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Washington, D.C. 20006  
United States of America

Secretariat for Multidimensional Security

Organization of American States

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**XLIII MEETING OF THE GROUP OF EXPERTS FOR THE CONTROL OF MONEY  
LAUNDERING**

**September 28-29, 2016**

**Punta Cana, Dominican Republic**

**OEA/Ser.L/XIV. 4.43**

**DDOT/LAVEX/doc.11/16**

**26 September 2016  
Original: Spanish**

**REGIONAL ASSESSMENT ON THE STATUS OF IMPLEMENTATION OF FORFEITURE LAWS IN OAS  
MEMBER STATES**

**ANTECEDENTS**

The CICAD/OAS Group of Experts for the Control of Money Laundering (GELAVEX) celebrated its XXXIX meeting in Montevideo, Uruguay, where it approved a strategic plan for the Sub-Working Groups. This document defines the lines of action for each of the Sub-Working Groups for the 2015-2017 period.

According to what was agreed in the XLI Meeting of the GELAVEX held in Lima, Peru, the Sub-Working Group on International Cooperation and Forfeiture will work on the following lines of action in the 2015-2016 period: (1) Administration of complex assets; and (2) Promotion of the development of effective forfeiture laws and their effective implementation in Member States.

This second line of action was adopted in response to some delegations' interest in learning about the nature of forfeiture laws and their implementation status in OAS Member States. Additionally, it aims to facilitate international cooperation in specific asset forfeiture cases where there is a confluence of dissimilar international elements or procedures.

With this in mind, the second line of action will be developed through a ***“Regional assessment on the status of implementation of forfeiture laws in OAS Member States,”*** which will be established according to the objectives and methodology described in this report.

## **GENERAL OBJECTIVE**

Identify the forfeiture laws included in the legislations of OAS Member States and determine their implementation status.

## **SPECIFIC OBJECTIVES**

1. Learn the features and characteristics of each Member State's forfeiture laws, including both conviction-based and non-conviction based laws;
2. Provide an updated list of countries that have non-conviction based forfeiture laws;
3. Identify countries that are currently working on legislation projects to implement non-conviction based forfeiture laws;
4. Determine the main benefits of implementing non-conviction based forfeiture laws; and
5. Establish the main limitations for implementing non-conviction based forfeiture laws.

## **METHODOLOGY**

As requested, the Sub-Working Group on International Cooperation and Forfeiture will present a report on the development of forfeiture laws and their effective implementation in Member States through the elaboration of a ***“Regional assessment on the status of implementation of forfeiture laws in OAS Member States.”***

This assessment will be carried out by the Sub-Working Group on International Cooperation and Forfeiture, with the support of the Technical Secretariat and the delegation of the United States. In order to complete this assessment, the following questionnaire will be distributed among the delegations and returned by **July 31<sup>st</sup>, 2016**.

The responses will be compiled and analyzed by the Technical Secretariat and the Sub-Working Group and the findings of the assessment will be presented at the XLIII Plenary Meeting of the GELAVEX.

## ANALYSIS OF THE COUNTRIES RESPONSES TO THE QUESTIONNAIRE

As noted, the mandate given to Sub-working Group on International Cooperation and Forfeiture was to "develop a Regional assessment on the status of implementation of forfeiture laws in OAS Member States."

The assessment aims to show the forms of "forfeiture" that are being implemented by the countries, highlighting whether forfeiture is decreed in criminal or civil court, in order to determine its nature and characteristics. Such features of the forfeiture depend on the legal nature that the legislative agency grants under the applicable law, as well as its location in domestic legislation.

In this sense, the following kinds of forfeiture were identified in the criminal area: traditional criminal forfeiture, "*decomiso especial*", "*decomiso de pleno derecho*" and "*decomiso ampliado*", among others. In civil forfeiture it was possible to observe the "*extención de dominio*", "*pérdida de dominio*", "*decomiso in rem*", "*decomiso sin condena*", among others. However, "*decomiso sin condena*" can be a criminal or a civil one.

