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Organization of American States	P. 202.458.3000 www.oas.org	Secretariat for Multidimensional Security
GROUP OF EXPERTS FOR THE CONTROL OF MONEY LAUNDERING SEPTEMBER 25-26, 2014 MONTEVIDEO, URUGUAY		OEA/Ser.L/XIV.4.39 CICAD/doc.8/14 24 September 2014 Original: Español
COMPLEMENTARY STUDY ON THE PROCEDURES AND/OR CRITERIA FOR INTERNATIONAL COOPERATION IN ASSET SHARING		

Complementary study on the procedures and/or criteria for international cooperation in asset sharing

INTRODUCTION

▣ **Mandate:**

Complementary study on the procedures and/or criteria for international cooperation in asset sharing XXXVII Meeting of GELAVEX, Brazil 2013.

▣ **Approved at the XXXVIII Meeting of GELAVEX, Washington, D.C. 2014 :**

Approval of the methodology for the development of the study, taking into account:

- The document "Mechanisms for sharing forfeited assets between countries"
- Proposal of the Technical Assistance Program, ES/CICAD

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.

Proposal for the technical assistance program

Promote the adoption of mechanisms for the sharing of forfeited assets between countries that participate and collaborate in the identification of assets and their recovery.

Investigation of the mutual evaluations that identify the problems of countries in international cooperation for asset recovery

Elaboration of a document of framework provisions, standards and/or good practices on international cooperation for asset recovery.

METHODOLOGY

1. Contribute to the efforts of the Executive Secretariat (ES/CICAD) in the development of the Technical Assistance Program, updating the information of the countries by means of a thorough questionnaire developed by SE/CICAD and the sub working group.
2. Update the "Mechanisms for the Sharing Seized Assets between Countries" with the information on the countries from the responses to the questionnaire and generate recommendations for sharing assets between States.
3. Consider the updated document as a fundamental input for the Secretariat in the development of related programs
4. That the international cooperation procedures and criteria for asset sharing be produced by the program.

Questionnaire

1. Collect updated and specific information
2. The countries have signed treaties in which they agree on the necessity of creating agreements for the repatriation of assets and the proceeds of crime between the State parties that include safeguarding the rights of third parties in these cases.
3. The document has information on the following countries: Argentina, Canada, Costa Rica, Guatemala, Jamaica, Mexico, Panama, Paraguay, Peru, United States, Venezuela, Spain, Columbia, Brazil, Uruguay, Dominican Republic, Haiti, Chile and Suriname

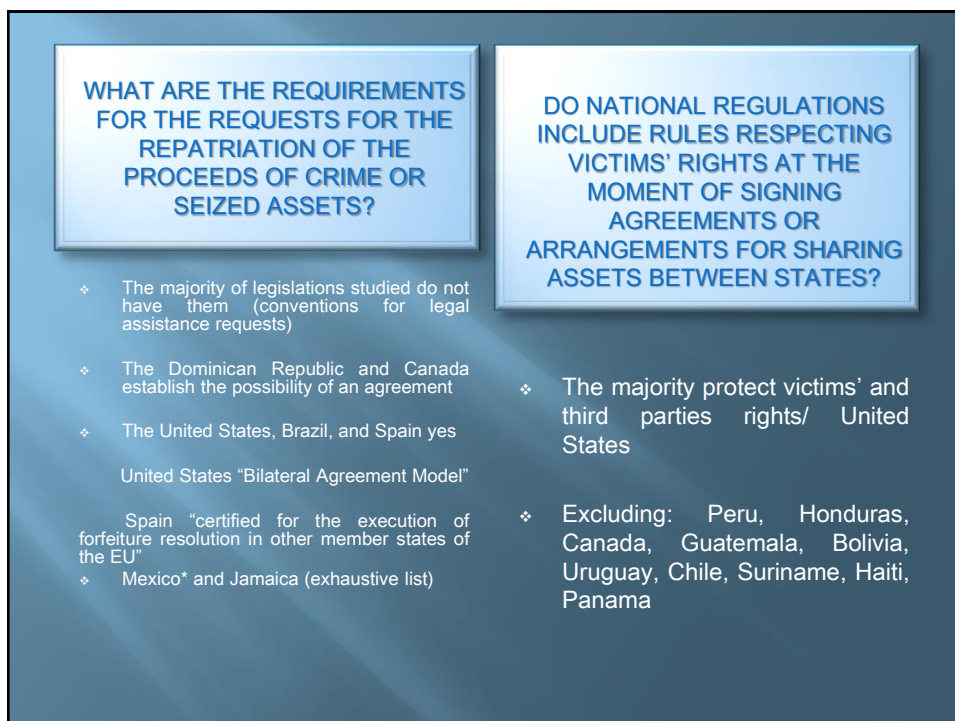
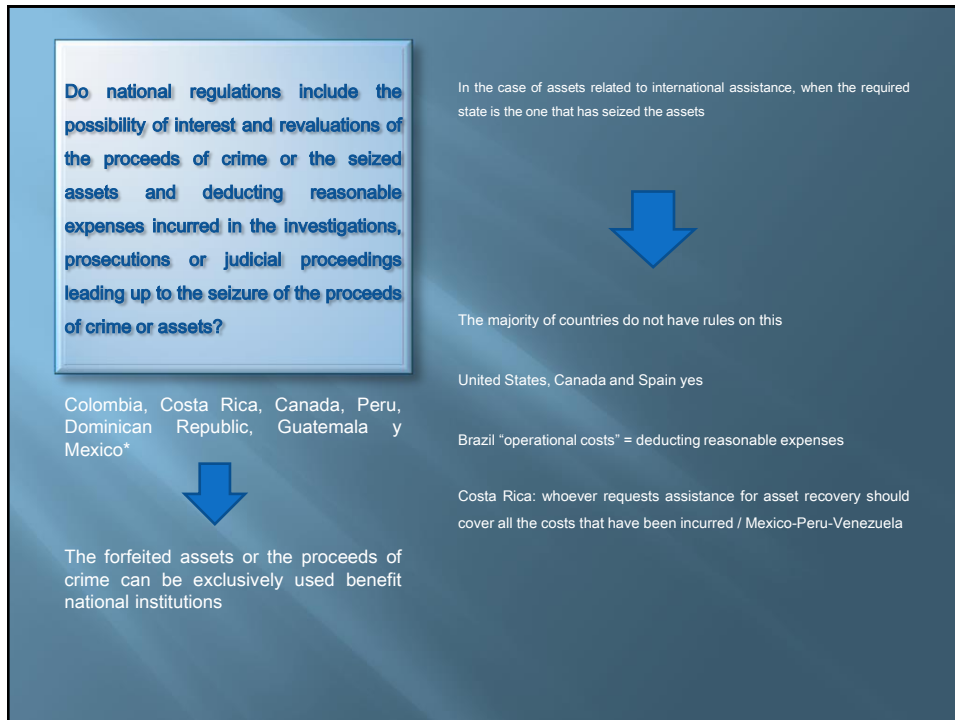
Does your country have standards, within your internal legal legislation, that establish procedures for the of sharing forfeited assets with other states?

