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# INTER-AMERICAN DRUG ABUSE CONTROL COMMISSION **CICAD**

Secretariat for Multidimensional Security

**XL GROUP OF EXPERTS FOR THE CONTROL OF MONEY LAUNDERING**  
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**STUDY ON THE RIGHTS OF VICTIMS AND BONA-FIDE THIRD PARTIES**  
**SUB-WORKING GROUP ON FORFEITURE AND INTERNATIONAL COOPERATION, DELEGATION OF**  
**BRAZIL AND EXECUTIVE SECRETARIAT OF CICAD/OAS**

# STUDY ON THE RIGHTS OF VICTIMS AND BONA-FIDE THIRD PARTIES

Group of Experts for the Control of Money Laundering  
(GELAVEX)

Sub-Working Group on Forfeiture and International Cooperation,  
Delegation of Brazil and Executive Secretariat of CICAD/OAS



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# Background



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- In the XXXVII Meeting of the Group of Experts for the Control of Money Laundering (GELAVEX), in September 2013 in Brasilia, Brazil and as part of the *Work Plan 2012-2013*, the Sub-Working Group on Forfeiture and International Cooperation, presented *the STUDY ON IDENTIFICATION OF INTERNATIONAL COOPERATION MECHANISMS (FORMAL AND INFORMAL) THAT ALLOW ADEQUATE INFORMATION EXCHANGE FOR THE PREVENTION AND REPRESSION OF MONEY LAUNDERING, TERRORISM FINANCING AND RECOVERY OF ASSETS OF CRIMINAL ORIGIN*, which was approved.



- It was recommended to the Executive Secretariat of CICAD that they design a technical assistance program for OAS Member States with the goal of increasing international cooperation in matters of asset recovery.
  - The initiative was supported and approved by CICAD in the 54th ordinary period of sessions of the Commission, in December 2013 in Bogota, Colombia.

- The first draft of the program's proposal was presented during the XXXVIII Reunion of LAVEX, held between May 22nd and May 23rd of 2014 in Washington, DC (USA), which recommended that ES/CICAD culminate the design of the program and present it before the Plenary Session at the XXXIX Reunion of the LAVEX, which was held between the 25th and 26th of September in Montevideo, Uruguay, where it was approved.
- For the 2013-2014 period, it was approved that the Sub-Working Group carry out a **“Complementary study on the procedures and/or criteria of international cooperation in asset sharing”** and in that same meeting, the proposal on methodology presented for the development of the study was received. Such methodology consisted in contributing to the efforts of the Executive Secretariat (ES/CICAD) in the development of the Technical Assistance Program, updating country information through a survey created between ES/CICAD and the Sub-Working Group.
- This Study was presented and approved in the GELAVEX Meeting held in Uruguay in September 2014, permitted the collection of information and in relation with the theme of victims and bona-fide third parties, already-existing systems lacking regulatory norms were identified.

- The Group has approved the Strategic Plan 2015-2017 and the Working Plan 2014-2015:
  - Working Subgroup in International Cooperation and Seizure will dedicate itself to support the ES/CICAD in the realization of a study about the rights of bona-fide third parties and victims in the context of the Technical Assistance Program regarding Asset Recovery.
- At the 56<sup>th</sup> ordinary period of sessions of CICAD, held in Guatemala City, Guatemala, from November 19<sup>th</sup> to November 21<sup>st</sup>, the Technical Assistance Program's Proposal, the Strategic Plan 2015-2017 and the Working Plan 2014-2015 were approved by the Commission, and the Subgroups began the designated activities .
- Presentation of the Progress Report of the STUDY ON THE RIGHTS OF VICTIMS AND BONA-FIDE THIRD PARTIES.



## STUDY ON THE RIGHTS OF VICTIMS AND BONA-FIDE THIRD PARTIES

### ARGENTINA

- In domestic legislation there are dispositions related to respected the rights of victims and third-parties.
- Article 23 of the Criminal Code of the Argentine Republic

«In all cases where sentencing occurs for crimes detailed in the Criminal Code or in special criminal laws, the same will decide the forfeiture of those things which have served to commit the crime and of the things or proceeds which are the product or advantage of crime, in favor of the national State, of the provinces or the municipalities, except the rights of restitution or indemnization of victims or third parties.»

### BRAZIL

- Agreements on international legal cooperation regarding criminal matters between Brazil and other countries normally have relative dispositions with respect to not only the rights of victims but also those of bona-fide third parties.



## STUDY ON THE RIGHTS OF VICTIMS AND BONA-FIDE THIRD PARTIES

### COLOMBIA

- Law 793 from 2002 in Colombia, article 3: “If it is not possible to locate or execute the seizure of property subject to forfeiture at the time of the verdict, the judge may order forfeiture of substitute property or assets possessed by the same person and of equal value. This article should not be interpreted in prejudice of the rights of innocent third parties acting in good faith”. Ref. Equivalent Assets

### COSTA RICA

- When it has been shown and concluded that the victim is a bona-fide third party, Law 8204 and Law 8754 establish that all of the measures and sanctions related to seizure and forfeiture of assets linked to infractions of these Laws, will apply without prejudice to the rights of these bona-fide third parties.
- Article 94 of Law No. 8204, describes what the requirements are that a claimant should meet to be considered a bona-fide third party
- Additionally, Costa Rica has Law 8720, Protection to victims, witnesses and other participants subjected to the criminal process. That law regulates the extraprocedural protection measures and its proceedings.