Since the circulation of the questionnaire, the Coordination of the Sub-Working Group received the answers from the following delegations: Bolivia, Brazil, Colombia, Costa Rica, El Salvador, United States, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, Venezuela and Uruguay. The analyzed data can be organized as shown below:

COUNTRY	1. What law authorize conviction-based forfeiture in your country?	2a. What law authorize non-conviction-based forfeiture in your country?	2b. Does your country count on any different type of forfeiture than the ones mentioned before?
<b>BOLIVIA</b>	Código Penal Boliviano, elevado a rango de ley el <b>10 de marzo de 1997</b> , Ley No. 1768		

<p><b>BRAZIL</b></p>	<p>Decreto-Ley 3.240 – Lesión al Erario, <b>8 de mayo de 1941</b>// Decreto-Ley 3,689 - Código Procesal Penal, <b>3 de octubre de 1941</b>// Ley 9.613 – Ley Antilavado de Dinero, <b>3 de marzo de 1998</b> // Ley 11.343 – Ley Antidrogas, <b>23 de agosto de 2006</b></p>	<p>Ley 6.204 – Ley de Intervención y Liquidación extrajudicial de instituciones financieras <b>13 de marzo de 1974</b> // Ley 8.112 – Ley de Procedimientos Disciplinarios Administrativos <b>11 de diciembre de 1990</b>// Ley 8.429 – Ley de Procedimientos Civiles en casos de Improbidad Administrativa <b>2 de junio de 1992</b>// Ley 8.443 – Ley de Ejecución de decisiones en la Evaluación Especial de Cuentas Públicas <b>16 de julio de 1992</b>// Ley 12.846 – Ley de la Responsabilidad Administrativa y Civil de las Personas Jurídicas por Actos contra la Administración Pública <b>1 de agosto de 2013</b>// Ley 13.105 – Código Procesal Civil <b>16 de marzo de 2015</b> //</p>	<p>Código Procesal Penal artículo 366 Suspensión del proceso penal por ausencia: se remite el expediente al Juez Civil para Juicio de Ausentes</p>
<p><b>COLOMBIA</b></p>	<p>Ley 599 de 2000 “Por la cual se expide el Código Penal” vigente a partir del <b>1 de julio de 2001</b>. // Ley 906 del 31 de agosto de 2004 “Por la cual se expide el Código de Procedimiento Penal” entra en vigencia a partir del <b>1° de enero de 2005</b>.</p>	<p>Ley 793 de 2002 “Por la cual se deroga la Ley 333 de 1996 y se establecen reglas que gobiernan la extinción de dominio.” <b>27 de diciembre de 2002</b> (Esta ley se encuentra derogada a partir de la entrada en vigencia del Código de Extinción de dominio, salvo para los procesos iniciados en vigencia de esta ley, ver art 217 de la Ley 1708 ) // Ley 1708 de 2014 “Por medio de la cual se expide el Código de Extinción de Dominio” <b>21 de julio de 2014</b></p>	
<p><b>COSTA RICA</b></p>	<p>Código Penal // Ley de Distribución de Bienes Confiscados o Caídos en Comiso No. 6106 Año 1977; // Ley No. 8204 "Ley sobre estupefacientes, sustancias psicotrópicas, drogas de uso no autorizado, actividades conexas, legitimación de capitales y financiamiento al terrorismo y sus reformas" reforma integral a la Ley No. 7786, que había entrado en vigencia del <b>30 de abril de 1998</b>. La Ley No. 8204 publicada el <b>11 de enero de 2002</b>; // Ley No. 8754 “Ley contra la delincuencia organizada” rige desde <b>24 de julio de 2009</b>.</p>	<p>Ley No. 8754 “Ley contra la delincuencia organizada” rige desde <b>24 de julio de 2009</b>. <b>CAPITALES EMERGENTES (NO PENAL)</b></p>	<p>En las leyes No. 8204 y No. 8754. <b>DECOMISO POR ABANDONO (PENAL)</b></p>

