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FOR THE CONTROL OF MONEY LAUNDERING**
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SECRETARIAT FOR MULTIDIMENSIONAL SECURITY

**Implementation status of laws on extinction of ownership in the region and
other forms of pre-conviction forfeiture**

Working Subgroup on Forfeiture and International Cooperation

Marcela Carvajal Barrionuevo, Costa Rica

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INTRODUCTION

The Department against Transnational Organized Crime (DTOC) of the Secretariat for Multidimensional Security (SMS) invited the permanent missions to the Organization of American States (OAS) to the fifty-fourth meeting of the Group of Experts for the Control of Money Laundering (GELAVEX).

The purpose of the meeting was to follow up on the work plan adopted at the fifty-third meeting of GELAVEX, held in 2023. The work plan assigned the Working Subgroup on Forfeiture and International Cooperation two tasks; the one that with which this progress report is concerned is as follows:

- Implementation status of laws on extinction of ownership in the region and other forms of pre-conviction forfeiture

It is clear to all countries that the resources available to organized crime groups give them advantages; and to be sure, the amount of assets that these organizations acquire, either to be laundered or as proceeds of crime, cannot be allowed to remain in their hands. The only way to really try to dismantle these criminal structures is through the dispossession of that ill-gotten wealth.

GENERAL OBJECTIVE

In 2016 GELAVEX carried out a "Regional Diagnosis on the Implementation Status of Confiscation Laws in OAS Member States." The objective of this effort is to update the information contained in that study. The intention was to include the observations of as many OAS member states as possible on the effectiveness and benefits of these laws and their rationale for their reform. It was considered important that countries identify obstacles they have encountered in the introduction or implementation of such laws.

METHODOLOGY

The results compiled in the 2016 Diagnosis were used as a basis. The answers of the small number of member states that collaborated by responding to the questionnaire circulated were also considered.

BACKGROUND

The Regional Diagnosis on the Implementation Status of Confiscation Laws in OAS Member States, approved by GELAVEX, identified the following variables in the case of criminal asset forfeiture:

- Traditional criminal asset forfeiture
- Special asset forfeiture
- Ipso jure forfeiture
- Expanded asset forfeiture

Regarding non-criminal asset forfeiture, the following were identified:

- Extinction of ownership
- Loss of ownership
- In rem forfeiture
- Pre-conviction forfeiture, which was indicated in the Diagnosis to be potentially criminal or non-criminal nature.

These results were obtained from information provided by 14 countries: Bolivia, Brazil, Colombia, Costa Rica, El Salvador, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, the United States, Uruguay, and Venezuela.

The following table provides the results:

BOLIVIA	Bolivian Criminal Code, elevated to the status of law on March 10, 1997, Law No. 1768		
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BRAZIL	Decree-Law 3,240 - Harm to the Treasury, May 8, 1941// Decree-Law 3,689 - Code of Criminal Procedure, October 3, 1941// Law 9,613 - Law on Money Laundering Law, March 3, 1998 // Law 11,343 - Anti-Drug Law, August 23, 2006	Law 6,204 - Law on Intervention and Extrajudicial Liquidation of Financial Institutions, March 13, 1974// Law 8,112 - Law on Administrative Disciplinary Procedures, December 11, 1990// Law 8,429 - Law of Civil Procedure in Cases of Administrative Corruption, June 2, 1992// Law 8.443 - Law on Enforcement of Decisions in the Special Evaluation of Public Accounts, July 16, 1992// Law 12,846 - Law on Administrative and Civil Liability of Legal Entities for Acts against the Public Administration, August 1, 2013// Law 13,105 - Civil Procedural Code March 16, 2015// Law 13,105 - Code of Civil Procedure, March 16, 2015//	Code of Criminal Procedure, Article 366, Suspension of criminal proceedings due to absence: the case is sent to a civil court for trial in absentia
COLOMBIA	Law 599 of 2000, Criminal Code, effective July 1, 2001 // Law 906 of August 31, 2004, Code of Criminal Procedure, effective January 1, 2005.	Law 793 of 2002, repealing Law 333 of 1996 and establishing rules governing extinction of ownership, December 27, 2002 (This law was repealed with the entry into force of the Code of Extinction of Ownership, excluding proceedings instituted while the law was still in force; see Art. 217 of Law 1708) // Law 1708 of 2014, Code of Extinction of Ownership, July 21, 2014	

