

“Main challenges faced by OAS Member States regarding the forfeiture of illicit assets”

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Money Laundering Control
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Organization of
American States



- Assets of criminal origin abroad

- Purpose: to avoid the discovery of the assets

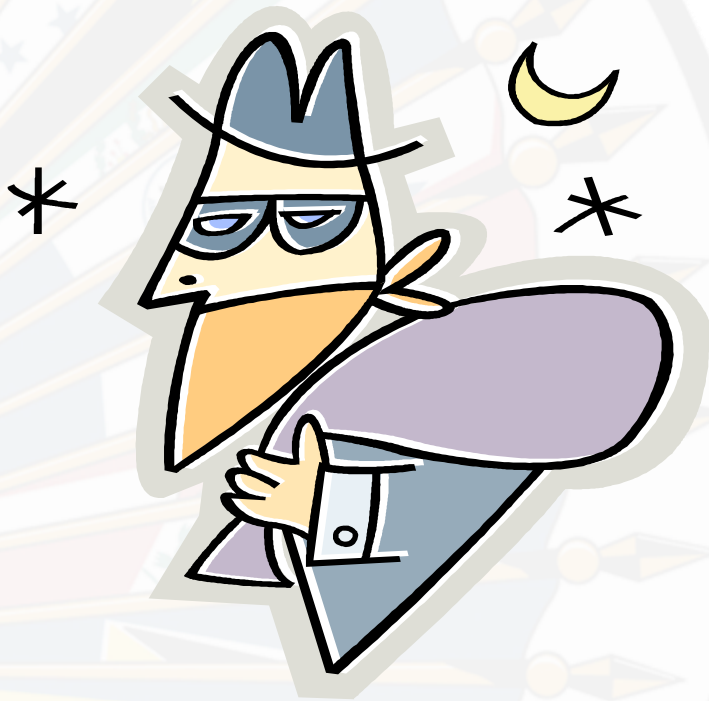
- And if discovered, avoid their forfeiture





- To locate and recover criminal assets international cooperation is **essential**.
- Seemingly there is goodwill between States.
- But there is not:
 - Appropriate legislation allowing for the forfeiture and asset recovery,
 - Nor specific legal procedures which detail what to do when a country requests assistance to others.





- Criminals take advantage of the difficulties of cooperation.
- And the States fail to intercept large amounts of wealth



- The differences in national systems obstruct cooperation in this field.
- Problems during the asset recovery procedure:
 - the **rejection of requests** for international cooperation or
 - they are **sent back**.



Difficulties in cooperation at the international level

Differences regarding prerequisites for the preparation of requests for cooperation



Differences regarding prosecution and conviction standards regarding the illicit origin of assets



Different procedures for obtaining international assistance



Legal terminology differs from country to country

Differences in the definition of criminal offenses which cause problems when assessing dual criminality

Differences in the terms used for precautionary measures (freezing, seizing, congelamiento...)

Differences in the denomination of forfeiture proceedings: forfeiture, in rem forfeiture



Tools for efficient international cooperation

National legislation that allows for a expeditious cooperation

Tools to know the channels for international cooperation

Staff trained in international cooperation (police, judges, prosecutors)



Training of competent staff

- A State may have the best legislation on international cooperation in asset recovery, but be unable to assist other States.



People

Knowledge

Experience



- Lack of Trust
- Lack of a Comprehensive Asset Recovery Policy
- Deficient Resources
- Lack of Adherence to and Enforcement of AML/CFT Measures
- Lack of Effective Coordination
- Quick Trigger on Formal MLA Submission
- Inability to Provide MLA
- Banking Secrecy
- Criminal Confiscation



- No Provisions for Equivalent-Value Restraint and Confiscation
- Immunity Laws that Prevent Prosecution and MLA
- Inability to Recognize and Enforce Foreign Confiscation and Restraint Orders
- Inability to Return Assets to Originating Jurisdictions
- Absent or Ambiguous Focal Points
- Onerous Legal Requirements to MLA and Overly Broad MLA Refusal
- Lack of Information on MLA Requirements
- Unreasonable Delays in MLA Responses
- Lack of Publicly Available Registries



How to improve international cooperation in international asset recovery?



Technical Assistance
Program to be
developed by the
ES/CICAD
with the support of
GELAVEX





RECOMMENDATIONS ON ASSET RECOVERY

- The need for **recommendations**: legal instruments to facilitate the creation of legal measures on asset recovery and/or update national legislation on the matter.
- Each Member State adapts the Recommendations to adequate them to its constitutional principles and fundamental premises of its internal system.





- Jurisdictions that have not yet done so should accede to or ratify and regional and international instruments that facilitate the provision of MLA.
- National procedures for asset recovery and domestic criminal laws should be reviewed and, if required, updated periodically to ensure their continued relevance



- When concerned about capital punishment, requested jurisdictions should seek assurances that if assistance is provided, the originating jurisdiction will not apply capital punishment.



- Jurisdictions should ensure that MLA requests cannot be refused on the ground that the offense involves fiscal matters.
- Requested jurisdictions should promptly advise originating jurisdictions in writing when an MLA request is denied, including the grounds for refusal and the underlying facts supporting the refusal.



To avoid unnecessary delay in processing requests, jurisdictions should implement procedures for all MLA requests that:

- acknowledge receipt of the request, providing contact information for the practitioner responsible for managing the request, including an e-mail address, to the originating authority;
- establish clear lines of communication between originating and requested jurisdictions; and
- provide information to originating jurisdictions about process, timeline, expectations, and any other relevant matters related to the process.

Practitioners should communicate with originating jurisdictions to ensure that all aspects of the request are understood.



- Jurisdictions should use clear, concise, and universal terms when drafting MLA requests
- Jurisdictions should implement policies and procedures that proactively notify originating jurisdictions about problems with terminology or other substantive issues
- Requested jurisdictions should consider developing and implementing policies and procedures that ensure they can use any and all possible procedures that will permit them to positively execute an MLA request



- Jurisdictions should prioritize requests and limit the volume of the request by focusing on specific and essential items to increase the possibility that their MLA request will be successful.



- Requested jurisdictions should prioritize requests when informed of the urgency and create special procedures to expedite requests where originating jurisdictions advise that the assistance is urgently required.



- A requested jurisdiction should not refuse a request for MLA unless it has precise and strong evidence that the originating jurisdiction has not guaranteed due process to the defendants.
- Requested jurisdictions should implement policies and procedures that guarantee transparency when dealing with originating authorities and should require that the reasons for rejecting a MLA request be divulged to the originating jurisdiction; they should also give the originating jurisdiction an opportunity to demonstrate that the defendant received due process.



- Where a central authority is the first point of contact for an MLA request, jurisdictions should introduce procedures that allow, encourage, and facilitate practitioner-to-practitioner communication once the process is under way; if necessary, the central authority should be copied on communications.
- However, jurisdictions should enact policies and procedures that avoid involving agencies that are not essential to the MLA process.



- Jurisdictions should permit MLA to be provided without notifying the asset holder where investigative and preservation measures are involved, provided that sufficient protections of the due process rights of the asset holder exist at those stages of the proceeding that involve coercive or intrusive measures.



- Jurisdictions should develop and maintain publicly available registries, such as company registries, land registries, and registries of nonprofit organizations.

If possible, such registries should be centralized and maintained in electronic and real-time format, so that they are searchable and updated at all times.



- Jurisdictions should not use banking secrecy as a basis for refusing to cooperate fully in international cases
- Jurisdictions should enact legislation that limits, as well as precisely defines, “protected information.” This information should be very narrow in scope. In cases where investigators or prosecutors in originating jurisdictions have a legitimate interest in examining such records, the banking secrecy laws should be broad enough to accommodate such requests.



- Jurisdictions should enact domestic legislation permitting confiscation without a conviction.

At a minimum, non-conviction based confiscation should be permitted when the perpetrator is dead, a fugitive, absent, immune from prosecution, or in other appropriate cases.



- Where a non-conviction based asset confiscation regime does not exist, jurisdictions that have not already done so should pass and implement legislation that allows them to respond positively to requests to confiscate suspected stolen assets in the absence of a conviction.



- In both conviction-based and NCB forfeiture cases, jurisdictions should ensure that the standard of proof to show that assets are linked to criminal activity is not too stringent and is clearly set out in relevant domestic laws.
- Jurisdictions should further ensure that prosecutors need establish a link only between assets and criminal activity in general rather than between assets and a specific criminal offense.



- To help build trust between jurisdictions, countries should establish policies and procedures that facilitate the establishment of personal contacts between originating and requested authorities.