<b>EL SALVADOR</b>	Código Penal <b>20 de abril de 1998</b> // Código Procesal Penal, <b>1 de noviembre de 2010</b> // Ley Reguladora de las Actividades Relativas a las Drogas, <b>15 de noviembre de 2003</b> // Ley Especial contra Actos de Terrorismo, <b>16 de octubre de 2006</b>	Ley Especial de Extinción de Dominio y de la Administración de los Bienes de Origen o Destinación Ilícita, <b>28 de diciembre de 2013</b>	
<b>UNITED STATES</b>	United States Code (USC), Sections from <b>1984</b> . Some paragraphs of the chapters 18 (§ 981, § 982, § 1963, §§ 2253 y 2254; Cap. 21 §§ 853 y 881; Cap. 26 § 5872; y Cap. 31 § 5332 y § 5317.	Section 18 (§ 981 – Civil confiscation; § 924 – Criminal and civil forfeiture of firearms; §§ 2253 y 2254 - Criminal and civil confiscation for child pornography), Section 21 (§§ 853 y 881 – Criminal and civil drug offense confiscation) Section 26 (§ 5872 - Criminal and civil forfeiture of firearms) y Section 31 (§ 5332: Criminal and Civil confiscation for bulk cash smuggling; § 5317: Criminal and civil confiscation for the violation of Bank Secrecy Act).	15 United States Code of Federal Regulations (CFR), Section 904.504 – Administrative Forfeiture Proceedings
<b>HONDURAS</b>	Código Penal Decreto 144-83 // Ley contra el delito de Lavado de Activos <b>1 de mayo de 2015</b>	Ley de Privación Definitiva de Dominio de Bienes de Origen Ilícito <b>6 de julio de 2010</b>	
<b>JAMAICA</b>	Proceeds of Crime Act, “POCA”, 2007 section 5i. <b>May 30, 2007</b> .	Proceeds of Crime Act, “POCA”, 2007 sections 57,58 y 79. <b>May 30, 2007</b> .	
<b>MEXICO</b>	Constitución Política de los Estados Unidos Mexicanos, <b>1º de mayo 1917</b> //Código Nacional de Procedimientos Penales, <b>5 de marzo de 2014, con vigencia nacional a partir del 18 de junio de 2016</b> // Código Penal Federal, <b>17 septiembre 1931</b> .	Ley Federal de Extinción de Dominio, Reglamentaria del artículo 22 de la Constitución Política de los Estados Unidos Mexicanos, a partir del <b>29 de agosto de 2009</b>	
<b>PANAMA</b>	Ley 23 de 1986 Sobre Delitos Relacionados con Drogas y sus modificaciones, <b>30 de diciembre de 1986</b> // y sus reformas Ley No. 57 del 17 de septiembre de 2013	Ley 23 de 1986 Sobre Delitos Relacionados con Drogas y sus modificaciones, <b>30 de diciembre de 1986</b> // y sus reformas Ley No. 57 del 17 de septiembre de 2013	

<b>PARAGUAY</b>	Ley N° 1160 Código Penal Paraguayo, <b>1997//</b> ; Ley N°1881 Que modifica la Ley 1340/88 que reprime el tráfico ilícito de estupefacientes y drogas peligrosas, <b>2002//</b> Ley N° 2422 Código Aduanero, <b>2004//</b> Ley N° 4036 De armas de fuego, sus piezas y componentes, municiones, explosivos, accesorios y afines, <b>2010 //</b> y Ley N° 4575 Que establece procedimiento especial para la aplicación de la orden posterior y orden autónoma de comiso, <b>2011</b>	Ley N° 1160 Código Penal Paraguayo, 1997, artículo 96 modificado por Ley No. 3440 del 2008 <b>COMISO AUTÓNOMO (PENAL)</b>	
<b>PERU</b>	Código Penal artículo 102, aprobado mediante Decreto Legislativo N° 635, publicado el <b>8 de abril de 1991</b> .	Ley de Pérdida de Dominio- Decreto Legislativo N° 1104, vigente desde el <b>19 de abril del 2012//</b> Decreto Supremo N° 093-2012-PCM “Reglamento del Decreto Legislativo N° 1104”, <b>08 de setiembre de 2012</b> .	
<b>VENEZUELA</b>	Ley orgánica contra la delincuencia organizada y financiamiento al terrorismo, <b>30 de abril de 2012</b> .	Ley orgánica contra la delincuencia organizada y financiamiento al terrorismo, <b>30 de abril de 2012. DECOMISO ESPECIAL</b> para aquellos bienes no reclamados o abandonados en un proceso penal o cuando no se logra la identificación del propietario del bien, el autor o partícipe del hecho, sin importar si media una sentencia condenatoria o absolutoria. <b>(PENAL)</b>	
<b>URUGUAY</b>	Decreto-ley 14294 en red ley 18.494 modificada por la ley 19.149 (DECOMISO DEL PROCESO PENAL)	Artículo 63.4 <b>DECOMISO DE PLENO DERECHO</b> art, 63.6 decreto ley 14.294 <b>(PENAL)</b>	

