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XLIX (VIRTUAL) MEETING OF THE GROUP OF EXPERTS FOR THE CONTROL OF MONEY LAUNDERING

**STUDY OF TYPOLOGIES IN CASES OF MONEY LAUNDERING DERIVED FROM
SMUGGLING. STUDY MADE BY CHILE AND GUATEMALA**

**SUB-WORKING GROUP ON FINANCIAL INTELLIGENCE UNITS AND
CRIMINAL INVESTIGATION AGENCIES**

NOVEMBER 10TH, 2020



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BACKGROUND

The “Study of typologies in cases of money laundering derived from smuggling” is a general nature document prepared by the Group of Experts for the Control of Money Laundering – GELAVEX. It is the result of the study of several cases that generate new money laundering typologies, and the analysis of Mutual Evaluation Reports of all jurisdictions that are part of the GELAVEX in the Americas.

The document contains general information on the fight against smuggling and money laundering; structured in a comparative study of the state of smuggling as criminal offence in the region.



OBJETIVES.

General objective

Carry out a study of typologies of Money Laundering derived from smuggling; commissioned by the Group of Experts for the Control of Money Laundering (GELAVEX) at their 2019 plenary session in Colombia.

Specific objectives

- To ascertain what types of smuggling are established under money laundering regulations as predicate offenses in the countries of the region.
- To identify, through studies carried out by the OAS and FATF, the typologies of money laundering with a predicate offense of smuggling in the countries of the region.
- To analyze instruments drafted by the countries of the region in order to identify money laundering typologies with smuggling as a predicate offense and potential smuggling routes.



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METHODOLOGY

- a) **Guatemala and Chile.** Identify what types of smuggling are a predicate offense of money laundering; according to each country legislation.
- b) **Regarding the countries of Central America and the Caribbean (Insular America).** Guatemala identifies what types of smuggling are a predicate offense of money laundering, according to each legislation of Central America and the Caribbean countries. It also analyses studies and reports from the OAS and FATF, such as reports of Mutual Evaluation; in order to collect information on typologies of money laundering derived from smuggling, and identify potential smuggling routes;
- c) **Regarding the countries of South America.** Chile will identify what types of smuggling are a predicate offense of money laundering; according to each South America country legislation. It will also analyze studies and reports from the OAS and FATF, in order to collect information on typologies of money laundering derived from smuggling. In addition, comparative tables are elaborated with all information collected to reach conclusions.



INVESTIGATION RESULTS

The results of this study will be focused on two parts:

- Part 1: Identify smuggling typologies noticed in the analysis of the FATF Mutual Evaluation reports; and the main routes in the region identified from different sources, as well as the new ones identified through this study.
- Part 2: Answer the questions about whether smuggling is a predicate offense of money laundering within the countries studied; and what type of smuggling is a preceding offense of money laundering.



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Part 1: EXAMPLES OF SMUGGLING TYPOLOGIES IN THE REGION

Bulk cash smuggling by air, sea and land;
Use of Shell Companies and false billing;
Simulation of personal loans to grant credit to obtain vehicles from importation;
Transportation of cash at the border, in hidden compartments within vehicles;
Drug trafficking requested by foreigners;
Drugs trafficking and arms smuggling;
Goods smuggling and illegal cargo transfer;
Use of shell companies for international trade, mainly oil;
Drug trafficking and corruption for tax evasion and smuggling;
Human trafficking and organ trafficking;
Smuggling of goods;
Trafficking of Weapons;
Fishing smuggling and other environmental crimes;
Smuggling of fauna and flora;
Illicit importation of vehicles;
Tax evasion.



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ROUTES USED FOR MONEY LAUNDERING AS A PREDICATE OFFENCE OF SMUGGLING WITHIN THE REGION

Drug trafficking routes from Latin America to Europe and North America: using Central American or Caribbean countries as a corridor; by air, sea and land.

The route of cannabis and cocaine, using airports, coming from South America to North America.





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ROUTES USED FOR MONEY LAUNDERING AS A PREDICATE OFFENSE OF SMUGGLING WITHIN THE REGION

Smuggling of cash from North America to South America, using countries of Central America or the Caribbean as corridors or transit points, by air, sea or land; as it is indicated in the respective table.





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ROUTES USED FOR MONEY LAUNDERING AS A PREDICATE OFFENSE OF SMUGGLING WITHIN THE REGION

Bulk Cash Smuggling to North America from South America, using Central American or Caribbean countries as corridors or transit points, by air, sea or land; as it is indicated in the respective table.





