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Secretariat for Multidimensional Security

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REGIONAL ASSESSMENT ON THE STATUS OF IMPLEMENTATION OF FORFEITURE LAWS IN OAS MEMBER STATES

REGIONAL ASSESSMENT ON THE STATUS OF IMPLEMENTATION OF FORFEITURE LAWS IN OAS MEMBER STATES

SUB-WORKING GROUP ON INTERNATIONAL COOPERATION AND FORFEITURE WASHINGTON DC 2016

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# Antecedents

Strategic Plan  
2015-2017  
Line of action

Promotion of the development of effective forfeiture laws and their effective implementation in Member States

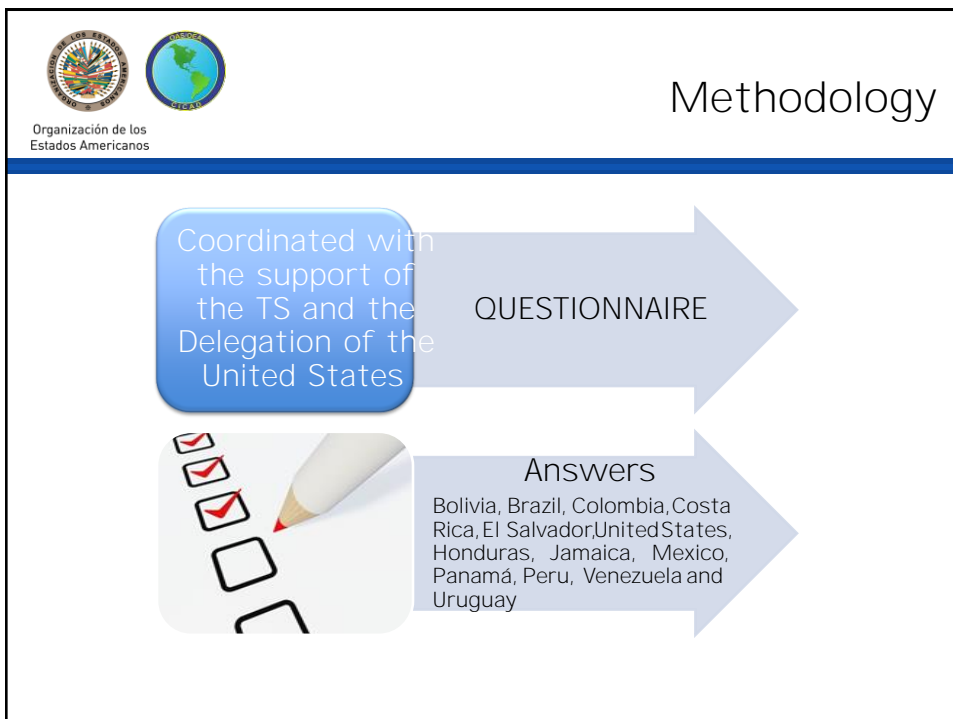
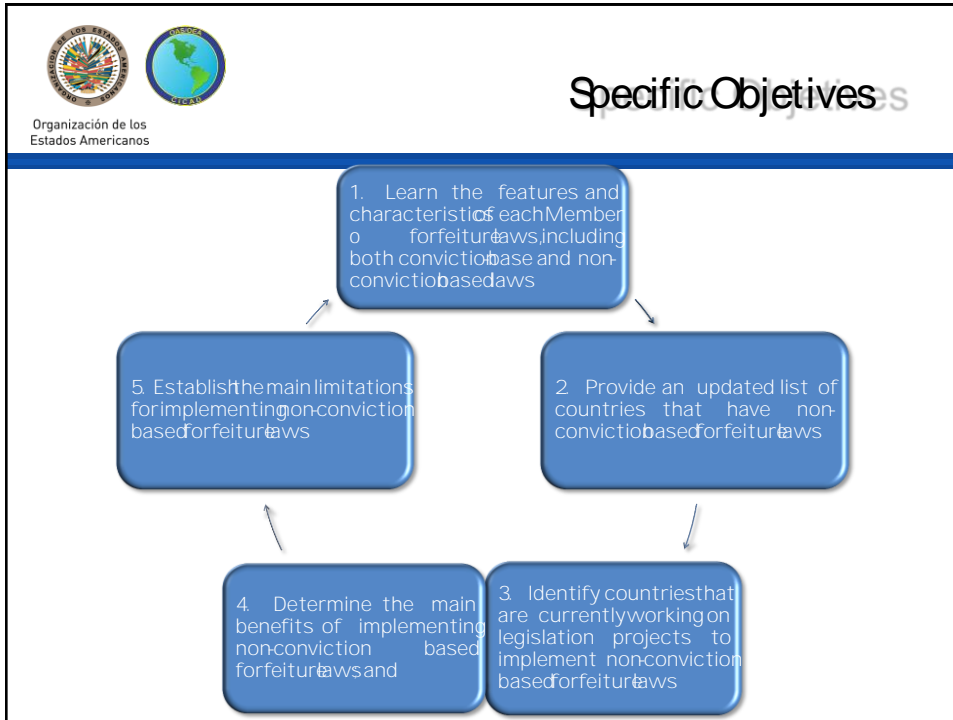