As can be seen, the aforementioned countries have incorporated into their domestic law the figure of forfeiture both in criminal court and outside of it, as shown in the case of Brazil, which since 1941 implements an Ley del Erario and Paraguay, a country which implements the figure of forfeiture in its weapons laws and customs code.

The figure of forfeiture has been aggregated in Penal Codes and Criminal Procedure Codes by the laws that were mentioned in the second column of the chart, which means criminal laws that authorize the forfeiture in each country.

The forfeiture has also been implemented in special laws regarding the combat of organized crime and its various manifestations related to narcotics and drugs, psychotropic substances, drugs of unauthorized use, money laundering and even terrorism financing. In this case, the forfeiture is placed in the criminal area from the moment when such laws were enacted (according to the information provided in the second column).

In these cases, the forfeiture generally takes place regarding the properties, values and rights that are considered an instrument or proceeds of the offenses that justifies the sentence. That is, for the appropriate forfeiture to occur it is necessary to have a criminal conviction.

However, as a tool against organized crime and according to information provided by the countries that have answered the questionnaire, some States have been adopting laws for "*decomiso sin condena*" (non conviction based forfeiture), both in penal and non-penal area.

In that sense, it was possible to identify countries that applies the figure of "*decomiso sin condena*" through different instruments, such as Costa Rica, Honduras, Bolivia and Mexico (the last one with the figure of "*decomiso por abandono*"). Joining this group, the United States and Jamaica presents traditional non-conviction based forfeiture (in rem jurisdiction), Paraguay, with the application of "*decomiso autónomo*", Venezuela with the "*decomiso especial*" and Uruguay with "*decomiso de pleno derecho*".

Each of these instruments has characteristics that differ among them, such as the type of assets to which they refer. For example, it is noted that in the case of "*decomiso por abandono*" the forfeiture applies on assets that have been seized in criminal proceedings, regardless of whether or not a condemnation of the owner exists. That is, if they were "abandoned" according to the premises established in the legislation, these assets can be declared forfeited.

In the United States, the non-conviction based forfeiture cases do not require neither the conviction nor prosecution of any person. The assets owned by a criminal defendant or any third parties are subject to forfeiture. Usually, there must be a link between the illicit activity and the asset in question, except in cases of crimes related to terrorism. In these cases, there is no need for a formal link between the asset and the terrorist offence. There is also possibility for "substitution of assets" to be forfeited in cases where those trully related to the offence can not be found or were dissipated, but only in criminal court or both civil and criminal parallely.

In the case of *“decomiso autónomo”* that is being implemented in Paraguay (*“orden autónoma de comiso”*), it is necessary the existence of an intentional unlawful act. Nevertheless, a conviction is not required for the application of this type of forfeiture. Among its features, we can highlight that it includes all types of assets, such as tangible and intangible property, movable and immovable, as well as documents that were used to commit or prepare the intentional unlawful act.

The *“decomiso especial”* mentioned by Venezuela is a special procedure that applies in cases where it is not possible to establish the identity of the owner of the property, the perpetrator or another part on the crime, or this person has abandoned the asset. The special procedure for abandonment is used in cases where an acquittal sentence is issued but the owner does not claim the asset. Such premises have been considered and regulated by countries that were already mentioned for counting on *“decomiso por abandono”*.

The *“decomiso de pleno derecho”* mentioned by Uruguay establishes that at any stage of the process where the person investigated or accused was not found, the respective order of prison will be delivered and after six months without any changes in the situation, any rights that the person might have regarding the assets, products or instruments that were seized as a precautionary measure will expire, operating the so called *“confiscación de pleno derecho”*.