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NEW TYPOLOGIES OF SMUGGLING IN THE REGION

They can be found within the investigation report and its executive summary.

1. Money laundering through international trade using foreign currency exchange;
2. Smuggling of cement and money laundering, using debit cards with regional coverage;
3. Smuggling of oil, meat and leather from swine livestock and money laundering, using, mostly, ATM services;
4. Money laundering from smuggling of alleged buttons and sewing supplies, using false import declarations.



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Part 2: CRIMINALIZATION OF SMUGGLING AND CUSTOMS FRAUD

This result is more complex; due to the disparity of criteria found in the legislations. Although a minority of countries clearly distinguish the criminal offences of smuggling from customs fraud, and divide it into concealment, deception or other hypotheses – such as violence or intimidation- most countries indistinctly typify both behaviors.



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INVESTIGATION RESULTS: CRIMINALIZATION OF SMUGGLING AND CUSTOMS FRAUD.

CRITERIA IDENTIFIED IN LEGISLATIONS:

- First, we find several legislations that clearly distinguish both criminal offenses.
- Second, we identify **general clauses** that apparently would incorporate those crimes as one, which creates a determination issue.
- Other legislations seem to distinguish between both offenses at the beginning, but then they **attribute to the crime of smuggling a function of protecting public finances that in general does not seem suitable**.
- In other cases, **customs fraud crimes are separated from this specific protection function**, which usually have this protection function according to the dominant doctrine.



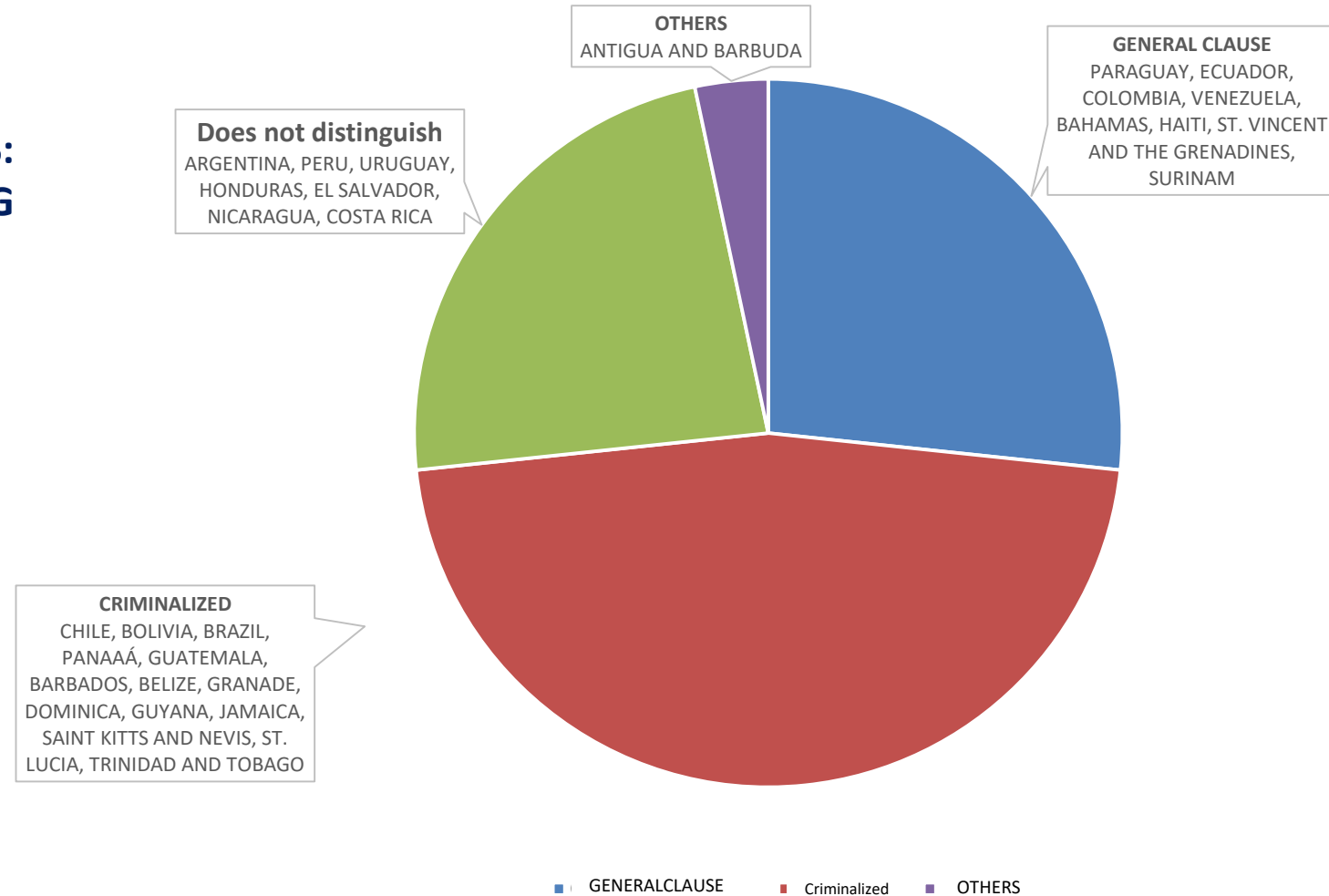
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IDENTIFIED CRITERIA FOR SMUGGLING