In particular, they should establish liaison magistrates, FIU liaison officers, and customs or police attachés to promote enhanced cooperation between central authorities and direct contacts between competent prosecutors, judges or law enforcement officers.



- Jurisdictions should create specialized forfeiture agencies or units within existing agencies with a clearly defined mandate to facilitate asset recovery.



- Jurisdictions should identify a primary and secondary focal point within their central authority, as initial contact point for inquiries on making requests for assistance. Jurisdictions should also identify other competent authorities as focal points for managing informal inquiries. Focal point information should be kept current and include the name and address of the central or competent agency, the position or title of the focal point, contact details (e-mail, telephone, facsimile), and the languages spoken.



- Jurisdictions should implement policies and procedures to ensure that focal points within central authorities have the capacity and knowledge to provide information on how to make a request for international assistance.
- Jurisdictions should develop and implement policies and procedures that ensure that informal assistance channels are available to foreign practitioners for non-coercive measures and temporary freezes of 72 hours or less, without disproportionate or unduly restrictive conditions.



- Jurisdictions should establish policies and procedures that create communication channels outside the formal process at all stages: before, during, and after the final preparation and communication of a formal MLA request.
- Requested jurisdictions should inform originating jurisdictions, at an early stage, of types of information that can be provided without the need for a formal MLA request.



- If requested, jurisdictions should be willing to contact potential witnesses without a formal request to determine if the witness is willing to cooperate with the originating authorities voluntarily. States should take witness statements from voluntary witnesses without a formal request, provided that contact with the witness is permitted under such circumstances.



To facilitate understandings between jurisdictions with different legal traditions, jurisdictions should provide easy access to information about asset recovery within their legal system, including relevant statutory provisions and information about proof requirements, capacities, types of investigative techniques that are available, and types that are disallowed. Formats should include:

- A Web site that provides this information and practical asset recovery case examples that offer guidance on available investigative techniques and how they are used in the jurisdiction.
- Workshops involving international and domestic practitioners to provide information on how to submit MLA requests, capacities, types of investigative techniques that are available, and types that are disallowed.



- Jurisdictions should initiate their own asset investigations using a variety of legitimate sources (FIUs, complaints, and media reports); establish bilateral technical assistance programs; provide hands-on technical assistance on a case-by-case basis; initiate and properly resource special investigative-prosecutorial units and support international organizations that have the capacity to provide assistance (as prescribed in Article 60(2)(3) of UNCAC).



- Jurisdictions should provide adequate resources to enable their officials to attend relevant international meetings and forums and to network with their counterparts bilaterally.
- Jurisdictions should ensure that their officials, including judges and prosecutors, are well trained on asset recovery matters involving both domestic laws and international conventions and standards.



- Jurisdictions should participate in and exploit asset recovery networks and groups such as CARIN to develop relationships with practitioners in other jurisdictions.
- Jurisdictions should establish policies and procedures that allow practitioners to develop effective contacts and avenues for communication at an institution-to-institution level, including maintaining contact details in corporate systems. Such systems should be updated on a regular basis.



- When facing a dual criminality requirement, jurisdictions should interpret the originating jurisdiction's definitions of offenses in a broadminded manner, allowing for the widest range of consideration, and, if necessary, use a conduct-based approach to determine if the conduct is a crime in both jurisdictions.



- Originating and requested jurisdictions should try to resolve resource issues, including communication about cost sharing and, where appropriate, sharing of recovered assets.



- Jurisdictions should include provisions that permit the disposal of rapidly depreciating or perishable seized property where necessary to preserve the value.



GELAVEX

GELAVEX was created in 1990 in accordance with article 22 of the Statute of CICAD and is, therefore, one of the advisory bodies of CICAD

- GELAVEX is formed by two Sub-Working Groups:
- the Sub-Working Group on **International Cooperation and Forfeiture**; and
- the Sub-Working Group in **Financial Intelligence Units (FIU) and Law Enforcement Agencies (LEA)**
- Its activities are determined by **strategic plans** that define lines of action and by **work plans** that define concrete actions to be developed in accordance with the lines of action previously defined
- The **Strategic Plan 2012-2014** was **concluded** at the XXXIX GELAVEX Meeting, held in Montevideo, Uruguay (25-26 Sept., 2014)



Precautionary measures

- Once identified and located it is necessary to secure the assets.
- **Objective:** to prevent the traffic, transmission or sale of assets and secure the evidence.
- Two measures:
 - A) preventative seizure
 - B) international cooperation for the application of precautionary measures



International cooperation in precautionary measures and asset administration

- It is advantageous that States should apply precautionary measures to assets at the request of a foreign authority.
- A procedure for cooperation and a request model should be implemented.
- Two options:
 - The requested State issues its own resolution to freeze or seize.
 - The requested State allows the direct implementation with the direct execution by the competent authority of the requesting State.



Administration of forfeited assets

- The request for mutual legal assistance should contain some reference to how to manage seized assets
- The assets should be managed!!!!!!



BIDAL Project

- Technical assistance program to improve seized and forfeited asset management, maximizing its use and benefits
- Objective: to establish or strengthen national systems for asset investigation and management



Situational assessment

- Identification of strengths and weakness of each national system regarding asset investigation, administration and use, and the international cooperation component.

Working plans

- Proposal for modifications to national legislation and the creation of recommendations for the asset administration authority



Documents of regional impact

- Best practices on management of seized and forfeited assets;
 - Comprehensive technical and legal analysis of national law and regulations of countries with seized and forfeited asset management national authorities;
 - Relevant information to improve countries' legal system;
 - Guidelines to establish policies to promote transparent and responsible asset administration



Guide for the management of seized business

- provides best practices involving the management and taking into custody of seized companies by the appropriate authorities, so that the companies' regular activity can continue while the judicial process is still underway; and
- represents a reference for the region's various agencies specialized in the management of seized and forfeited assets can develop manuals or protocols regarding the seizure of companies that are still operating.



✓ Steps prior to seizure

- Planning between the appropriate authorities and the agency for the management of seized and forfeited assets.
- Obtaining information on the investigation from the appropriate authorities.
- Identifying the company and commercial establishment.



✓ Steps during the seizure

- Documentation one should try to secure in taking over a company.
- Preliminary analysis for the eventual management of the seized company.

✓ Steps subsequent to the seizure

- Meeting with the company's entire staff.
- Company's self-sufficiency.
- Infusion of capital to continue operations.
- Substitution of the company's general manager or administrator



✓ Steps involving follow-up and control

- Taking financial and supervisory control of the company.
- Identifying the company's danger areas and improving control.
- Establishing management indicators or other types of indicators.



- ✓ Steps to take in advance before taking control of the investigated company.
 - Information on the commercial or business activity.
 - Identification, physically and legally, of the commercial business.
 - Identification of partners, board members and legal representatives.
 - Suspension of the owners' rights to exercise control over the corporation.



- Identification of the company's bank account numbers in the national financial system and other financial products.
- Identification of specialized professionals or third parties who can take over the administration of the company.
- ✓ Qualitative analysis of the company in order to identify the probability of being able to continue business activities.



- ✓ **Commercial or business aspects:** related to the identification of the company's commercial or industrial activity, its business strategy, clients, providers, way of operating, etc.
- ✓ **Organizational aspects:** related to the company's organizational structure, human resources, processes and means of production, assets in general.
- ✓ **Financial aspects:** related to the financial/ownership situation, record-keeping, accounting documents, cash flow, account and investment balances, loans, mortgages, collateral, in general the company's assets and liabilities.



✓ **Fiscal or tax aspects:** income-tax return and billing documentation filed with the Ministry of Finance or the tax collection agency. These could provide important information on the financial returns reported for payment of the company's taxes.

✓ **Legal or juridical aspects:** evaluation of aspects involving compliance with operational requirements for the company, permits related to health, fishing, the environment, trade, mining, and in general state concessions for carrying out certain activities.



- 1) If it was not possible, through this analysis, to identify an organizational structure (list of employees, payroll tables, accounting records, cash flow, providers); if the tax returns do not match the company's supporting documentation; or if there has been noncompliance with legal requirements for undertaking some type of commercial or industrial activity, these could be indicators that this is a front company and that therefore it does not have the capacity to operate.

- 2) If, on the other hand, some of the aspects mentioned above could be identified in full or in part, the viability of continuing the company's normal operations should be analyzed and evaluated.



- 3) If in the initial analysis and evaluation or over a period of time in which the company is operating it is found that the operating costs are very high, or if it is determined that commercial or industrial operations definitely cannot continue because the company is not self-sustaining, a decision should be made to close the business, using the money in bank accounts to pay outstanding creditors and providers and settle obligations to the employees.