Regarding the Criminal Procedure Code of Brazil, it establishes that the forfeiture of assets or money that were not claimed by presuming that their owners are absent is not allowed. Except if in a *“Juicio de Ausentes”* (civil) the process occurs within five years without the identification of any possible heirs or owners of the asset to claim them as their property. In this case, it would be admissible to forfeit the asset.

In the case of *“decomiso sin condena”* not based on criminal area, Colombia, El Salvador, Honduras, Mexico and Peru count on laws of extinction, loss or deprivation of domain (*leyes de extinción, pérdida o privación de dominio*). The first country that implemented it was Colombia (1996) and they currently have a *“Código de Extinción de Dominio”*, followed by Mexico (2009), Honduras (2010), Peru (2012) and El Salvador (2013). The United States count on a unique feature for non-criminal court forfeiture: the administrative forfeiture proceedings. In all of these cases, the legislator highlighted the relevance of the action of asset forfeiture (*extinción de dominio*) is taken against the properties of the organized crime.

The laws of the countries that have incorporated the *“extinción de dominio”* in their legislation



mentioned in this document concur that such action has a realistic character, patrimonial content and that it engenders any assets described in the grounds specified by the law, regardless of who possesses or has acquired it, unless such person is a bona fide third party. Furthermore, the process of "*extinción de dominio*" is considered autonomous, distinct and independent of criminal matters. In this case there is a specialized jurisdiction.

The administrative forfeiture proceedings mentioned by the United States is non judicial in nature and does not demand a conviction. It is carried out by the federal government agency that manages the assets in cases where no one claims them. This measure applies to assets with values less than US \$ 500.00 and to any amount of cash or monetary instruments.

El Salvador has indicated that its "*Ley de Extinción de Dominio*" applies on assets whenever that represent economic value to the State.

Regarding the principles of retroactivity and prescription, the Delegation of Mexico has mentioned that the action of "*extinción de dominio*" is imprescriptible for assets that are proceeds of crime. As for other assets, the prescription rules are applied according to which illicit activity they are related to. Honduras, Colombia and El Salvador consider the action of "*extinción de dominio*" is applicable regardless of when the crimes or unlawful activities related to assets were committed (principle of retroactivity) and that the action itself is imprescriptible. Meanwhile, Peru applies the principle of retroactivity but the action prescribes within twenty years.

Jamaica considers that criminal activity is imprescriptible, but for the forfeiture to take place, the date of acquisition of the asset may not exceed twenty years. US civil forfeiture action must start within the next five years since the crime was discovered, or within two years from the date of the assimilation between the assets that they intend to forfeit and the criminal activity.

Each legislation has regulated the grounds to be match so that the "*extinción de dominio*" applies, but they concur that such action should proceed in cases of death of the owner of the property, when that person is declared insurgent or not available to answer to legal proceedings.

All "*extinción de dominio*" laws mentioned in this study recognize the rights of bona fide third parties. Colombian legislation uses the term "*buena fe exenta de culpa*" (good will free of guilt), which requires diligence and prudence from the third party.

Most laws studied do not expressly refer to victims' rights, except the United States, Jamaica and

Colombia. In Jamaica, victims can testify in court that the property belongs to them, making the asset more susceptible to being seized and giving the court the duty of declaring its restitution.

In the United States, Congress enacted a uniform innocent owner defense, in which the person who declares them-self as "bona fide third party" must prove with evidences their lack of knowledge about the wrongfulness regarding the asset and their ownership. The US justice also has two other mechanisms to restore the property to the victims: remission and restoration. In remission, the court order of forfeiture can have civil or criminal nature. The victim must make a request to the Office of the Attorney General, and him, after sending a report to the AFMLS<sup>1</sup> revises and grants -or not- the funds to repair the damage suffered by the victim. If granted, the funds are transferred from the administrative agency directly to the victims. In cases of restoration, there must be a criminal conviction of the accused, a forfeiture order of civil, criminal or administrative nature and an order for restitution. The victims must be identified by the Office of the Attorney General, but they don't make a request. The AFMLS and the Attorney General review and grant - or not - the restoration of the forfeited property to the victims. The documentation for the transference must go from the custody responsible to the court, so the restitution can be made.