INVESTIGATION CRIMINALIZATION OF AND CUSTOMS FRAUD

RESULTS: SMUGGLING





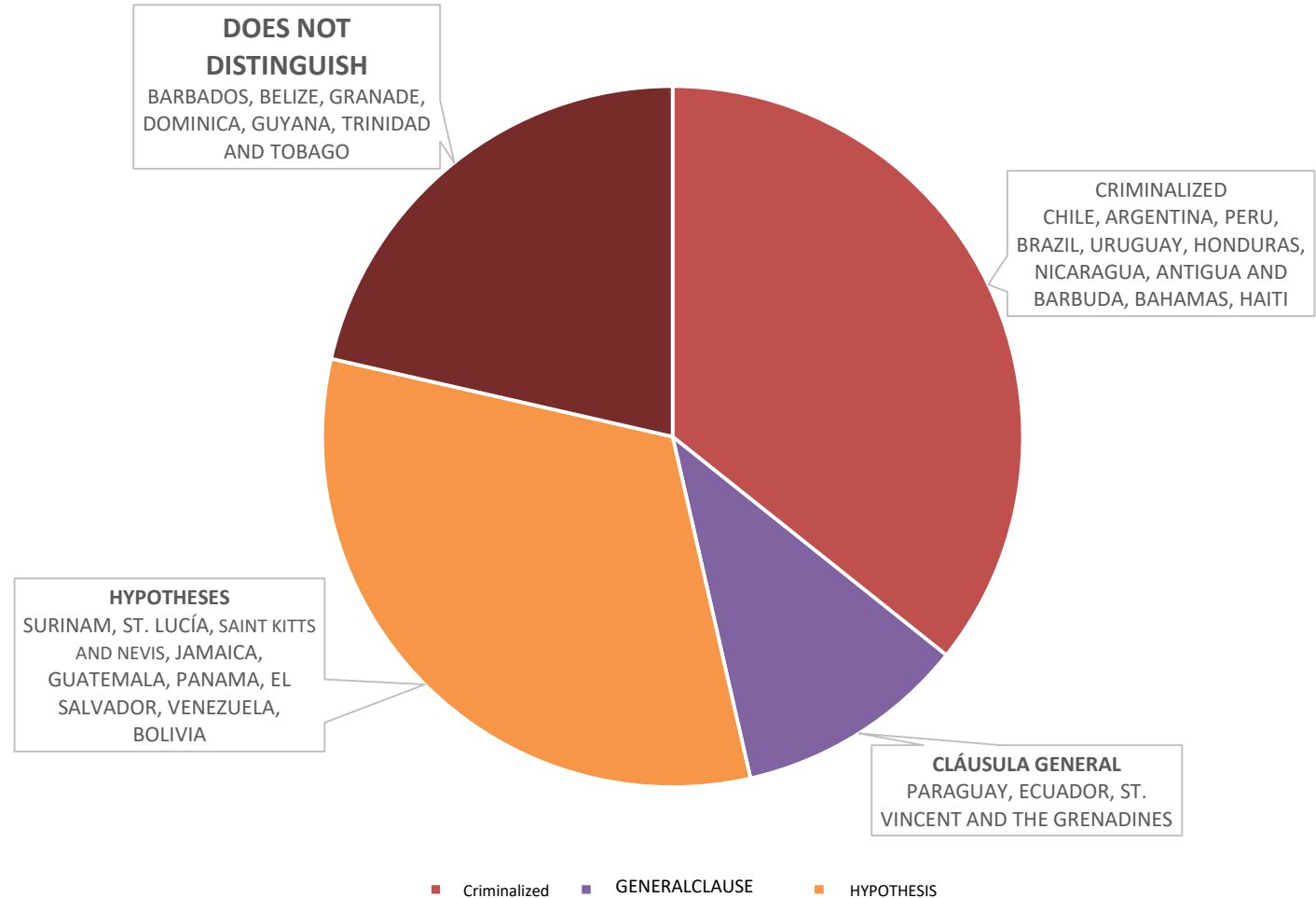
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INVESTIGATION RESULTS: CRIMINALIZATION OF SMUGGLING AND CUSTOMS FRAUD