COSTA RICA	Criminal Code // Law on Distribution of Confiscated or Forfeited Assets, No. 6106, 1977 // Law No. 8204 "Law on narcotics, psychotropic substances, illegal drugs, related activities, money laundering, and terrorism financing, as amended," comprehensively reforming Law No. 7786, which had entered into force on April 30, 1998. Law No. 8204 of January 11, 2002 // Law no. 8754, Law against Organized Crime, in force since July 24, 2009.	Law No. 8754, Law against Organized Crime, in force since July 24, 2009. Emerging capital (non-criminal)	In Laws Nos. 8204 and 8754. Forfeiture by abandonment (criminal)
EL SALVADOR	Criminal Code, April 20, 1998// Code of Criminal Procedure, November 1, 2010// Law Regulating Drug-Related Activities, November 15, 2003 // Special Law against Acts of Terrorism, October 16, 2006	Special Law on Extinction of Ownership and Administration of Goods of Illicit Origin or Destination, December 28, 2013	
UNITED STATES	United States Code (USC), sections dating back to 1984. Some paragraphs in Chapter 18 (§ 981, § 982, § 1963, §§ 2253 and 2254; Ch. 21 §§ 853 and 881; Ch. 26 § 5872; and Ch. 31 § 5332 and § 5317.	Section 18 (§ 981, Non-conviction based forfeiture; § 982, Criminal and non-conviction based forfeiture of firearms; §§ 2253 and 2254, Criminal and non-conviction based forfeiture for child pornography), Section 21 (§§ 853 and 881, Criminal and non-conviction based forfeiture for drug-related offenses), Section 26 (§ 5872, Criminal and non-conviction based forfeiture of firearms), and Section 31 (§ 5332, Criminal and non-conviction based forfeiture for money smuggling; § 5317, Criminal and non-conviction based forfeiture for Bank Secrecy Act reporting and data maintenance violations)	Code of Federal Regulations (CFR), Title 15, Section 904.504, Administrative forfeiture proceedings

HONDURAS	Criminal Code, Decree 144-83 // Anti-Money Laundering Law, May 1, 2015	Law on the Permanent Deprivation of Ownership of Ill-gotten Assets July 6, 2010	
JAMAICA	Proceeds of Crime Act (POCA), 2007 section 5.i, May 30, 2007	POCA, 2007 sections 57, 58 and 79, May 30, 2007	
MEXICO	Political Constitution of the United Mexican States, May 1, 1917 // National Code of Criminal Procedure, March 5, 2014, in force nationwide as of June 18, 1931 // Federal Criminal Code, September 17, 1931.	Federal Law on Extinction of Ownership, governing the application of Article 22 of the Political Constitution of the United Mexican States, as of August 29, 2009	
PANAMA	Law 23 of 1986 on Drug-Related Crimes, as amended, December 30, 1986 // as amended, Law No. 57 of September 17, 2013	Law 23 of 1986 on Drug-Related Crimes, as amended, December 30, 1986 // as amended, Law No. 57 of September 17, 2013	
PARAGUAY	Law No. 1160, Paraguayan Criminal Code, 1997//; Law No. 1881, amending Law No. 1340/88 which represses illicit trafficking in narcotics and dangerous drugs, 2002// Law No. 2422, Customs Code, 2004// Law No. 4036, on firearms, their parts and components, ammunition, explosives, accessories and related materials, 2010 // Law No. 4575, establishing a special procedure for the application of subsequent confiscation orders and autonomous confiscation orders, 2011	Law No. 1160, Paraguayan Criminal Code, 1997, Article 96, as amended by Law No. 3440 of 2008, Autonomous confiscation (criminal)	
PERU	Criminal Code, Article 102, as approved by Legislative Decree No. 635, published on April 8, 1991.	Law on Loss of Ownership, Legislative Decree No. 1104, in force since April 19, 2012// Supreme Decree No. 093-2012-PCM, Implementing Regulations for Legislative Decree No. 1104," September 8, 2012.	

