implement initiatives to mitigate the impact of transnational economic crime through policies of reparation to victims, so that they overcome the reasons that make them more vulnerable to consequences that affect them in the long term;

- to provide channels so that the victims of organized crime and the operators of persecutory procedures have access to rapid answers and effective protection at national and international level;

- to train national officials who act expecting to achieve reparation for victims according to the law, in order to promote the cooperation they can offer and generate confidence in the criminal justice system ;

- to promote the positive performance of the State, which allows a wide and transverse action that goes beyond the persecutory answers so that they are capable of, as much as it is possible, restoring the status quo before of affected persons;

- to strengthen the institutions specializing in the assistance and protection of the victims of violence generated by the organized crime, with the intention of attracting the cooperation of the involved ones in the conflict and of spreading a sense of justice to those who were affected by the crime;

- to ensure the recovered assets of illicit origin sponsor actions of reparation to victims, in order to assure the predominance of social interest protected by the law; and

- to develop trustworthy and updated information systems and information on victims.

In the framework of the Technical Assistance Program on International cooperation regarding asset recovery of the Sub-working group on International cooperation and Forfeiture, the ES/CICAD suggests considering the development of the following capable initiatives:

- to reduce the asymmetries observed in the countries of the region in regards to the development of protection systems and assistance to the victims;

- to identify sub-regional good practices and to promote horizontal cooperation among countries;

- to supervise horizontal technical exchange; and

- to strengthen reparation projects for victims, already underway at the Organization of the American States, like the project of strengthening institutions specializing in the assistance and protection of victims of violence generated by organized crime in Central America.

As observed, the study has reached most of its objectives, having compiled: i) international standards on the rights of victims and bona fide third parties; ii) regional and bilateral agreements and iii) legislation of Member States, as proposed in the methodology. Nevertheless, the principles, doctrine and jurisprudence could not be included because the delegations did not offer information on this matter.

In view of the above, the Sub-working group proposes to the Group of Experts additional work to realize the principles, doctrine and jurisprudence on the rights of victims and bona fide third parties under the leadership of one or more Member States and the Executive Secretariat. Thus, all the programs objectives would be fulfilled.