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INTERNATIONAL COOPERATION: EFFECTIVE ASSET RECOVERY STRATEGIES




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Oficina de las Naciones Unidas
contra la Droga y el Delito

PROJUST
Área de Prevención del Delito y
Fortalecimiento de la Justicia

Crime Prevention and Justice Program -PROJUST-






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1. LEGISLATIVE ASISTANCE

- **Components**
- **Model Law**
- **Legislative and technical Assistance (Colombia, El Salvador, Costa Rica y Mexico)**



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ABOUT UNODC

Among different working areas UNODC provides technical assistance for the drafting and implementation of Non-Conviction-Based Confiscation (NCB) laws and regulations.

Additionally it contributes to the process of adopting the bills that can be used in cases recovery of stolen assets taking into consideration the following:

- International legal framework to asset recovery
- National Legal Regulations

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International Criminal Policy



**Vienna
Convention
Illegal Traffic
of Narcotics
1988**

**Palermo
Convention
Organized
Crime
2000**

**Convention
against
Financing of
Terrorism
1999.**

**Merida
Convention
Corruption
2003**

**FATF's 40
Recommend
ations.**

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NCB Regional Overview

COUNTRY	NCB CONFISCATION LEGISLATION		LAW	DRAFT BILL
	YES	NO		
ARGENTINA		X		S-198-2014 y S-1171-2014
BOLIVIA		X		
BRASIL		X		
CHILE		X		
COLOMBIA	X		Law 1708-2014	
COSTA RICA	X			18964-2013 y 19671-2015
DOMINICAN REPUBLIC		X		
ECUADOR		X		
EL SALVADOR		X	Decree 534-2013	
GUATEMALA	X		Decree 55-2010	
HONDURAS	X		Decree 27-2010	
MEXICO	X		Federal Law 2009	
NICARAGUA		X		
PANAMA		X		
PARAGUAY		X		104-2014
PERU	X		Law 29212-2008	
URUGUAY		X		
VENEZUELA		X		

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From Conviction- based Confiscation to Non-conviction-based Confiscation

Conviction Based Forfeiture		Non Conviction Based Forfeiture
Against the person	Object	Against the asset.
Criminal charges against person.	Action	Government action against the asset as offender.
As part of the criminal judgment.	Time	Before, during or after of judgment, o (in some countries) without criminal charges.
1. Criminal Judgment → <u>Beyond all possible doubt.</u> 2. Assets associated to the offenses.	Evidence	1. Conduct contrary to the law. 2. Connection between crime and asset. Evidence of criminal conviction is not necessary.
Defendant lost interest in the asset .	Lost	Asset forfeiture, taking in to consideration to the innocent owner.

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Two ways to incorporate NCB into a legislation

In the criminal case		Separately Civil Action
In the criminal case: doesn't exist conviction, seized. assets	Case	Separately Civil Action : Before, during, or after of the criminal judgment, or (in some countries) even in the absence of criminal charges.
Criminal--- Criminal Procedure.	Jurisdiction	Civil---- Civil Procedure.
As part of the criminal judgment.	Time	Before, during, or after of the criminal judgment, or (in some countries) even in the absence of criminal charges.
Beyond all possible doubt.	Evidence rating	Most likely that no.
Sweden, Liechtenstein, Thailand	Countries	Civil Law: Colombia, Quebec (Canada) Customary Law: South Africa, United Kingdom and EEUU

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Main topics related to NCB Confiscation

- Against the asset.
- Autonomy and independence.
- Imprescriptibility
- Criminal Offenses under NCB proceeds.
- Retrospective Legislation.
- Judgment effects.

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NCB advantages and effectiveness

- Criminal sentence is not required.
- Rules of evidence.
- Best practices.


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**INTERNATIONAL
COOPERATION. STRATEGIES
FOR EFFECTIVE ASSET
RECOVERY**

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1. ASSET RECOVERY

- What does it refer to?
- It seems easy...
- It is not that fast.
- Legal Ways.



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2. INTERNATIONAL JUDICIAL COOPERATION

- Four Key Principles.
- Strategic Planning.
- ¿How does the cooperation phenomenon operate in the practice?



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3. BARRIERS FOR ASSET RECOVERY

1. General, institutional issues and others.
2. Legal and requirements that delay legal assistance.
3. Operational as communication matters.



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4. RECOMMENDATIONS

- General
- Public Policy




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5. FULFILLMENT OF INTERNATIONAL CONVENTIONS ON ASSET RECOVERY

- United Nations Convention against Transnational Organized Crime.
- United Nations Convention against Corruption.



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6. GOOD PRACTICES

- Institutional matters.
- Legal matters.
- Operational matters.

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