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*Identify the forfeiture laws included in the legislations of OAS Member States and determine their implementation status*

GENERAL OBJECTIVE

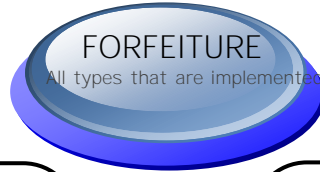
Identify the forfeiture laws included in the legislations of OAS Member States and determine their implementation status





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# ASSESSMENT



## Conviction based forfeiture

Traditional conviction based forfeiture, **“decomiso especial”, “decomiso de pleno derecho”, “decomiso ampliado”** y **“decomiso sin condena”**.



Nature and characteristics

## Non-conviction based forfeiture

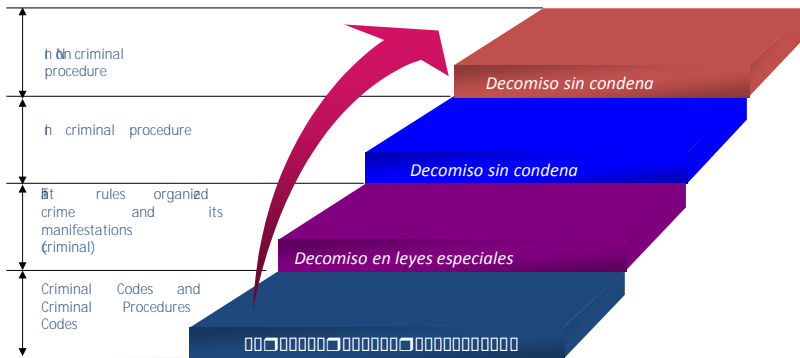
**“Extinció de dominio”, “pérdida de dominio”,** in rem forfeiture, **“decomiso sin condena”**.



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# Analysis of the answer provided by countries

## Forfeiture in the legislation of countries

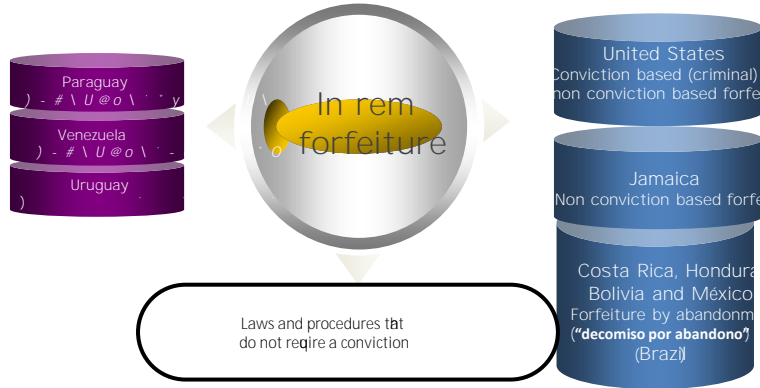




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# Analysis of the answers provided by countries

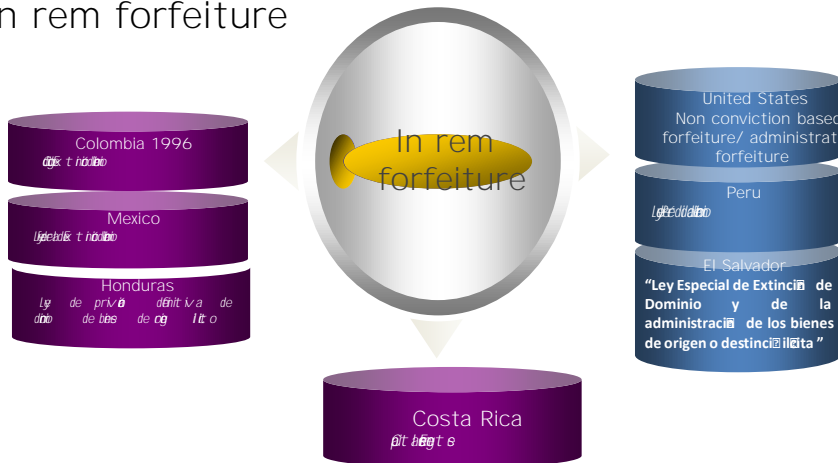
All countries count on laws that allow authorize the for  
Non conviction based forfeiture in criminal procedure



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# Analysis of the answers provided by countries

## In rem forfeiture



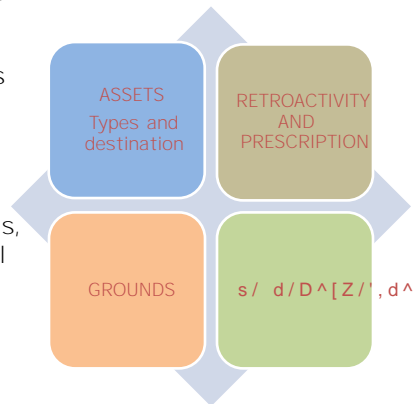


## “Extinción o pérdida de dominio ” COINCIDENCES AND DIFFERENCES

The action has a realistic character, patrimonial content and that it engenders any assets described in the grounds specified by the law, regardless of who possessor has acquired it, unless such person is a bona fide third party

Furthermore, the process “**extinción de dominio**” is considered autonomous, distinct and independent of criminal matters. In this case there is a specialized jurisdiction.