Meeting with the company's entire staff (institutional public policies on job creation and economic activity)





Financial analysis of the company (operating costs and financial returns)

1) To continue to operate based on the company's self-sufficiency.

Appointment of manager or company administrator

2) To close the company and use of the money in its accounts to start settling with the workers based on the company assets.

Leasing of the commercial establishment of the company.



INFUSION OF CAPITAL

Establishment of a special fund

Concept of reimbursable fund or bridge loan

Study of financial performance

Objective: to ensure that it can be a source of jobs and boost the national economy

Projections based on the sale of an operational company





STEPS INVOLVING FOLLOW-UP AND CONTROL

Taking financial and supervisory control of the company.

Identifying the company's danger areas and improving control.

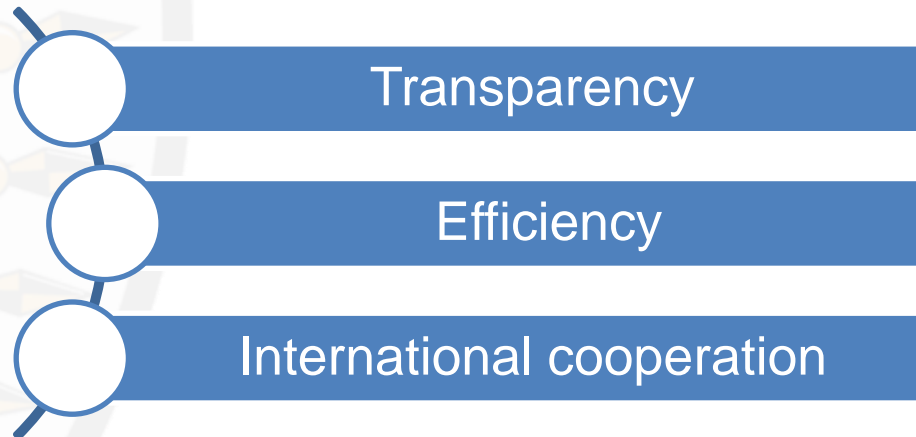
Establishing management indicators or other types of indicators.





Analysis of systems for the collection of data on seized and forfeited assets of illicit origin

- The issue of DATA collection: why is it important?





To guarantee a transparent and accountable functionality of the agencies tasked with managing seized and forfeited assets it is crucial that the assets for which the agency is responsible be documented in an efficient manner.

The improvement of the collection of data on seized and forfeited assets aims to:

1. improve the efficiency of dedicated agencies, by increasing their knowledge of assets currently under their control;
2. aid national investigations and trials, by providing updated and clear information regarding assets currently and previously associated with criminal individuals and groups;



3. better integrate the activities of law enforcement tasked with investigating financial crime with the agencies responsible for the administration of seized and forfeited assets by creating common data collection standards;
4. facilitate international cooperation, by expediting the exchange of information regarding seized and forfeited assets, particularly in the case of transnational organized crime;



5. expedite disposal of assets in accordance with international standards, by efficiently and quickly providing information on assets that are eligible for disposal;
6. increase the transparency and accountability of asset recovery offices (AROs), by providing updated information on the assets and their status in relation to investigations, court cases, administration and disposal;



7. provide a basis for future analysis of the activities of AROs and their improvement in light of strengths and weaknesses that may emerge over time;
8. be a source of information on best practices that can be shared between OAS states to encourage national governments to develop and improve systems for managing and administering property, based on the experience of other OAS states;
9. provide, in due course, data for further research on illicit assets to inform decision makers, as has been carried out in other countries such as Canada, the Netherlands and Italy



QUESTIONNAIRE ON DATA COLLECTION SYSTEMS

52 questions

6 months

10 countries → 10 agencies

a) **Geographical location:** countries from northern, central and southern America and the Caribbean.

b) **Strategic in the fight against organized crime:** relevant to the objective of targeting proceeds of crime.

c) **An ongoing process of development of systems for the collection of data on seized and forfeited assets of illicit origin:** a history of success in the area of seized and forfeited assets as well as countries that have begun a process of implementing these activities in more recent years



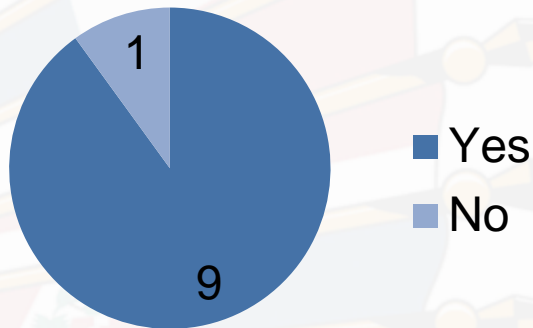


PARTICIPANTS

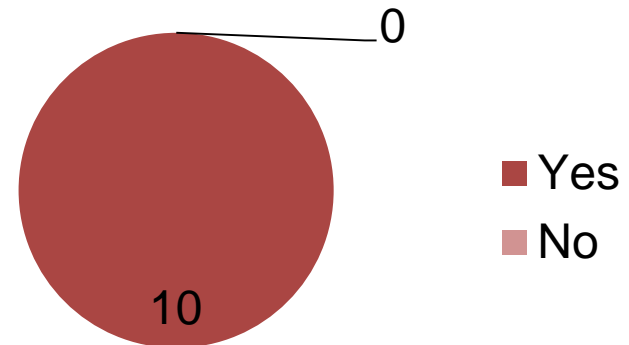
OAS Member State	Agency
Brazil	Department of Assets Recovery and International Legal Cooperation
Colombia	National Narcotic Drugs Directorate
Ecuador	National Directorate for Management of Property in Deposit
Guatemala	National Secretariat for the Administration of Seized Assets (SENABED)
Haiti	National Commission for the Fight against Drugs (CONALD)
Honduras	Administrative Office of Seized Assets (OABI)
Jamaica	Financial Investigations Division (FID) of the Ministry of Finance and the Public Service
Mexico	Asset Management and Disposition Agency (SAE)
Peru	National Commission of Seized Assets (CONABI)
United States of America	United States Marshals Service



QUESTIONNAIRE ON DATA COLLECTION SYSTEMS: AGENCIES AND DATABASES



Is information collected by one centralized agency?



Is the information collected in a single centralized database?



Data entry and access

In most of the countries a **specialized employee** is responsible for updating the information.

The issue of inputting information only available in **hardcopy** form → **process of being digitalized so as to be included in the database.**

Seven out of ten countries reported that less than 10 people were responsible for data input into the database. In the other cases a greater number of **people were responsible for data entry along with the other functions** they performed for the agency.

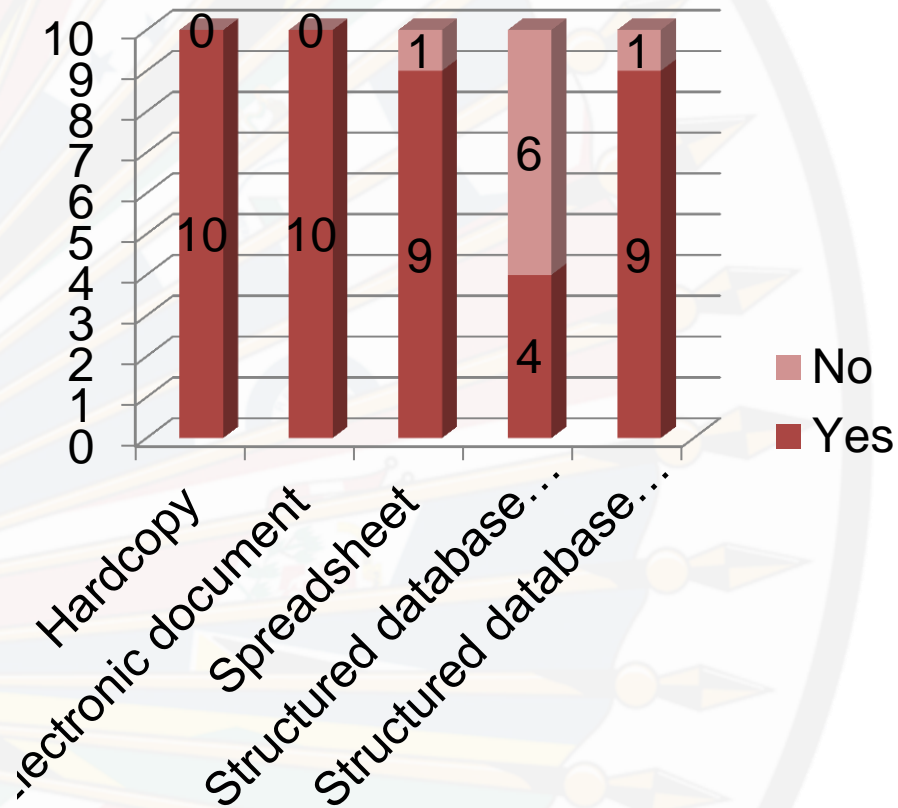
In all of the countries the **discretion to modify information was restricted to a limited number of employees.**

In most cases the **same individuals** responsible for data entry were also the only ones who could change the information in the system.

