FORFEITURE
A REGIONAL VIEW
UNODC
Forfeiture
- A regional view-

Legal Assistance Programme for Latin America and the Caribbean (LAPLAC)
Why is necessary to adopt measures on assets?

• To combat the "reason to be" of organized crime: Their financial and economic structure.

• To avoid the appearance of new criminal groups.

• To give property a social function according with the constitution of the countries.

• Because the traditional legal tools are not sufficient.
What consequences derive from illicit richness?

- Underground economy that blocks down progress of the countries.
- Corruption, violence and increase of crime.
- Change of cultural and social patterns in order to follow negative models.
- Disloyal competence, less equity and poverty.
## T.O.C global context

<table>
<thead>
<tr>
<th>TRANSNATIONAL ORGANIZED CRIME PROBLEM</th>
<th>ESTIMATED EXTENT</th>
<th>ESTIMATED ANNUAL VALUE (US$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>TRAFFICKING IN PERSONS TO EUROPE FOR SEXUAL EXPLOITATION</td>
<td>70,000 victims (annual) 140,000 victims (stock)</td>
<td>3 billion (stock)</td>
</tr>
<tr>
<td>SMUGGLING OF MIGRANTS FROM LATIN AMERICA TO NORTH AMERICA</td>
<td>3 million entries (annual)</td>
<td>6.6 billion (income for smugglers)</td>
</tr>
<tr>
<td>FROM AFRICA TO EUROPE</td>
<td>55,000 migrants (annual)</td>
<td>150 million (income for smugglers)</td>
</tr>
<tr>
<td>COCAINE FROM THE ANDEAN REGION TO NORTH AMERICA</td>
<td>309 tons (depart) 196 tons (at destination)</td>
<td>38 billion (at destination)</td>
</tr>
<tr>
<td>FROM THE ANDEAN REGION TO EUROPE</td>
<td>212 tons (depart) 124 tons (at destination)</td>
<td>34 billion (at destination)</td>
</tr>
<tr>
<td>HEROIN FROM AFGHANISTAN TO THE RUSSIAN FEDERATION</td>
<td>95 tons (depart) 70 tons (at destination)</td>
<td>13 billion (at destination)</td>
</tr>
<tr>
<td>FROM AFGHANISTAN TO EUROPE (EXCL. RUSSIA)</td>
<td>140 tons (depart) 87 tons (at destination)</td>
<td>20 billion (at destination)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TRAFFICKING OF FIREARMS</th>
<th>FROM THE UNITED STATES TO MEXICO</th>
<th>20,000 weapons, mostly handguns</th>
<th>20 million</th>
</tr>
</thead>
<tbody>
<tr>
<td>FROM EASTERN EUROPE TO THE WORLD</td>
<td>At least 40,000 Kalashnikovs in 2007/2008</td>
<td>At least 33 million (in 2007/2008 at destination)</td>
<td></td>
</tr>
<tr>
<td>TRAFFICKING OF NATURAL RESOURCES</td>
<td>WILDLIFE FROM AFRICA AND SOUTHEAST ASIA TO ASIA</td>
<td>Elephant ivory: 75 tons Rhino horn: 800 kg Tiger parts: Perhaps 150 tskins and about 1,500 kg of tiger bones</td>
<td>Elephant ivory: 62 million Rhino horn: 8 million Tiger parts: 5 million</td>
</tr>
<tr>
<td></td>
<td>TIMBER FROM SOUTH-EAST ASIA TO THE EUROPEAN UNION AND ASIA</td>
<td>Perhaps 10 million cubic meters</td>
<td>3.5 billion (at destination)</td>
</tr>
<tr>
<td>PRODUCT COUNTERFEITING</td>
<td>CONSUMER GOODS FROM ASIA TO EUROPE</td>
<td>Some two billion articles per year</td>
<td>8.2 billion (at destination)</td>
</tr>
<tr>
<td></td>
<td>MEDICINE FROM ASIA TO SOUTHEAST ASIA AND AFRICA</td>
<td>Billions of dose units</td>
<td>1.6 billion (at destination)</td>
</tr>
<tr>
<td>MARITIME PIRACY</td>
<td>OFF THE COAST OF SOMALIA</td>
<td>217 attacks in 2009</td>
<td>100 million</td>
</tr>
<tr>
<td>CYBERCRIME</td>
<td>IDENTITY THEFT</td>
<td>Around 1.5 million victims</td>
<td>1 billion</td>
</tr>
<tr>
<td></td>
<td>CHILD PORNOGRAPHY</td>
<td>Perhaps 50,000 new images generated annually</td>
<td>250 million</td>
</tr>
</tbody>
</table>
According with UNODC-Vienna report (2.011): “Estimating illicit financial flows resulting from drug trafficking and other transnational organized crimes”:

- Drug trafficking is the most lucrative transnational organized crime in the world. Specifically, cocaine trafficking generates more proceeds.

- 62% of total revenue from cocaine trafficking are available to be reintegrated into the economy and only 38% is reinvested in the illicit organization.

- Overall percentage of confiscation: less than 1%
Forms of forfeiture

Traditional confiscation

Non convicted based confiscation

Mixed way of forfeiture
Regional scope
- Other complementary forms of confiscation/forfeiture -

- Decomiso sin condena
- Comiso ampliado
- Perdida de dominio
- Capitales emergentes
- Extinción de dominio
- Privación definitiva de dominio
Obstacles for an effective system of forfeiture

- Death of the investigated person.
- Legal prohibition to investigate in absence of the accused person.
- Immunities regime.
- Assets on behalf of legal persons (other kinds of societies).
- Prescription of prosecution and / or punishment.
- Real state and other property registered on behalf of a minor.
- Assets in another jurisdiction
Procedures of forfeiture

CRIMINAL OFFENSE → INVESTIGATION → JUDGEMENT

PROPERTY → INVESTIGATION → TRIAL → FORFEITURE DECLARATION
Some relevant matters

• International context.

• Constitutional scope.

• Ways to acquiring property.

• Internal sources of information – Search of evidence-

• A look to variables of the sectors of the economy.

• Commercial practice about scope of good faith.

• System of management and disposal of property.
Constitutional justification for confiscation in its various forms

• Prevalence of general interest / common-interest.

• Constitutional protection of property acquired by legitimate ways.

• Social function of property.

• Right to work vs. disloyal competence.

• Right to equality.
Some issues to consider

- Analysis of possible rights affected. The justice must permit the forfeiture of all assets?

- Can the authorities abandon the pursuit of some kind of property?

- Is viable a negotiation on assets and property with the affected party in a forfeiture procedure? This way can legitimize illicit proceeds?

- It's a penalty? Depends if the property have an illicit origin or an illicit destination?

- Good faith. Simple or qualified?
Challenges to an effective confiscation system

- International cooperation with no consideration to the legal form or name of the forfeiture mechanism.

- Specialized officers.

- Investigation with economic approach. A change of paradigms in criminal investigation.

- Effective systems of: registration, tracking and location of assets.
! Thanks for your attention!

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