Costa Rica and Panama have a bill for “**extinción de dominio**”. (Bolivia)

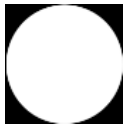


## Main benefits of in rem forfeiture (“**decomiso sin condena**”)

This figure is considered an effective resource for cases of fugitives from the law or absent people, especially in transit countries where the operation of foreign criminal organizations is very frequent

With this instrument, they are able to resolve the situation of assets that are seized indefinitely and project them for the benefit of the society, according to what is established in each national legislation, such as financing projects, programs of comprehensive prevention and repression of offenses of organized crime and terrorist financing.

It also deprives criminal organizations of their assets and thereby limits their possibilities to continue with their illegal activities



## Main benefits of in rem forfeiture in non criminal procedure ( "extinción de dominio" )

**Procedural benefits:** the process of "extinción de dominio" is more agile and advantageous than the "decomiso sin condena" in criminal court matters such as proving, once the standards are more demanding in criminal law. Moreover, the importance of the principle of dynamic burden of proof is valued. The accused is not obligated to prove its allegations, but it is imposed to the citizen the burden of proving its claims.

**Economic benefits:** the illicit resources acquired through "extinción de dominio" can be more easily transferred to the state budget and used to combat organized crime, financing of public policies to strengthen the justice sector, the social policies, social investment and rural development among others.


**Criminal policy:** the "extinción de dominio" is considered as a deterrent and persuasive tool. Moreover, it seeks to demonstrate that the State pursues any instrument or product derived from an illegal activity in order to discourage the commission of crimes. Moreover, it aims to effectively dismantle the sources used for funding illegal structures and their products. Hence, succeeding in combating organized crime.







## Main limitations of in rem forfeiture (in a criminal procedure)


States that count on "decomiso sin condena" in criminal procedure through legislative figures such as "decomiso por abandono", "decomiso especial", "decomiso automático" and "decomiso de pleno derecho", do not seem to find limitations to its implementation.

Costa Rica reported the need to «follow up with judicial cases in order to verify requirements and meet deadlines».

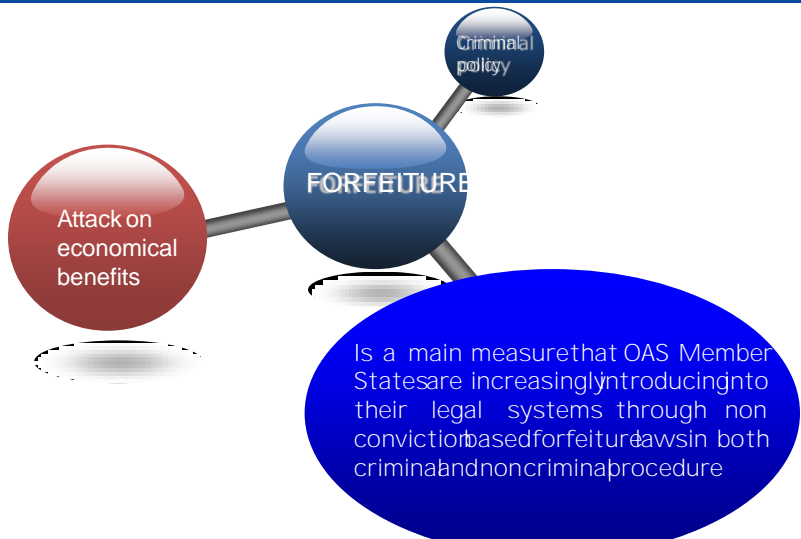


## Main limitations of in rem forfeiture (in a criminal procedure)

-  Colombia and El Salvador long duration in the process and judicial system with insufficient investigative capacity and resources (human, technical and financial ones)
-  Honduras need for specific training due to a misunderstanding regarding the theme
-  Jamaica: do not count on clear rules for the procedures related to this kind of laws
-  Peru: There is no proper registration system, (precautionary measure); There are no multilateral to facilitate international judicial cooperation for asset recovery; The process of "pérdida de dominio" is a residue of the criminal process; There is no special jurisdiction; There is a limitation period of 20 years for prescription.



## CONCLUSION



**FORFEITURE**

Attack on economical benefits

Criminal penalty

Is a main measure that OAS Member States are increasingly introducing into their legal systems through non conviction based forfeiture laws in both criminal and non criminal procedure