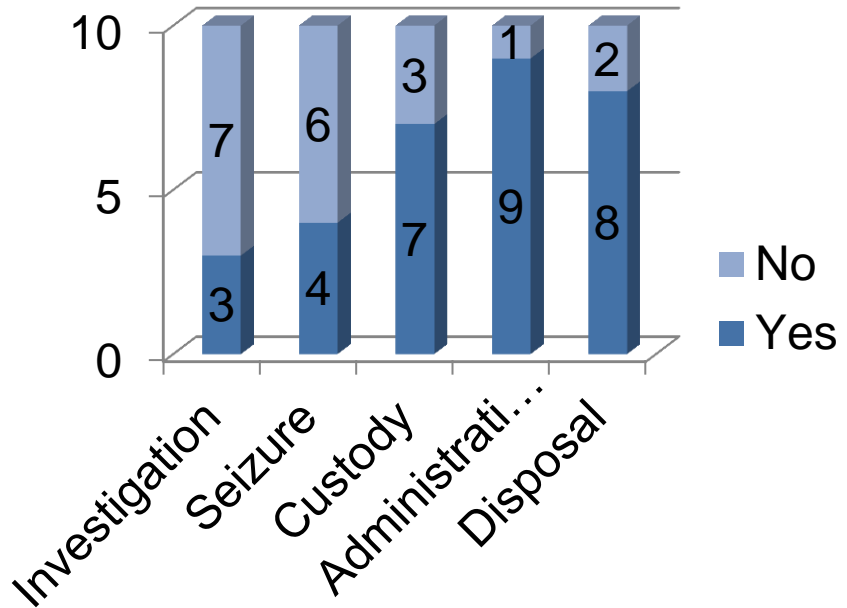
In other cases where a wider number of people were responsible for data entry a **special authorization or clearance** was necessary to modify existing information.



QUESTIONNAIRE ON DATA COLLECTION SYSTEMS: FORMAT AND PHASES



Format used to collect and store the information



Phases involving assets in which the agency is involved



QUESTIONNAIRE ON DATA COLLECTION SYSTEMS: INVENTORY AND CLASSIFICATION

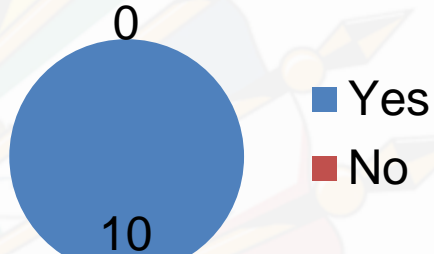
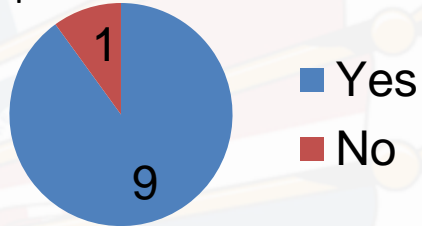
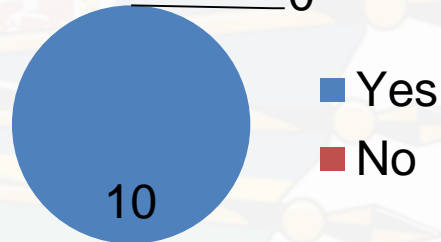


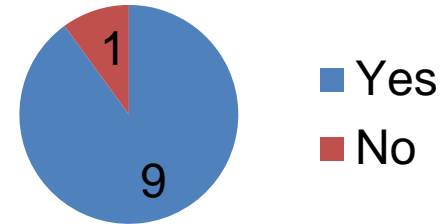
Figure 10: Is a description of the assets included?



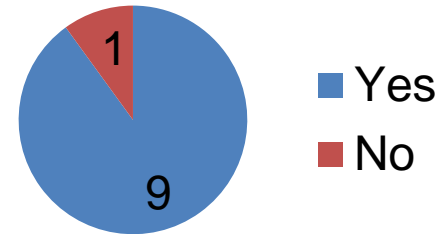
Is there a catalogue of possible descriptions of assets?



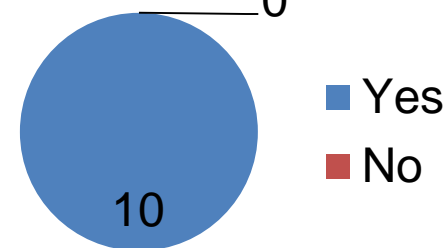
Are the assets classified into categories?



Is there an exact count of the number of assets currently in your custody?



Is there an exact count of the number of assets by description?

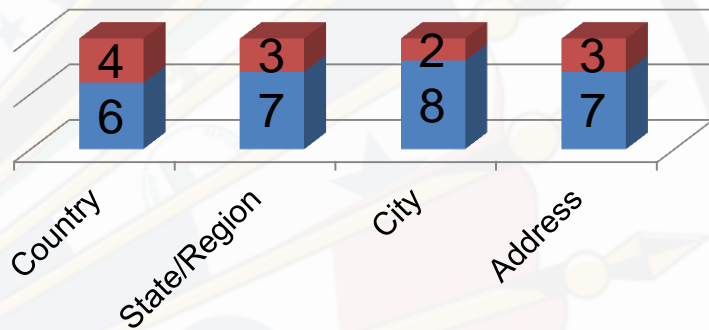


Is there an exact count of the number of assets by category currently in your custody?

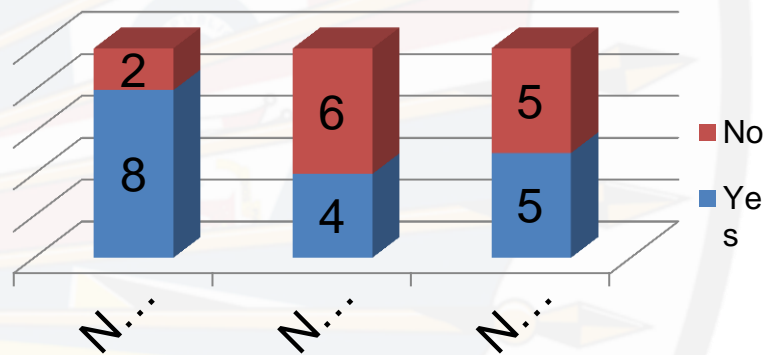


QUESTIONNAIRE ON DATA COLLECTION SYSTEMS: LOCATION AND OWNER

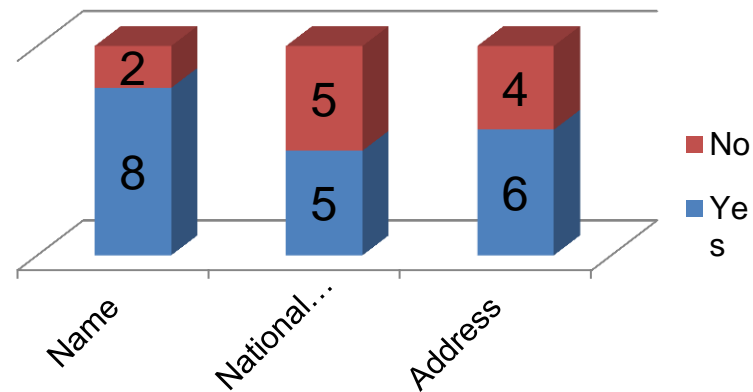
Information provided when an asset is seized in a given location



No
Yes



No
Yes



No
Yes

Information provided if the owner is a natural person

Information provided if the owner is a legal person



CONDITION AND VALUE

Almost all of the countries (nine out of ten) reported that they record the **condition of the asset** at the time of seizure → important for the preservation of the property over time

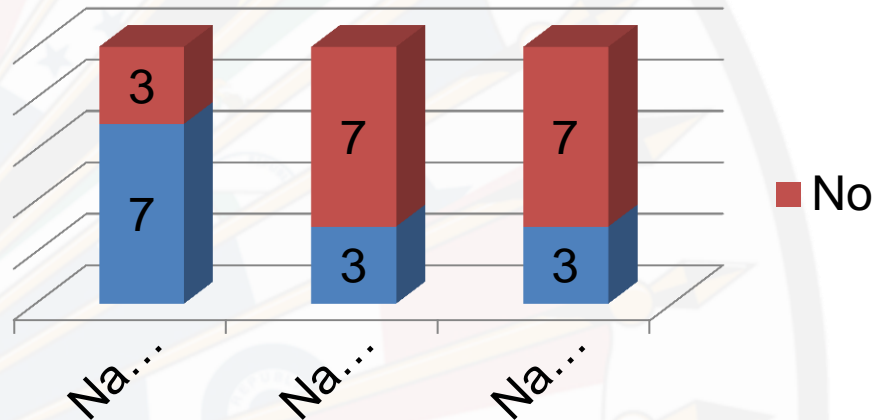
The **value of the asset** at the time of the seizure is also crucial → Not all of the countries (six out of ten) reported having information on the value of assets at the time of the seizure.

