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

Secretariat for Multidimensional Security

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**FORFEITURE
A REGIONAL VIEW
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Oficina de las Naciones Unidas
contra la Droga y el Delito

Forfeiture - A regional view-

Legal Assistance Programme for Latin America and the Caribbean (LAPLAC)



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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.



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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

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



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



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According with UNODC-Vienna report (2.011):
“Estimating illicit financial flows resulting from drug trafficking and other transnational organized crimes”:

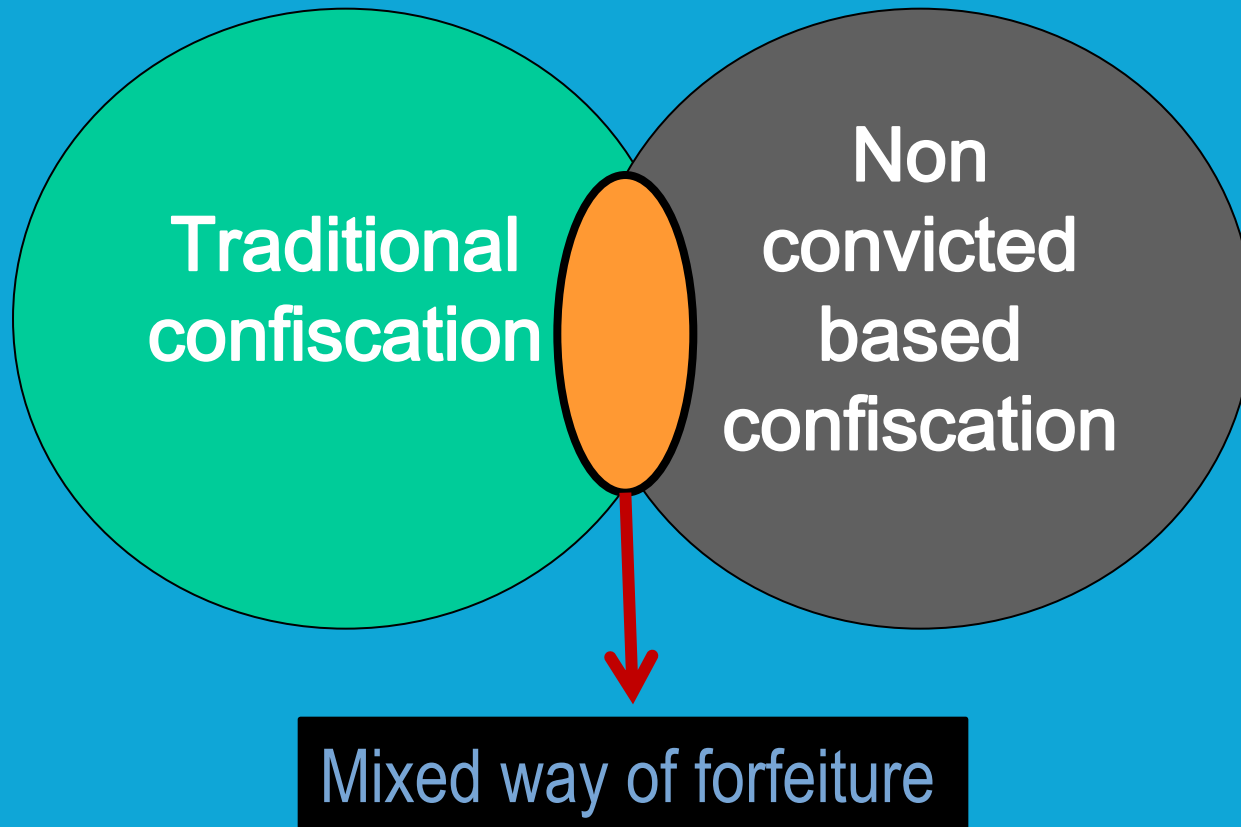
- Drug trafficking is the most lucrative transnational organized crime in the world. Specifically, cocaine trafficking generates more proceeds.
- 62% of total revenue from cocaine trafficking are available to be reintegrated into the economy and only 38% is reinvested in the illicit organization.
- Overall percentage of confiscation: less than 1%