VENEZUELA	Organic Law against Organized Crime and Terrorist Financing, April 30, 2012	Organic Law against Organized Crime and Terrorist Financing, April 30, 2012, SPECIAL FORFEITURE for unclaimed or abandoned property in criminal proceedings or when the owner of the property or the perpetrator or participant in the crime cannot be identified, regardless of whether there is a conviction or an acquittal (CRIMINAL)	
URUGUAY	Decree-Law 14294 as amended by Law 18.494, as amended in turn by Law 19.149 (FORFEITURE IN CRIMINAL PROCEEDINGS)	Article 63.4 IPSO JURE FORFEITURE, Decree Law 14.294 (CRIMINAL), Article 63.6	

INFORMATION ON CURRENT SITUATION

ARGENTINA

In its responses to the questionnaire, Argentina reports that since 2011 its Criminal Code regulates some forms of pre-conviction forfeiture (Articles 23 and 305). The Federal Code of Criminal Procedure also contains a slightly broader regulation on the subject in Article 310. The Code only applies in the federal criminal justice system, not the criminal justice systems of provincial states. The Code is in the process of implementation and since June 2019 has only been applied in one jurisdiction in the country, covering the provinces of Salta and Jujuy.

With respect to pre-conviction forfeiture, which is currently only enforced for economic and financial crimes, the executive branch submitted a preliminary draft Criminal Code to the Senate. The purpose of this draft is to allow pre-conviction forfeiture, subject to certain requirements being met; it can be applied in any crime. It also includes forfeiture of assets of equivalent value. The draft remains at the parliamentary stage, though it has reportedly not been debated in recent years.

Pre-conviction forfeiture has been in effect for 12 years and has been successfully enforced in approximately 15 cases. According to the information, those were cases in which prosecuting the persons concerned was impossible. In general terms, there are sufficient resources for its enforcement, based on the fact that it is done within the criminal proceedings themselves. However, the resources allocated to the system for the administration of seized and forfeited assets should be increased in order to reorganize and improve that system overall.

In Argentina, cultural difficulties related to some judges' and prosecutors' conception of forfeiture are reported as an obstacle to its enforcement, despite the progress that has been made. Another obstacle is the fact that the Criminal Code regulation largely makes non-conviction-based forfeiture conditional on the impossibility of prosecuting the person, which means that it is only applicable in a small number of cases, and usually after several years have elapsed since the beginning of the proceedings.

Decree of Necessity and Urgency No. 62/2019, issued in 2019, establishes rules on extinction of ownership within the framework of the federal courts for civil and commercial

matters (Article 2). It also creates in the Office of the Attorney General of the Nation the Office of the Attorney for Extinction of Ownership in favor of the State. This Attorney's Office, together with the competent prosecutors, files lawsuits and brings actions for extinction of ownership, as envisaged in the above decree.

It is worth noting that the action for extinction of ownership in civil and commercial courts is contingent upon the prior ordering of precautionary measures by a criminal court.

The law states that the assets making up the defendant's wealth from the date of the alleged commission of the investigated crime onwards are subject to the rules governing extinction of ownership. Article 5 states that "because they do not reasonably constitute the income of their holder, possessor, or owner, or represent an unjustified increase in assets, they may be considered as coming directly or indirectly from one of the offenses listed" in said Decree.