Most countries reported that they record the value of the assets in their **national currency** → could be an obstacle to international asset recovery when different countries need to share recovered assets .

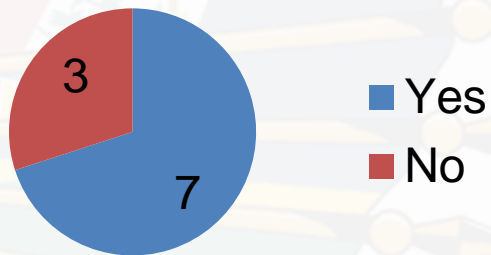
All of the countries indicated that valuation of the asset is carried out by a **specialized agent**, based on the **market value of similar assets**. Some countries indicated that **additional factors** are considered, such as legal status, condition and depreciation.



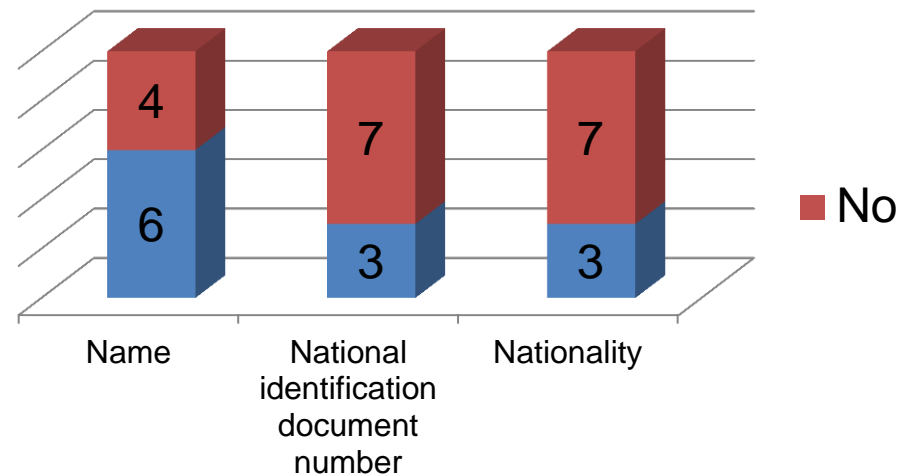
QUESTIONNAIRE ON DATA COLLECTION SYSTEMS: CRIMES AND CRIMINALS



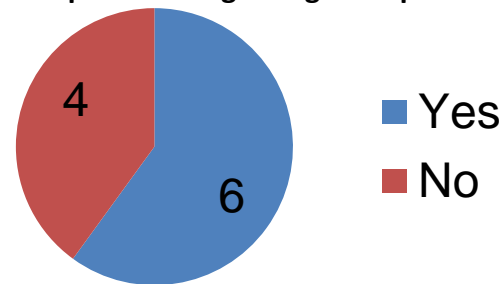
Information provided regarding indicted person/people



Predicate offence



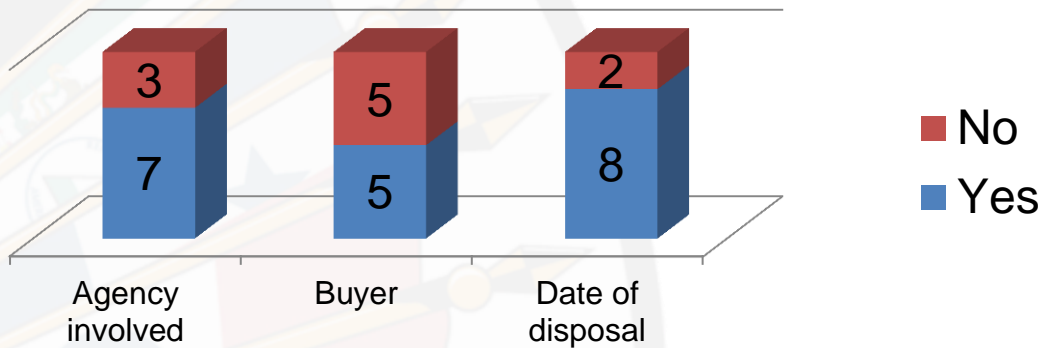
Information provided regarding third parties



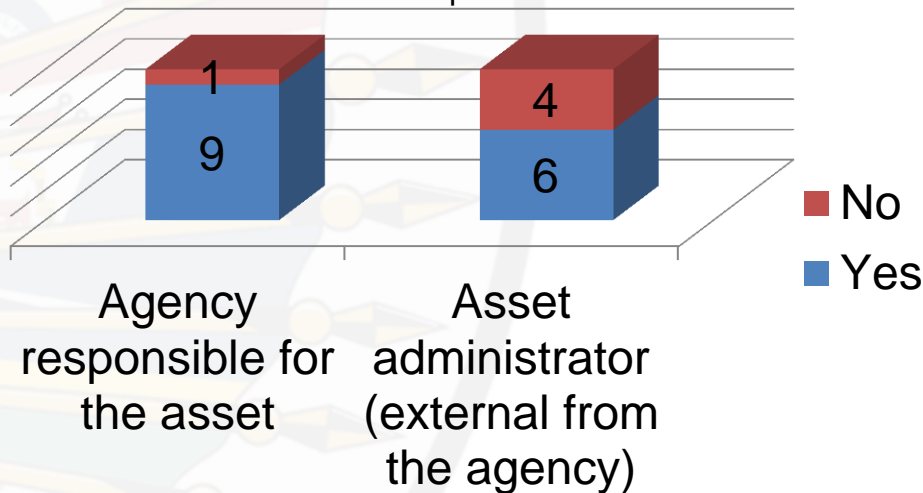
Related offences (one or more)



QUESTIONNAIRE ON DATA COLLECTION SYSTEMS: ADMINISTRATION AND DISPOSAL



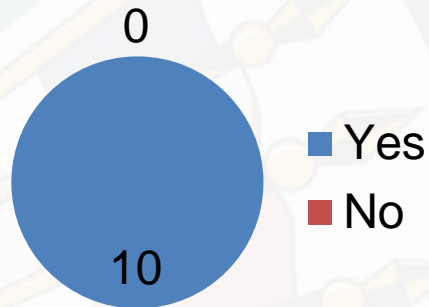
Regarding information on judicial proceedings, the following information is provided for custody and administration



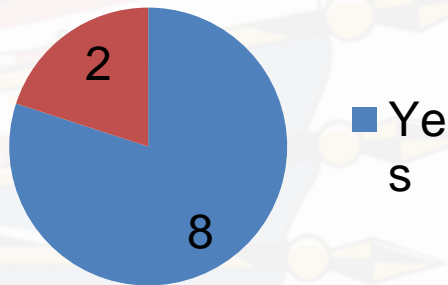
Regarding information on judicial proceedings, the following information is provided for disposal



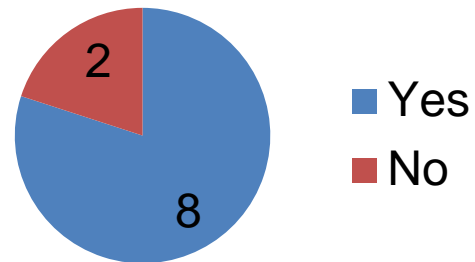
QUESTIONNAIRE ON DATA COLLECTION SYSTEMS: DISPOSAL CRITERIA



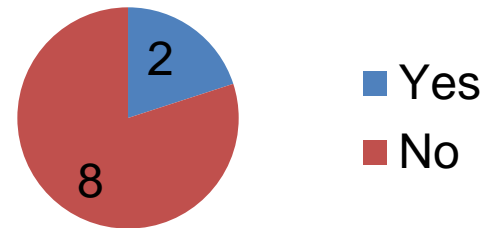
Is the current legal status of the asset specified?



Is the eligibility of the asset for disposal specified?