Colombia stipulates that assets that went through a process of "*extinción de dominio*" have a destination pre-defined by law, with one exception: when the assets are reported within the "*Ley de Justicia y Paz*" for being product, used in or intended for the use in illicit activities, they have reparative vocation and the mechanism of "*decomiso sin condena*" does not apply.

These laws have been inspired generally by the following references: i. Model Law for Latin on In Rem Forfeiture for Latin America, that was led by the United Nations Office on Drugs and Crime (UNODC); ii. The laws of "*extinción de dominio*" from Colombia; iii. international conventions; iv. the 40 new FATF Recommendations; v. Proceeds of Crime Act of the United Kingdom. vi. jurisprudence and also the "*Proyecto de Bienes Decomisados para América Latina*" (BIDAL) of the Secretariat for Multidimensional Security of the OAS.

Costa Rica does not count on a law of "*extinción o pérdida de dominio*" but they introduced in their special law against organized crime (Ley No. 8754) the figure of "*capitales emergentes*". This figure regards the unjustified property growth and it is not placed in criminal jurisdiction. The competent agency for such cases is the "*Juzgado Contencioso Administrativo y Civil de Hacienda*".

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<sup>1</sup> Asset Forfeiture and Money Laundering Section.

All this is evidence that the phenomenon of development and implementation of *“extinción de dominio”* laws has been increasing in the past few years. Countries such as Costa Rica and Panama, for example, have a bill for *“extinción de dominio”* and in the case of Costa Rica, it is in the Legislative Assembly awaiting approval.

In the case of Bolivia, even if they do not count on a law for *“decomiso sin condena”*, they recognized the need for a law on the matter, thus they drafted a law bill on *“extinción de dominio”*, but for now they are not going to implement it.

The experience has allowed us to identify the main benefits of using *“decomiso sin condena”*:

In the case of countries that count on *“decomiso sin condena”* in a criminal court we observed that this instrument allows them to deprive criminal organizations of their assets and thereby limit their possibilities to continue to fund illegal activities. In that sense, *“decomiso sin condena”* is considered an effective resource for cases of fugitives from the law or absent people, especially in transit countries where the operation of foreign criminal organizations is very frequent. With this instrument, they are able to resolve the situation of assets that are held seized indefinitely and project them for the benefit of the society, according to what is established in each national legislation, such as financing projects and programs of comprehensive prevention and repression of offenses of organized crime and terrorist financing.

States that have implemented the *“decomiso sin condena”* in non criminal court identified as benefits several aspects that could be classified as follows:

- Procedural benefits: the process of *“extinción de dominio”* is more agile and advantageous than the *“decomiso sin condena”* in criminal court on matters such as proving, once the standards are more demanding in criminal law. Moreover, the importance of the principle of dynamic burden of proof is valued. The accuser is not obligated to prove its allegations, but it is imposed to the citizen the burden of proving its claims.
- Economic benefits: the illicit resources acquired through *“extinción de dominio”* can be more easily transferred to the state budget and used to combat organized crime, financing of public policies to strengthen the justice sector, the social policies, social investment and rural development, among others.
- Criminal policy: the *“extinción de dominio”* is considered as a deterrent and persuasive tool. More over, it seeks to demonstrate that the State pursues any instrument or product

derived from an illegal activity in order to discourage the commission of crimes. Moreover, it aims to effectively dismantle the sources used for funding illegal structures and their products. Hence, succeeding in combating organized crime.

On the other hand, some countries have included in their legislation the figure of "*capitales emergentes*", which consists of process of sanctions - but not criminal - that is characterized by demanding that the assets growth of a certain individual shall be justified.

Through this study, it has also been possible to obtain valuable information on the main limitations to the implementation of "*decomiso sin condena*" from countries that responded to the questionnaire.

In that sense, the States that count on "*decomiso sin condena*" in criminal court through legislative figures such as "*decomiso por abandono*", "*decomiso especial*", "*decomiso autónomo*" and "*decomiso de pleno derecho*", do not seem to find limitations to its implementation. In this regard, Costa Rica is the only State that highlights the need give continuity to the judicial causes to which the asset forfeiture is based on. That is because the process with these figures require that deadlines or term are met, since it is fundamental that they are still pending in order to require and decreed the forfeiture.