In relation to assets, the Public Prosecution Service, with the intervention of the authority in charge of the administration of the assets, may request the judge to enable the advance sale of assets subject to precautionary measures. To approve the sale, the judge must have the consent of the affected party. However, the judge may also authorize the destruction of the seized assets when it is necessary or obligatory given their nature; when they represent a danger to the environment, health, or public safety; and when they threaten their ruin.

If extinction of ownership is ordered, the judgment shall order the auction of the assets, and the proceeds, less the costs of tracing, seizure, administration, maintenance and other procedural costs, shall accrue to the general revenues of the Nation, unless specifically assigned otherwise by law.

Since its entry into force, it has only been applied in one case, which was for laundering drug crime proceeds. The lawsuit described 45 real estate properties variously located in the Federal Capital, the province of Buenos Aires, Salta, and Mar del Plata. It also included 30 luxury vehicles, motorcycles, jewelry, and cash. Precautionary measures were ordered but ownership of the assets was not extinguished.

The Decree issued by the country's executive branch was not previously debated by different stakeholders, as was the case with the bill that the Congress was dealing with at that time. This has led to some inconsistencies in the regulation of extinction of ownership actions and to planning shortcomings of this public policy (including the fact that there is no known

impact assessment of the application of this action in the civil and commercial courts). In addition, the specialized prosecutor's office envisaged in the Decree is not yet operational. In light of these considerations, it is not possible to assess whether the resources available are sufficient for its execution.

Decree of Necessity and Urgency No. 62/2019 is not being reformed. However, a proposed law is in the process of being debated related to the reuse of recovered assets, which aims to introduce changes in the system for the administration of seized assets. There are also a number of other proposed laws that would modify the current rules, but none is currently before the Chamber of Deputies or the Senate.

BOLIVIA

In 2017, Bolivia enacted Law No. 913 (Law against Illicit Trafficking in Controlled Substances). This law, in addition to establishing mechanisms for the fight against drug trafficking, governs forfeiture of ownership of illicit assets in favor of the State. It establishes loss of ownership as a legal mechanism pertaining to real estate and assets—irrespective of the existence of a criminal proceeding for drug trafficking—that consists of forfeiture to the State of the right of ownership and possession of goods of illicit origin, as a result of their derivation from or connection to illicit trafficking in controlled substances; no compensation is due to the owner, possessor, or holder, except where the rights were acquired in good faith. Action on these assets can be exercised at any time since their right of ownership is illegitimate.

The Public Prosecution Service is responsible for investigating, filing, advancing, and concluding proceedings for extinction of ownership. The action may be brought at any time because the goods are of illicit origin.

The process allows the Public Prosecution Service to request the competent judge to apply the precautionary measures of preventive annotation, sequestration, seizure, and withholding of funds from bank accounts. The Public Prosecution Service may also issue a substantiated resolution on precautionary measures, for which it must inform the Specialized Judge within two days. Before filing an extinction of ownership action, the Public Prosecution Service may request, by means of a reasoned motion to the relevant authority, preventive annotation or withholding of funds generated by assets it considers to be the object of the

forfeiture proceeding" (Art. 82 II). It may also request the non-disclosure of the proceedings on the assets until the real precautionary measures materialize.

The General Directorate of Registration, Control and Administration of Seized Assets (DIRCABI), when it has a legal interest, may act in the proceedings as the agency responsible for the administration of the assets subject to the proceedings. Also, when it has knowledge and reliable information about the existence of goods of illicit origin linked to illicit trafficking in controlled substances, it must report them to the Public Prosecution Service.

The DIRCABI must also receive both the assets that are subject to forfeiture and those whose ownership has been consolidated in favor of the State. The assets will be turned over to the Public Prosecution Service.

This directorate has administrative powers over the assets delivered to it, and may enter into gratuitous bailment, deposit, or custody contracts with state institutions, although exceptionally it may do so with nonprofit legal entities. DIRCABI may monetize in advance those that are consumable, perishable, fungible, difficult to preserve, or susceptible to technological depreciation, as well as animals. It will also monetize the assets ordered forfeit.