Is the percentage of the asset that has been seized indicated?

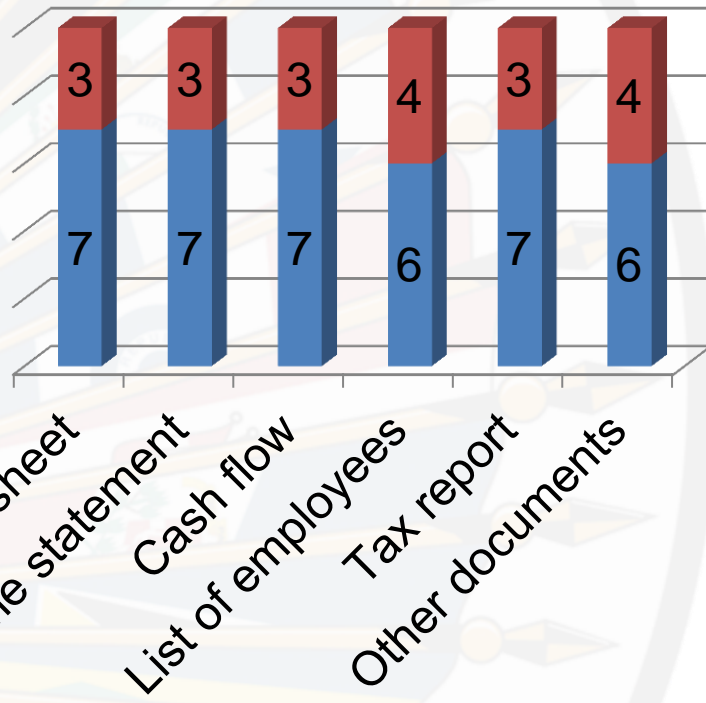


Is the urgency of the disposal of the asset specified?

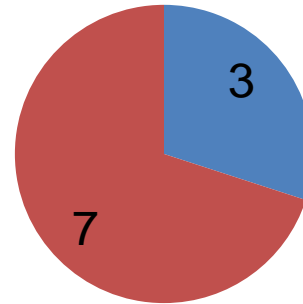


QUESTIONNAIRE ON DATA COLLECTION SYSTEMS: PRODUCTIVE ASSETS

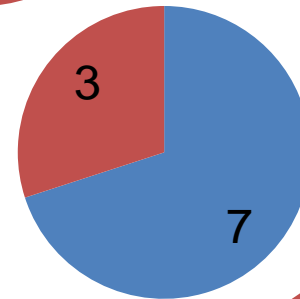
Available financial documents



■ No
■ Yes

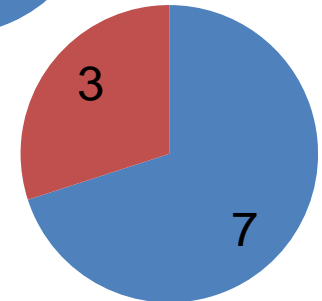


Are the financial documents from years before the seizure available?



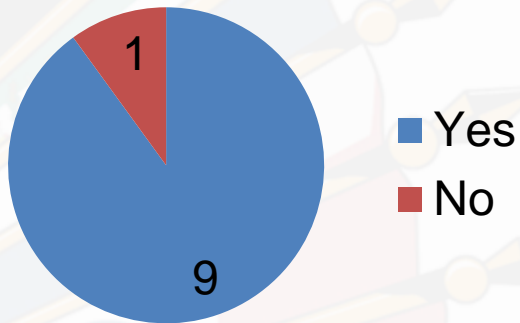
Are the financial documents from years after the seizure available?

Do all the documents specify the author?

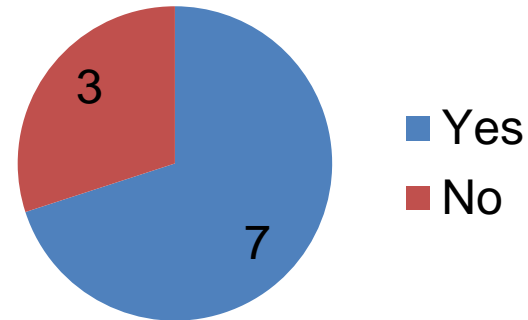




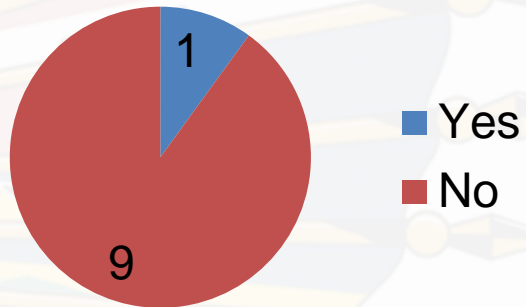
QUESTIONNAIRE ON DATA COLLECTION SYSTEMS: PRODUCTIVE ASSETS



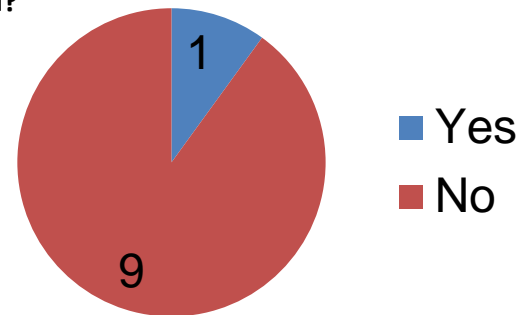
Is the current administrator specified?



Is the current status of the company specified?



Is the financial information shared directly with the Chamber of Commerce?



Does your agency have free access to the Chamber of Commerce registry?



Recommendations

- I. Information should be collected by a **centralized agency**.
- II. Information should be collected in a **centralized structured database**.
- III. All of the agencies involved in phases of the process related to seized and forfeited assets (investigation, seizure, custody, administration and disposal agencies) should provide information on their activities to be collected in the centralized database. **Each phase of the process should be accurately documented** so as to provide all of the necessary information to successfully complete all subsequent phases.
- IV. The information should be updated by **specialized personnel**. The ability to change information in the database should be granted only to authorized personnel.



V. Information should be collected in a **customized database**. The database should allow searches with different criteria (e.g. year, type of asset, individuals connected to the case etc.). The database should keep a log of the changes made by the users and must provide tools to track changes in the records since their creation. The database should allow users to export the information in excel spreadsheets or other compatible formats.

VI. The information should cover all **of the phases of the process** related to seized and forfeited assets (investigation, seizure, custody, administration and disposal) and therefore be provided by the relevant agencies involved in each phase.



VII. For each asset a **description** should be available. The possible descriptions should be standardized and listed in a metadata catalogue with additional information (e.g. house, motorcycle, diamond ring, a construction company etc.). Assets should also be classified into categories by type of asset (e.g. real estate, registered assets, movable assets, companies etc.). The possible categories for the classification of assets should also be listed in the metadata catalogue. The metadata catalogue of descriptions and categories should be made available for consultation when assets are first recorded, throughout the management process and for the interpretation of statistics on assets.

VIII. The updated total number of assets, total number of assets by description and by category should be **publicly available**.



IX. The **physical location** of the asset should be recorded specifying the country, state or region, city and address at the time of seizure.

X. The **owner of the asset** should be recorded specifying the name, national identification document number (or the date of birth if a national identification document is not available) and nationality if the owner is a natural person and the name, national identification number and address if the owner is a legal person.

XI. A **serial number** should be attributed to each asset when they are taken into custody.



XII. If the asset has a specific serial number (e.g. serial numbers, vehicle registration plate etc.) this should be recorded when the asset is taken into custody.

XIII. The condition of the asset at the time of seizure should be recorded.

XIV. The value of the asset at time of seizure should be recorded in both local currency and US dollars. The valuation should be carried out by a specialized agent based on the market value of the asset.



XV. For each asset information on the legal history of the asset should be recorded. In particular:

XV.1. Regarding the **seizure**: the type of seizure (e.g. freezing, seizure of assets etc.), the countries / agencies involved in the investigation, the court that issued the seizure, the name of judge who requested seizure, the court case number number and the date of seizure should be specified.

XV.2. Regarding **custody and administration**: the agency responsible for custody/administration of the asset and the asset administrator (if external from the agency) should be specified.



XV.3. Regarding **forfeiture**: the type of forfeiture (e.g. criminal, of equivalent value, in rem, *extinción de dominio* etc.), the court that issued the forfeiture, the name of the judge who requested forfeiture, the court case number and the date of forfeiture should be specified.

XV.4. Regarding **asset disposal**: the agency involved, the buyer and the date of disposal should be specified.