- ▣ All the legislations have rules that offer the greatest assistance possible to other countries in the matter.
- ▣ Argentina, Brazil, Venezuela and Jamaica have general regulations that establish the possibility of sharing assets between States. Situation in Mexico and Peru.
- ▣ The United States, Canada, and Spain (this last one, in relation to the Member States of the European Union) do have regulations that establish procedures for the sharing of assets.
- ▣ Countries that do not have a specific procedures for the sharing of seized assets with other countries: Paraguay, Dominican Republic, Costa Rica, Guatemala, Honduras, Mexico, Peru, El Salvador, Bolivia, Uruguay, Chile, Suriname, Haiti and Panama.

If you responded affirmatively to the first question: what specific internal legislative regulations of your country define percentages and prerequisites for circumstances in which the forfeited assets can be or should be shared?

- | | |
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| <ul style="list-style-type: none"> ▣ No response:

Jamaica, Paraguay, Dominican Republic, Venezuela, Argentina, Peru, Colombia, Guatemala, Honduras, Costa Rica y Mexico (only in case of assets in <i>extinción de dominio</i>). ▣ Brazil has a regulation that considers a percentage for sharing. | <ul style="list-style-type: none"> ▣ States that establish percentages, prerequisites or circumstances: <ul style="list-style-type: none"> ▪ The United States: establishes a three level structure ▪ Canada ▪ Spain |
|--|---|



**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 y 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

RECOMMENDATIONS

- That the countries find themselves in the position to cooperate in cases in which they receive requests for sharing the proceeds of crime or forfeited assets with other countries.
- In principle, the countries should commit to cooperating in a free manner in international asset recovery cases.
- To recognize the importance of establishing framework standards that serve as a reference.
- That the countries incorporate regulations in their legislation that establish procedures for sharing forfeited assets with other countries.

RECOMMENDATIONS

- The existence of two main assumptions is recognized
 - That the requesting country is not interested in the assets or proceeds of crime (then they are not the object of an investigation, a lawsuit is not started in which these are linked and/or have not been forfeited in this country) and the requesting country has begun a lawsuit on assets and/or seized them and needs to recover them.
Cooperation and Free Negotiation
 - That the requesting country is interested in the assets or products of the crime and the requesting state has initiated a lawsuit on these assets and/or has seized them and needs to recover them.
Limitation/Possibility of Agreements
- That the negotiation is performed through bilateral agreements for specific cases.

RECOMENDACIONES

- That the agreement contemplates the commitments of both the requesting and requested country.
- That in trying to share the assets the destination country should have participated – directly or indirectly- in the seizure or forfeiture of the specific asset to be shared.
- It is important to define some general requirements that the requests for the repatriation of the proceeds of crime or the seized assets should contain, like a guide document (that includes the documentation that should be attached).
- It is recommended that the judicial authority of each country in charge of receiving assistance for carrying out investigation proceedings or the execution of the sentence of seizure, make the corresponding liquidations and that this liquidation be attached to the agreement for the sharing of assets or proceeds of crime between States. Also, in the case of procedures related to the management or maintenance of the assets these authorities can coordinate with the organism that is charged with the asset for it to make the appropriate liquidation.

RECOMMENDATIONS

- To establish how to transfer the assets or proceeds of crime in the case of which the disposal of assets is necessary because of the impossibility of transfer, giving the relevant authorities so that the offices charged with administering the assets in the requested country arrange the proceedings for the sale or disposal at the request of the requesting country.
- It is recommended that the agreements signed by the countries include conditions that safeguard and respect victims' and third party rights.
- It is recommended that the central authorities be used for the transmission and execution of the requests of sharing assets between countries and that communications and proximity exist between them and the judicial and administrations authorities of the member states.
- That the legal capacity for signing agreements between states be delegated to central authorities instead of high authorities which can slow the process.

THANK YOU VERY MUCH

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