Regarding the implementation of the Extinction of Ownership Law, one of the challenges faced by Bolivia seems to be a lack of human and financial resources to carry out thorough, effective investigations.

COSTA RICA

Despite several years of trying to pass an extinction of ownership law, Costa Rica has not succeeded in doing so. Instead, the “emerging capital” procedure is applied, which is governed by Law No. 8754 (Law against Organized Crime) enacted in 2009.

This is a special procedure that is processed in the contentious administrative jurisdiction. This special process is governed by a handful of provisions and its purpose is to act directly against assets on which no lawful cause for their acquisition can be demonstrated. Moreover, for tax assessment purposes, the illicit cause of the wealth or of the emerging increase is irrelevant.

The obligation to report falls on the Office of the Comptroller General, the Ministry of Finance, the Costa Rican Institute on Drugs (ICD), and the Public Prosecution Service. After the entry into force of Law No. 8754, several constitutional actions were filed that held up its application. At present, the Attorney General's Office has delegated the filing of emerging capital claims before the Administrative Court to the Deputy Prosecutor's Office for Money Laundering and Pursuit of Assets.

Once the Public Prosecution Service has filed the action, the Court holds a hearing within 20 business days to enable the interested party to answer and to present evidence. As a precautionary measure the Court shall order the seizure of assets, their immobilization in the registry, as well as the freezing of all kinds of financial products. Only an appeal without suspensive effect may be lodged against the precautionary measure, which will be dealt with by a court of review as a matter of priority.

In principle, the Court should issue a judgment once the 20 business days have expired. An appeal may be filed against the judgment. There is no appeal against the decision of the appellate court. In practice, however, this 20-day time limit is not met; however, emerging capital proceedings take much less time to be processed than criminal proceedings.

The majority of the approximately 150 emerging capital cases (more than 95 percent) originated from criminal proceedings. The assets in question could not be confiscated pursuant to Law No. 8204 (Law on Narcotics, Psychotropic Substances, Illegal Drugs, Related Activities, Money Laundering, and Terrorism Financing), so the Prosecutor's Office takes advantage of the investigation already carried out in the criminal proceedings and submits it to the administrative

court together with the emerging capital suit. Also, more than 95 percent of the proceedings are conducted on monies that are mostly deposited in the accounts of the ICD as a result of their seizure during criminal proceedings.

Such assets are not subject to advance sale since, in principle, the process was expected to be a summary proceeding. However, at the time of ordering the forfeiture of the emerging assets, they are delivered to the ICD to be disposed of in the same way as assets confiscated for violation of the law on psychotropic substances or organized crime.

The process requires reform to make its implementation more effective and efficient. In recent years, the Public Prosecution Service has emphasized this process; however, it is too early to measure its results, since it has been applied in few cases, almost residually, given the impossibility of confiscation in criminal proceedings and in cases that are not of great significance.

ECUADOR

Ecuador has its Organic Law on Extinction of Ownership (published in May 2021), as amended in March 2023. A reform bill is currently under debate. Ecuador has also promulgated the General Regulations on the Organic Law on Extinction of Ownership (June 2022).

It was passed by the legislature as a process separate from any other process or matter. The Attorney General's Office and the Prosecutor General's Office are parties in the proceedings.

The former files the private indictment within the proceedings for extinction of ownership and promotes measures in the asset investigation. In addition, during the adjudicatory stage, it is in charge of filing the lawsuit for the extinction of ownership, as well as intervening in procedural acts and jurisdictional or constitutional actions arising from the extinction of ownership proceedings.

For its part, the Attorney General's Office is responsible for carrying out asset investigations in extinction of ownership proceedings. To this end, it has made every effort to set up asset investigation units and provides specialized units with the personnel needed to process cases.