XVI. The **person/people** indicted in connection to the asset should be recorded specifying the name, national identification document number (or the date of birth if a national identification document is not available) and nationality.

XVII. **Third parties** connected to the asset should be recorded specifying the name, national identification document number (or the date of birth if a national identification document is not available) and nationality.

XVIII. The predicate and related offences connected to the seizure of the asset should be recorded.

XIX. The location of the asset while in custody after seizure should be recorded specifying the country, state or region, city and address at the time of seizure.



XX. The **current legal status** should be recorded (e.g. Seized, registered, mortgaged etc.)

XXI. If the entirety of the asset was not seized, the **percentage of the asset** that has been seized should be recorded (e.g. 50%, 75%, 100%)

XXII. The **eligibility** of the asset **for disposal** should be recorded.

XXIII. The **urgency of the disposal** of the asset, based on the condition of the asset and the eligibility for disposal, should be specified.



XXIV. Regarding productive assets:

XXIV.1. Documentation on the financial situation of productive assets (e.g. balance sheets, income statements, cash flow statements, lists of employees, tax reports etc.) should be available through the centralized database. These documents should be available for years preceding seizure as well as the years during which the asset has been under management of the specialized agency. Each document should specify the author.

XXIV.2. The current administrator should be recorded specifying if the administrator of the asset is a third party external to the agency.



XXIV.3. The current status of the asset should be recorded (e.g. active, in liquidation, under the supervision of an administrator etc.).

XXIV.4. The information in the database should be shared directly with the national Chamber of Commerce. To ensure that information on productive assets is accurate and updated, the agency should also have free access to the Chamber of Commerce.



- Comparative law study on asset administration system in Latin America:
 - Analysis of regulatory bodies in the region and the procedures used by seized and forfeited asset administration authorities;
 - Review of the evolution of the legal figure of forfeiture, with special reference to the European legislation;
 - The importance to establish specialized agencies to identify and locate assets of criminal origin



MECHANISMS FOR THE SHARING OF FORFEITED ASSETS

Review of the regulatory provisions on international cooperation in Argentina, Brazil, Columbia, Costa Rica, United States, Guatemala, Honduras, Mexico, Dominican Republic, El Salvador and Venezuela

These countries do not define specifically in their domestic systems the procedures, percentages and/or prerequisites for the sharing of assets between countries. Except the United States and Brazil.

There are still systems that do not have regulations on the sharing of assets with other countries and others that have regulations still have serious gaps on the topic.

WHAT ARE THE REQUIREMENTS FOR THE REQUESTS FOR THE REPATRIATION OF THE PROCEEDS OF CRIME OR SEIZED ASSETS?

❖ The majority of legislations studied do not have them (conventions for legal assistance requests)

❖ The Dominican Republic and Canada establish the possibility of an agreement

❖ The United States, Brazil, and Spain yes

United States “Bilateral Agreement Model”

Spain “certified for the execution of forfeiture resolution in other member states of the EU”

❖ Mexico* and Jamaica (exhaustive list)

DO NATIONAL REGULATIONS INCLUDE RULES RESPECTING VICTIMS’ RIGHTS AT THE MOMENT OF SIGNING AGREEMENTS OR ARRANGEMENTS FOR SHARING ASSETS BETWEEN STATES?

❖ The majority protect victims’ and third parties rights/ United States

❖ Excluding: Peru, Honduras, Canada, Guatemala, Bolivia, Uruguay, Chile, Suriname, Haiti, Panama

DOES THE LEGAL POSSIBILITY EXIST OF SIGNING BILATERAL AGREEMENTS OR ARRANGEMENTS FOR RESOLVING SPECIFIC CASES ON SHARING ASSETS BETWEEN STATES?

All the states have the legal ability to do it

In the United States, Brazil and Costa Rica the central authorities are equipped to make these treaties

WHICH NATIONAL AUTHORITY(IES) HAVE THE LEGAL CAPACITY TO SIGN BILATERAL AGREEMENTS OR ARRANGEMENTS FOR SHARING ASSETS BETWEEN STATES?

Many states have been granted the legal capacity for the signing of these agreements by the **government authorities at the highest level**

❖ Bolivia, Uruguay, Chile, Suriname, Haiti and Panama. None of these countries has the procedures nor the regulations in their internal legislation that regulate the matter of sharing assets between other countries.



Study and updating the document



Yet there are legislations that do not regulate the matter and large gaps exist



Communicate this need to the countries

CONCLUSIONS

- That countries may cooperate in cases in which they receive requests for sharing of assets;
- That agreements may establish the commitments of both the requesting State and the requested State;
- If it is impossible or inconvenient to transport the asset, that the requested country may arrange for the disposal of the asset or the transfer of funds of equivalent value to the requesting country;
- That agreements include provisions that ensure and respect the rights of victims and bona fide third parties;



CONCLUSIONS

- That each country may consider the creation of a document that defines the requirements for requests for the sharing of assets (specifying the documents to be attached).
- That agreements may take into consideration the costs incurred in the recovery for the assets;
- That agreements may take into consideration the costs incurred in the management and maintenance as well as the interests and revaluations of the assets;
- That agreements may establish the way in which the assets will be transported;



Disposal of forfeited assets

- Classic criteria in international conventions: the assets belong to the State that executes the order.
- Practice of the States: to share the assets, one part of the assets recovered corresponds to the State that helps to recover them.
- On **corruption matters** it is the opposite:
- Fundamental principle: the product of corruption should be repatriated to its legitimate owner, who in most cases is the population of the State in which the crime occurred.
- States should adopt the necessary legislative measures to allow its competent authorities to restitute forfeited assets when complying with a request from other Member State.



Other issues

- **Agreements for each particular case:** Possibility of making agreements or mutually acceptable arrangements on the basis of each individual case for the final disposal of forfeited assets.
- **Deduction of reasonable expenses:** When appropriate, unless States involved decide otherwise, the requested State may **deduct reasonable expenses** incurred in investigations or judicial proceedings that allowed the return or disposition of forfeited assets.



Argentina

- Decree 826/2011 was issued, instituting the National Register of Seized and Confiscated Assets during the criminal process, whose main function is the identification, registration, valuation and location of all of the assets seized, forfeited or subject to an injunction in the course of criminal proceedings.
- Further modifications were made to Article 305 of the Criminal Code by introducing the topic of "confiscation without sentence or conviction" with Law 26.683 published in the official gazette on June 21, 2011.
- Seminars and workshops on equity research and asset management for more than 400 officials, prosecutors and judges.



Chile

- In **Chile**, the BIDAL project conducted a diagnostic assessment of the national situation in the field of identification, location, management, and use of seized and forfeited assets that allowed national authorities and the Public Prosecutor, the Investigative Police of the country and the defunct CONACE, to identify weaknesses in each of its processes for which the project BIDAL gave a series of recommendations and a proposal to change its legislation and create a specialized agency for the management of organized crime assets.



Uruguay

- BIDAL project had a direct effect on the enactment of Law 18494, which incorporated among other policy provisions the Full Right Forfeiture and some others related to the abandonment and administration of seized and forfeited assets. Additionally, the provisions related to the Confiscated Assets Fund of the National Drugs Board were amended by Law 18362 and the Regulation of the Forfeited Assets Fund was created through Executive Decree 339-2010, which provides the framework which establishes the procedures for the efficient management of seized and forfeited assets.



El Salvador

- Decree 534, called "Ley de Extinción de Dominio"
- Creation of the National Asset Management Council (CONABI)
- Special provisions on the administration of seized and forfeited assets.