## STUDY ON THE RIGHTS OF VICTIMS AND BONA-FIDE THIRD PARTIES

### UNITED STATES

- With respect to victims and third parties, in consonance with Article 14, Paragraph 2, of the United Nations Convention against Transnational Organized Crime, the United States includes in its bilateral agreements on cooperation exchange and permanent asset forfeiture, a reciprocal obligation that signatory countries return all of the income from fraud and theft to the soliciting country for the purpose of compensating victims.
- This disposition appears in the most recent of the bilateral agreements on permanent confiscation and distribution of assets cooperation that the United States has signed with other governments since 1990.

### GUATEMALA

- In Guatemala the Attorney General's Office is the principal articulating entity of services of assistant and protection to victims and/or witnesses. Article 26 of the Organic Law of the Attorney General's Office instituted the Office of Victims Services. E.g. Sexual crimes
- Guatemalan domestic norms do not include dispositions related to respecting the rights of victims at the time of signing agreements or arrangements to share assets among States.



## STUDY ON THE RIGHTS OF VICTIMS AND BONA-FIDE THIRD PARTIES

### HONDURAS

- In Honduras, principles directly related with a focus on the victim have been developed through special legislation, such as the Law against Human Trafficking, Law against Domestic Violence and, to a smaller degree, in the Childhood and Adolescence Code.

### EL SALVADOR

- In the case of El Salvador, article 12 of the Criminal Procedure Code contains the definition of victim; which covers;  
  
“1) Those directly offended by the crime; 2) The spouse, life partner, child or adoptive parent, relatives within four degrees of consanguinity or two degrees of affinity and the testamentary heir, in crimes resulting in the death of the offended; 3) Partners, with regard to crimes that affect a society, committed by those who run, administer or control it, or its managers or by those who may direct or administer a controlled corporation, controlling or linked; and 4) Associations in those crimes that affect collective or diffuse interests provided that the object of the association can be directly linked with those interests.”



## STUDY ON THE RIGHTS OF VICTIMS AND BONA-FIDE THIRD PARTIES

### SPAIN

- Articles 5, 9c and 19 of Law 4/2010 include dispositions related to respecting the rights of victims at the time of signing agreements or arrangements to share assets among States.

### MEXICO

- The Mexican Political Constitution protects the rights of victims and offended parties. Likewise the Federal Law on *in rem* forfeiture, article 43:

*«...In the case of sentencing that declares in rem forfeiture, the Federal Government will be able to opt for conserving the assets and carrying out corresponding payments to third parties, victims or offended parties.»*

- The internal norms of the country do treat on dispositions related to respecting the rights of victims at the time of signing agreements or arrangements to share assets among States.



## STUDY ON THE RIGHTS OF VICTIMS AND BONA-FIDE THIRD PARTIES

### PARAGUAY

- The Paraguayan Criminal Code states that protection is afforded to bona-fide third parties, victims of seizure of assets found in their possession to whom an indemnity will be guaranteed on the part of the State. Likewise, victims of the crime are also protected, to those who allow asset damage caused by means of those forfeited assets.

### DOMINICAN REPUBLIC

- The Attorney General's Office of the Republic has a department for the protection of victims of all infractions, including money laundering.



## STUDY ON THE RIGHTS OF VICTIMS AND BONA-FIDE THIRD PARTIES

### VENEZUELA and JAMAICA

- Both internal systems allow cooperation conventions to share assets to provide for norms related to respecting the rights of victims.

### PERU, BOLIVIA, URUGUAY, CHILE, SURINAME, HAITI and PANAMA

- Currently, national regulations do not include provisions to respect the rights of victims at the time of signing agreements to share assets between States.

# Rights of victims and bona-fide third parties: International norms



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# INTERNATIONAL CONVENTIONS



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UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED  
CRIME ([UNODC, 2000](#))

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

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

INTER-AMERICAN CONVENTION ON MUTUAL ASSISTANCE REGARDING  
CRIMINAL MATTERS ([OEA, 1996](#))

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

**MODEL LEGISLATION ON MONEY LAUNDERING RELATED WITH ILLICIT DRUG TRAFFICKING AND OTHER SERIOUS CRIMES ([CICAD/OEA, 1999](#)):**

**NORMATIVE ASPECTS FOR THE CREATION AND DEVELOPMENT OF SPECIALIZED BODIES ON THE ADMINISTRATION OF SEIZED AND FORFEITED ASSETS ([CICAD/OEA, 2012](#))**