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Forms of forfeiture





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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



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Obstacles for an effective system of forfeiture

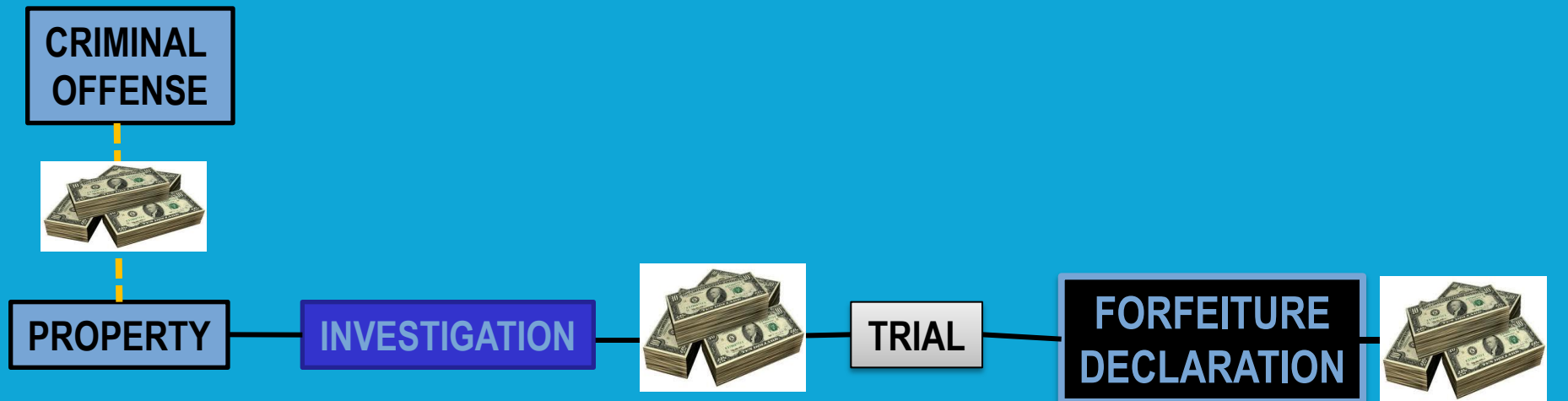
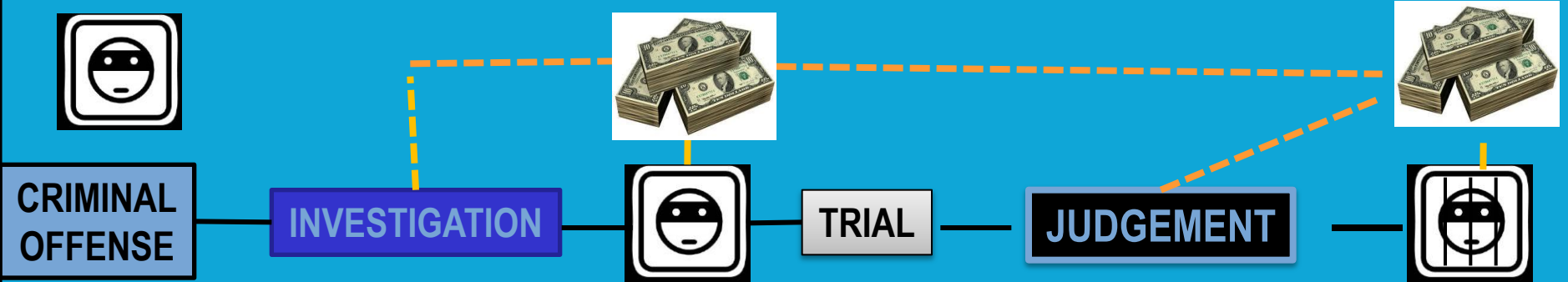
- Death of the investigated person.
- Legal prohibition to investigate in absence of the accused person.
- Immunities regime.
- Assets on behalf of legal persons (other kinds of societies).
- Prescription of prosecution and / or punishment.
- Real state and other property registered on behalf of a minor.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



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Procedures of forfeiture





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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.



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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.



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Somes 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?



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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.



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! Thanks for your attention!

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