Dominican Republic

- Diagnostic assessment to identify weaknesses in the forfeiture system and the current agency for the management of seized and confiscated assets,
- Proposal to improve the current situation



Next steps of the BIDAL Proyect

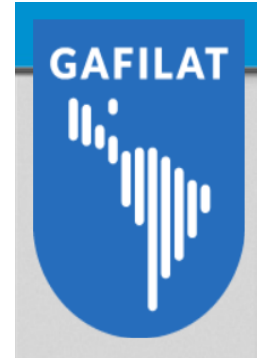


- Started to be implemented in **Brazil**
- Signed of agreement with **Paraguay**





Technical Assistance Program of international cooperation in asset recovery



CARIBBEAN FINANCIAL
ACTION TASK FORCE



BACKGROUND/JUSTIFICATION

20^o Period of Sessions GA/OAS, June 1990: need of cooperation in identification, tracing, seizure and forfeiture and of illicit assets

Since then, GELAVEX working plans have included the importance of international cooperation in asset recovery

Creation of the Sub-Working Group on International Cooperation and Forfeiture



BACKGROUND/JUSTIFICATION

XXXVII GELAVEX meeting (Brazil, Sept. 2013): GELAVEX entrusted the SE/CICAD with the design of the Program Proposal of a Technical Assistance Program on International Cooperation

“Recommended Proposal to Improve the Anti-Money Laundering Systems at the level of the OAS Member States”

“Study on the Identification of Mechanisms for International Cooperation (formal and informal) that allow for an adequate exchange of information for the prevention and repression of money laundering, financing of terrorism and the recover of illicit assets”



Obstacles that affect international cooperation in asset forfeiture



BACKGROUND/JUSTIFICATION

54 ordinary period of CICAD (Colombia, dez. 2013):
mandate approved

XXXVIII Meeting of GELAVEX (USA, may 2014):
progress report

54° Período Ordinario de
Sesiones de la CICAD
13 al 15 de diciembre de 2013
BOGOTÁ, D.C. COLOMBIA





Recent references to the need to intensify the international cooperation in international asset recovery:

Declaration of Antigua, 43 AG/OAS (Guatemala, June 2013)

Resolution 44 AG/OAS (Paraguay, June 2014)

Resolution 46 AG/OAS Extraordinary (Guatemala, September 2014)



OEA GUATEMALA 2014
Asamblea General Extraordinaria





OBJECTIVES

Main Objective:

To identify the practical difficulties experienced by OAS Member States in the international recovery of illicit assets, and develop tools so that the identification, location and recovery of assets can be executed harmoniously, effectively and in conformity with international standards concerning money laundering and the financing of terrorism



SPECIFIC OBJECTIVES

Identify the **main challenges** that the OAS member States face in international asset recovery

Optimize and promote the **exchange of information** in order to prevent and fight money laundering, the financing of terrorism and its related offenses, facilitating the recovery of illicit assets

Provide **technical assistance** to the OAS member States in implementing the recommendations of the international treaties concerning the recovery of illicit assets

Contribute to **institutional strengthening** and the **capacity building** of specialists in asset recovery



- Build **confidence** in the institutions and the public servants of the OAS member States related to the recovery of assets
- Improve **administrative and judicial cooperation** between the OAS member States in money laundering, the financing of terrorism and its related offences
- Promote the adoption of mechanisms for the **sharing assets** of illicit origin between States that collaborate in their identification and recovery
- Facilitate the exchange of **knowledge, experiences** and **best practices** in asset recovery



PRODUCTS

Development of a **situational assessment** to identify the challenges that the OAS member States face in international asset recovery that will serve as the basis for products II, III, and IV

Development of **guidelines** for the implementation of international standards in the recovery of assets as a reference to the OAS member States

Creation of a **structured information repository** to facilitate international cooperation in asset recovery

Training in international cooperation in asset recovery



METHODOLOGY

Situational assessment

What is the current situation, where we are and why?

Precise and detailed information on the national mechanisms of investigation, identification, freezing, seizure and forfeiture of criminal assets of each OAS member State





The products will complete the work started by GELAVEX

The data will be analysed descriptively, organized and published in the online repository (product II), making them useful and accessible

The findings will be a reference for the practitioners of the American States and abroad who are involved in the processes of identification, tracing, freezing, seizure and forfeiture of assets



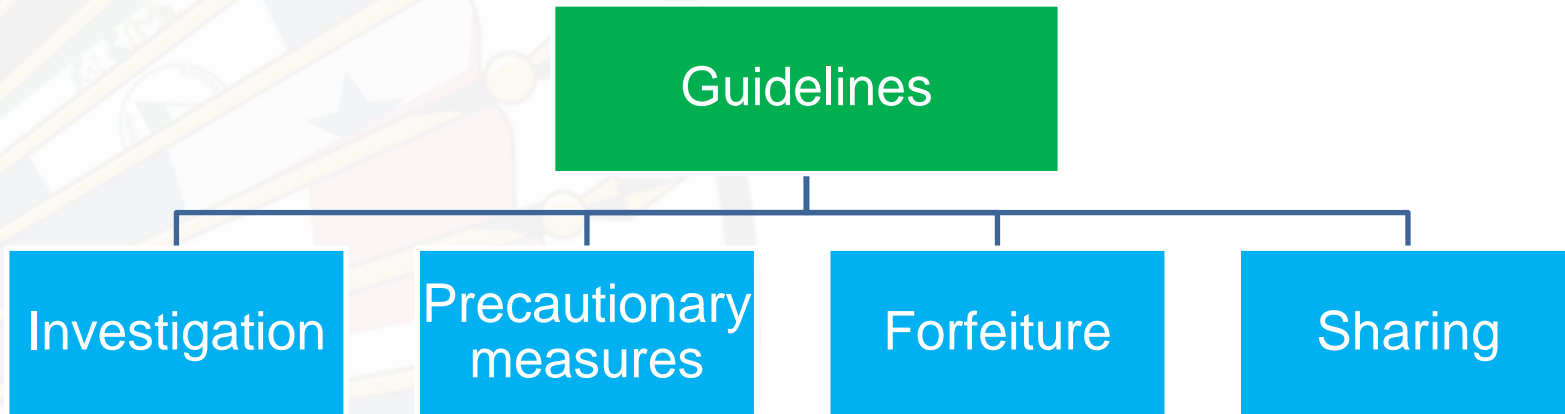
It will identify the challenges and best practices in each Member State, as well as the difficulties (legal, organizational and practical) that require immediate attention

It will identify specific need of the Member States, as well as the issues that need to be developed with greater attentions, either through the training activities or the implementation of other projects

Resources will be allocated to key issues of the specific process, that will allow for concrete improvements of the asset recovery process



Guidelines for the implementation of international standards in asset recovery



Development of guidelines for international cooperation in asset recovery for the Member States to consider when updating their legislation and procedures according to international standards



Give **guidance** on the legal regulation that allows a foreign judicial authority to issue a freezing measure in the course of a criminal procedure and request that it be executed in another OAS Member State in order to:

Safeguard the objects, documents or data that can be seized and used as evidence, thus preventing its disappearance or transformation.

Proceed to subsequent confiscation



In preparing the Guidelines it seems appropriate to establish a Working Group constituted by a Principal Consultant and by Experts in the field.

- Need of dissemination in order to achieve the maximum level of acceptance among the countries in the Hemisphere
- Used as a basis for legislative reform processes that would be approved.





4.3) Guidelines for the implementation of international standards in asset recovery

INTENDED TO:

Offer a tool that can help in the implementation of the existing international recommendations

Provide options for each Member State to consider according to their needs

Consolidate a practical approach



NOT INTENDED AS:

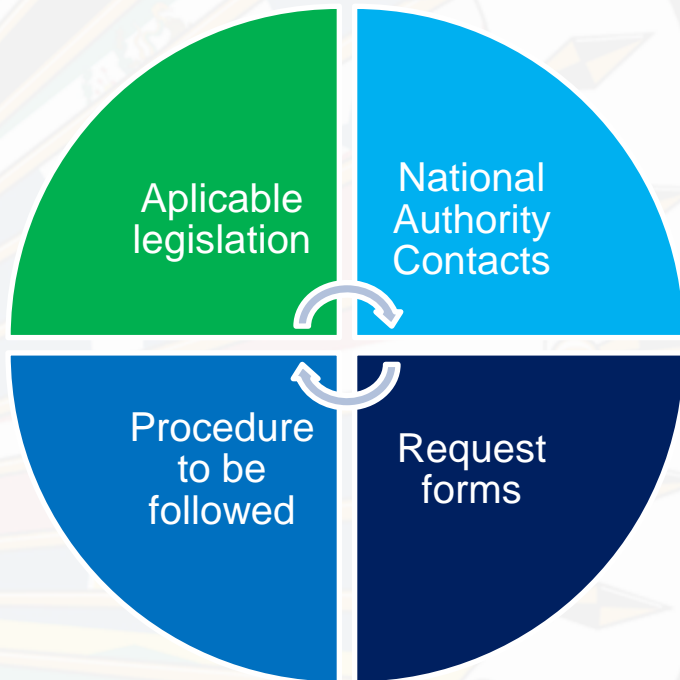
The creation of new laws

The establishment of compulsory procedures





4.3) Creation of a Structured Information Recovery



- Reports, analysis and documents developed by GELAVEX and its strategic partners on international cooperation and forfeiture
- Case studies (best practices)



4.4) Training courses

Provide an overview of relevant regulation

Instruct on the procedures for requesting cooperation in asset recovery by using the Structured Information Repository

Encourage the exchange of knowledge, experiences and good practices

Strengthen the network of professionals involved in the process of asset recovery in the OAS member States



Thank you!

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