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

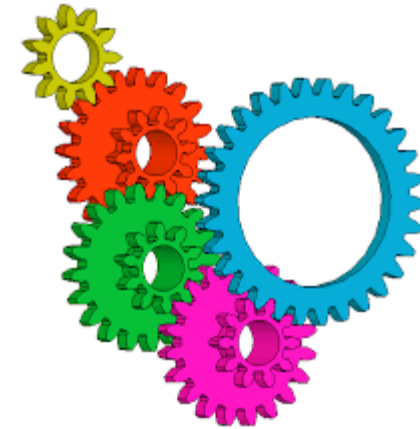
**RECOMMENDATIONS OF THE INTERNATIONAL FINANCIAL ACTION TASK FORCE ([GAFI, 2012](#))**

**BEST PRACTICES ON CONFISCATION (Recommendations 4 and 38) ([GAFI, 2010](#))**

# Justification of the study within the framework of the REACT Project



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Forfeiture and its limitations;



Restorative justice



Right to property (e.g. Socios comerciales e inversores empresa incautada)

- Concept:

↳ “person who has suffered damages (...), financial loss or substantial harm to fundamental rights...”



Obligation of the State  
to repair damages



Funds and specific  
programs



Integral repair



Indemnization for the  
damage caused

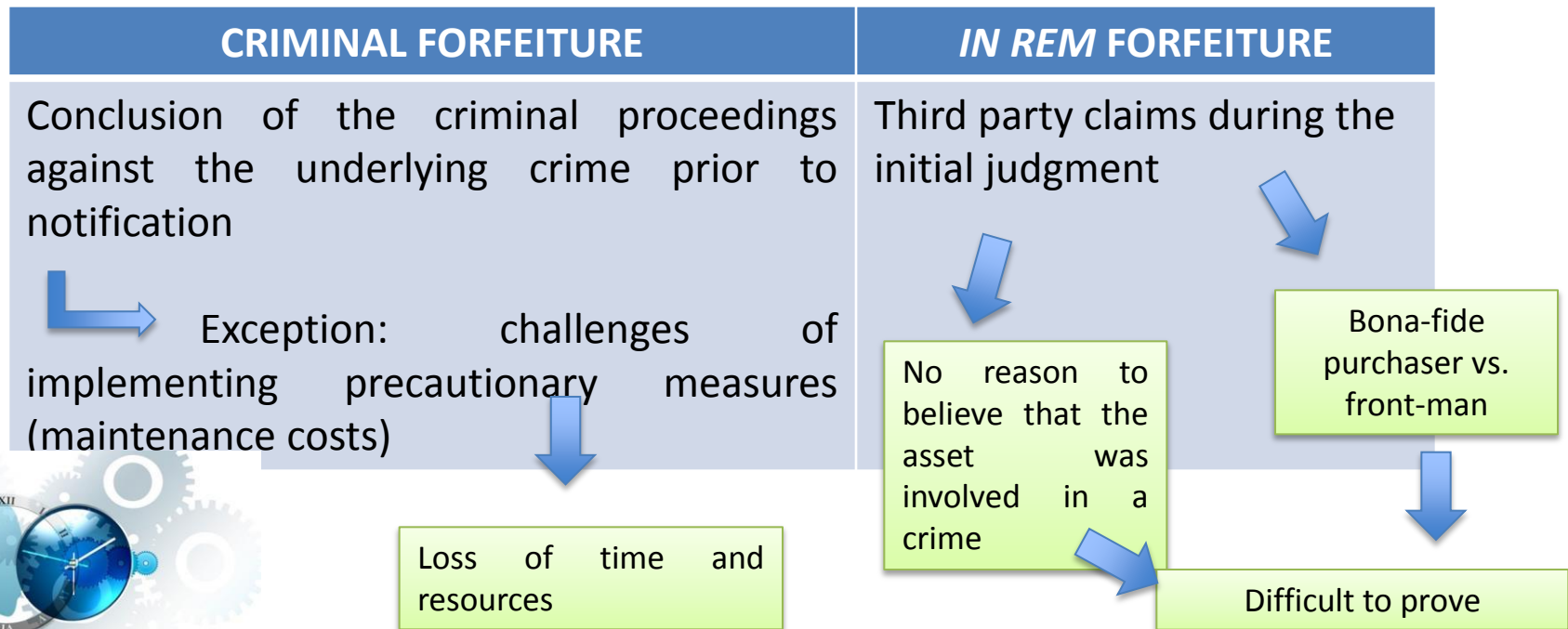


# Bona-fide third parties



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- Right to be notified and heard as interested parties in the process
  - Generally: notification to those who could have legitimate interest;
  - Necessity of broad notification to those signaling interest



# General objective



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

International  
standards

Bilateral and  
regional  
agreements

National  
legislation

Doctrine

Jurisprudence

Principles

# Specific objectives



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Compile  
international  
standards

Member States'  
implementation



Situational  
Diagnostic

Disposition  
framework

Online  
Repository

Training

# Timeline



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[illegible]



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# Thank You!!