With regard to the limitations identified by the countries that have implemented the "*decomiso sin condena*" in not criminal court (through "*extinción de dominio*"), they are mainly due to particular situations of the reality of each country.

For example, Colombia, despite of being the pioneer in this matter and counting on a fairly comprehensive law collection on "*extinción de dominio*", they estimate that the long duration in the process and judicial system along with insufficient investigative capacity and resources (human, technical and financial ones) are important limitations when it comes to effectively attending the procedures related to the action of "*extinción de dominio*". El Salvador also mentions the lack of human and material resources.

As for Honduras, they mention that a process of training the actors involved in the process is needed, since there have been a misperception that such figure was unconstitutional. However, the "*sala Constitucional de la Corte Suprema de Justicia*" dismissed the constitutional motions that have been alleged against the law. In Jamaica it is necessary to create clearer rules for the procedures related to this type of law, as well as greater awareness and education of the members of the judiciary to apply them properly.

For its part, Peru has found significant limitations to the implementation of "*decomiso sin condena*", such as:

1. They do not have mechanisms to ensure the rights of bona fide third parties on jointly-owned assets;
2. There is no proper registration system, in order to effectuate the precautionary measures in the process of "*pérdida de dominio*"
3. There are no multilateral agreements with major countries to make international judicial cooperation mechanisms possible for asset recovery;
4. The process of "*pérdida de dominio*" is a residue of the criminal process: all budgets are related to the impossibility to initiate or continue a criminal process or conclude it.
5. There is no special jurisdiction: judges, prosecutors and attorneys that operate the "*Ley de Pérdida de Dominio*" have jurisdiction to these processes in conjunction with other matters, such as money laundering. The only court on the matter in Peru is also competent for dealing with tax and customs offenses, as well as is also a "*juzgado liquidador*", the cases of "*pérdida de dominio*" are not a priority.
6. Peruvian regulation establishes a limitation period of 20 years for prescription. In other countries, the rules on "*pérdida or extinción de dominio*" foresee the imprescriptibility of the crime, as well as the principle of retrospectivity. When there is prescription, it allows for the criminals to legitimize the asset that was acquired with illegal funds after 20 years.

It is important to highlight these limitations in order to initiate corrective processes in all areas, through legal reforms, strengthening of human resources, specific training, etc. And to reach for the optimization of the execution and effectiveness in the implementation of these figures, which according to all countries who answered the questionnaire, allows achieving significant benefits.

In conclusion and having observed the dynamics of implementation of forfeiture laws in the States that participated in this study, we can confirm that in the last decades we have been developing a criminal policy in order to deprive criminals of their assets, when they are originated from or are used in criminal activities.

Organized crime means a highly lucrative business and one of its main purposes is the generation of wealth. For this reason, the attack on its economic benefits is essential to impact criminal organizations. The deprivation of criminals from their profits is a mean to discourage the commission of crimes that generate profits, and prevent that illicit assets are used to finance the commission of

other crimes, which breaks the trust on the financial systems and damages the legitimate society<sup>2</sup>.

In this revolution the need to count on effective tools in this fight against illegally acquired property arises. For that reason, forfeiture is important as a main and complementary measure that OAS Member States are increasingly introducing into their legal systems. They are incorporating laws that engender "*decomiso sin condena*" in criminal and non-criminal area as part of this new strategy against organized crime.

In the international context, several initiatives inspire OAS Member States to make important progress in this area. Among them, the document of G8 "Best practices for the administration of seized assets"; "Best practices on the confiscation" of the Financial Action Task Force (FATF), the Model Regulations of the Inter-American Drug Abuse Control Commission (CICAD / OAS), and the European Union's Framework Decision on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime.

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<sup>2</sup> Asset Management Systems in Latin America and Best Practices Document on Management of Seized and Forfeited Assets, Isidoro Blanco Cordero, pages 19 and 80.