Defining the crime of customs fraud, we identify different criteria. There are countries that establish a general clause; in others it is criminalized; in other cases it is not possible to distinguish it; and there are cases that it is established in several specific hypotheses – for example, concealment through maritime transport and bribery.

IDENTIFIED CRITERIA FOR CUSTOMS FRAUD





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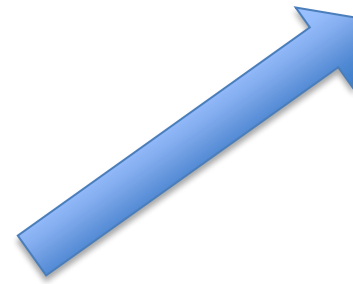
INVESTIGATION RESULTS: CRIMINALIZATION OF SMUGGLING AND CUSTOMS FRAUD

OTHER IDENTIFIED TRENDS:

- **Expand the criminal offense** to the hypotheses that borders are not crossed, but goods are traded or even possessed - goods whose extraction or insertion is prohibited- extending the criminalization field of application to cases that correspond to reception or money laundering.
- **Particular circumstances of different national markets** affect the classification of these crimes.

Examples:

- **Caribbean countries**, where concealment by means of transport, mainly maritime, is a legal concern
- **Colombia** with oil smuggling.
- **El Salvador** and liquefied gas that is subsidized by the State.
- **Brazil** is concerned for the species that are exported but then those are reinserted into the country.





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INVESTIGATION RESULTS: CRIMINALIZATION OF SMUGGLING AND CUSTOMS FRAUD

PROTECTION OF THE PUBLIC FINANCE:

Notwithstanding the foregoing; the most common trend of all legislations studied is to protect public finances; emphasizing the importance to guarantee the payment of cross-border taxes.



Most legislations have economic and trade interests in customs regulations



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INVESTIGATION RESULTS: CRIMINALIZATION OF SMUGGLING AND CUSTOMS FRAUD

PROTECTION OF THE PUBLIC FINANCE:

All above mentioned represent an issue; especially **regarding to goods that would never pay taxes**; such as that goods unconditionally prohibited for trading. Some legal systems remedy this problem by making an express reference to the fact that the existence of damage to public finances, is not relevant to the configuration of the crime.

Therefore, it has cause that smuggling, that has different foundations of protection, is not either delimited or reinforced within regional legislations. This may be remedied with special regulations that protect the population from entry or extraction of products that are dangerous to public health, the environment and other interests worthy of protection.