# ANEX No. 1

## QUESTIONNAIRE

Member state:

Position of the person answering this questionnaire:

E-mail address and phone number:

**1. What law(s) authorize conviction-based forfeiture<sup>3</sup> in your country? Please list the law, its main characteristics, and the date it came into force. Please also attach a copy of each law(s) when returning this questionnaire.<sup>4</sup>**

FULL NAME OF THE LAW	MAIN CHARACTERISTICS	DATE IT CAME INTO FORCE

**2. Are there any law(s) authorizing non-conviction based forfeiture<sup>5</sup> in your country? Please list the law, its main characteristics, and the date it came into force. Please also attach a copy of each law(s) when returning this questionnaire.<sup>2</sup>**

FULL NAME OF THE LAW	MAIN CHARACTERISTICS	DATE IT CAME INTO FORCE
e.g. Irish Proceeds of Crime Act	e.g. predicate offenses, burden of proof, jurisdiction, extraterritoriality, etc.	e.g. May 2, 1996

**3. What kinds of assets can be forfeited under the laws selected in questions N°1 and N°2?**

Explain:

**4. If your country has only conviction-based forfeiture laws, is non-conviction based forfeiture legislation currently being drafted or under consideration in your legislature?**

Explain:

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<sup>3</sup> Conviction based forfeiture is any forfeiture that is ordered as part of the conviction and sentencing of a criminal defendant and that forfeits to the state that defendant’s ownership interest in the forfeited property.

<sup>4</sup> If the FATF or a FSRB has issued a Mutual Evaluation Report (MER) on you country during the 4<sup>th</sup> round of FATF evaluations, please provide the portion of the MER that reports on Recommendation 4, with any relevant updates on modifications to your legislation.

<sup>5</sup> Non-conviction based forfeiture is any forfeiture in which the forfeited asset itself is the defendant in the proceeding based upon its role in the criminal activity for which forfeiture is authorized. – to be double checked

*If your country has only conviction-based forfeiture laws, at this point, please skip to question N°17.*

**5. If your country's non-conviction based forfeiture law was based on a Model Law or Regulation, indicate which one.**

Explain:

**6. Is your country's non-conviction based forfeiture law applicable regardless of when the illicit activity was committed? (principle of retroactivity).**

- Yes
- No

Explain:

**7. Are the actions undertaken under your country's non-conviction based forfeiture law imprescriptible or do they have statutes of limitations?**

- Imprescriptible
- Statutes of limitations

Explain:

**8. In the case of statutes of limitations, are there any exceptions, for example, for criminal assets that have become known to the prosecution, after reasonable investigation, only after the running of the statute of limitations?**

Explain:

**9. In which cases does non-conviction based forfeiture proceed in your country?**

- Death of the defendant
- Defendant is declared *in absentia*
- Defendant is unavailable to face legal proceedings
- Other; explain:

**10. Does your country's non-conviction based forfeiture law include provisions to protect the rights of *bona fide* third parties?<sup>6</sup>**

Explain:

**11. If you answered affirmatively to question N°10 above, in what phase of the process are the rights of *bona fide* third parties adjudicated, and what is the established procedure to assert these rights?**

Explain:

**12. Does your country's non-conviction based forfeiture law include provisions to protect victims' rights?<sup>7</sup>**

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<sup>6</sup> Bona fide third parties are persons with an ownership interest in the property being forfeited.



Explain:

**13. If you answered affirmatively to question N°12 above, in what phase of the process are victims' rights adjudicated or acknowledged, and what is the established procedure to assert these rights?**

Explain:

**14. If you answered affirmatively to question N°12 above, what is the scope of coverage of victims' rights? Is the coverage limited to victims' direct pecuniary losses from the crime, or is it broader?**

Explain:

**15. In your experience, what are the main benefits of implementing your country's non-conviction based forfeiture law(s)?**

Explain:

**16. In your experience, what are the main limitations to implementing your country's non-conviction based forfeiture law(s)?**

Explain:

**17. Does your country's forfeiture law(s) (conviction-based and/or non-conviction based) include asset forfeiture for "equivalent" or "corresponding" value?**

Yes

No

**18. Does your country's forfeiture law(s) (conviction-based and/or non-conviction based) allow for the forfeiture of "co-mingled assets" (i.e., non-criminal assets that are mixed with criminal assets to conceal or disguise the latter)?**

Yes

No

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<sup>7</sup> Victims are persons who have been harmed by the criminal activity, but who may have no actual ownership claim to the asset involved.