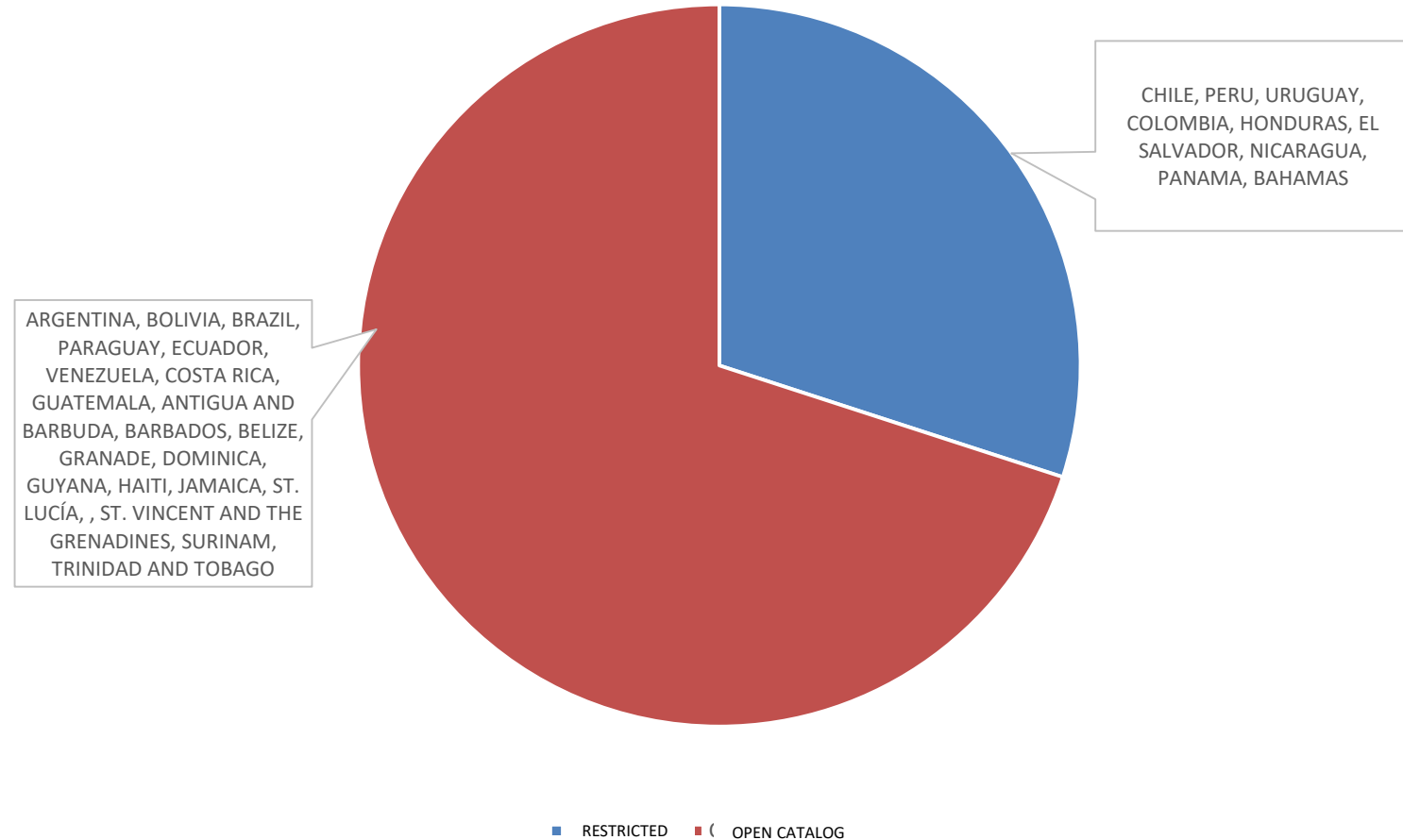


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INVESTIGATION RESULTS: CRIMINALIZATION OF SMUGGLING AND CUSTOMS FRAUD

It is easy to identify two categories: those countries that adopts a restrictive catalog of crimes that have predicate of money laundering crimes; and the other countries that adopt an open rule model





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INVESTIGATION RESULTS: CRIMINALIZATION OF SMUGGLING AND CUSTOMS FRAUD

- A **common delimitation that we found is the minimum amount**. It usually requires that the value of illicit goods have a minimum amount established by law, thus that crime can be considered as money laundering.
- A final relevant issue to address regarding those legislations that have established a restrictive **catalog on the matter, is focused on what specific expression is used to incorporate these crimes as predicated offenses of money laundering**. Thus, some use the term “smuggling” without any distinction, what is likely to exclude customs fraud. Others use a broader expression “customs offenses”, that includes all behavior, and some of them make the difference between “smuggling” and “customs fraud”.



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INVESTIGATION RESULTS: CRIMINALIZATION OF SMUGGLING AND CUSTOMS FRAUD

In **conclusion**, differences between smuggling and customs fraud offenses are not clearly identified within the OAS countries legislations either concealment or deception. Additionally, except for some cases already mentioned- we cannot affirm that all legislations recognize the commission of a money laundering as a predicate offense of custom crimes. This seems to be a ubiquitous trending within the legislations analyzed.

All above must be bearing in mind for legal argumentation, separating the base crime and money laundering offenses.

Typology reports are only guidelines that the FIU and UAF identify as evidence of conduct for criminal investigations lines lines, that, when are confirmed by the authority, will be contrasted with the base offense, but these typology reports are not probative means to be provided to the process.



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¡Gracias!