The specialized unit prosecutors for the matter act as parties in the judicial stage and have nationwide jurisdiction. The Prosecutor's Office is responsible for ex officio asset investigation when it becomes aware of the existence of assets that may be subject to this process. This information may come from the Comptroller General's Office, the Attorney General's Office, the National Police, the Financial Analysis Unit or any other public institution.

Under the law, the final paragraph of Article 6 states: "The assets subject to extinction of ownership represent an interest for the State, so they will have a pecuniary value susceptible to administration and will generate economic benefits or profits." The precautionary measures of prohibition of sale, withholding, and seizure may be applied to these assets, which must be requested of the competent judge by the Attorney General, the Prosecutor General or their delegate.

The State Prosecutor General's Office may request the judge of first instance to authorize advance sale of the assets subject to precautionary measures, as well as of livestock, as the case may be. It is a requirement that such assets be at risk of perishing, deterioration, depreciation, or devaluation, or their conservation and care would be prejudicial or entail disproportionate expenses relative to their value or administration.

If the judgment declares the extinction of ownership of assets in favor of the State, the ownership of such assets in favor of the State must also be declared. The Law notes that an enforceable judgment is sufficient legal title and will serve for the registration of the assets in favor of the Property or Special Assets Administration Service where the relevant public registries of movable and immovable property and competent entities are concerned.

In Ecuador the extinction of ownership action prescribes after 15 years counted from the date on which the asset or assets subject to the process were acquired. This is a limitation on total independence.

The country notes that this legislation has had a positive impact on state institutions involved in judicial and anti-corruption matters, especially by declaring ownership in favor of the State of assets used for an unlawful or unjustified activity or purpose. It notes the commitment of the institutions called upon to coordinate with one another, since they have generated working groups and meetings for organizing procedural issues, generating points of contact for cooperation, and providing information to achieve the purposes of the extinction of ownership action. In this way, it becomes an effective tool in encumbering illicit assets of criminal

organizations or those proceeding from crimes such as drug trafficking, money laundering, corruption, etc.

However, it points out that one of the main challenges is to raise awareness of the law and knowledge of the nature, requirements, and purposes of the extinction of ownership action as separate and autonomous from other matters, including, logically, criminal matters. The possibility of the Prosecutor's Office carrying out asset investigations and prosecutions has caused confusion because it is believed that they are criminal investigations, when they are only asset investigations. In a bid to dispel this confusion the subject has been discussed in depth in training provided to officials at public entities that play an important role in the investigation and prosecution of extinction of ownership actions.

EL SALVADOR

In 2013, the country enacted the Special Law on Extinction of Ownership and Administration of Goods of Illicit Origin or Destination. That law is intended to be applied to economic assets of illicit origin or destination that are located within or outside its territory "when their origin, increase, or use is consistent with the circumstances envisaged therein, provided that the action for extinction of ownership is initiated in El Salvador."

The law applies "to assets that proceed from or are used in activities related or connected with money laundering, organized crime, criminal gangs, groups, associations and organizations, acts of terrorism, arms trafficking, trafficking in persons, drug-related crimes, computer crimes, corruption, crimes involving public finances, and any illicit activity generating economic or other material benefits carried out individually, collectively, or through organized or structured criminal groups. It also applies to any assets that constitute an unjustified increase in wealth when there is reasonable cause to presume that they proceed from illicit activities." (Art. 5)

The extinction of ownership action is exercised through an autonomous process separate from other lawsuits or proceedings.

In 2017, a limitation was introduced in the case of public officials, since in such cases the action may be exercised until the process provided for in the Law on Illicit Enrichment of Public Officials and Employees is exhausted and a final conviction is issued by the respective civil court.

This limitation was declared unconstitutional in 2018, since it establishes an additional requirement for public officials that does not apply to other citizens.

The law provides that the Attorney General's Office, through the Specialized Prosecution Unit for Extinction of Ownership, directs the investigation to establish and substantiate the concurrence of one or more of the requirements it envisages. For this purpose, it will have the collaboration of the National Civil Police where the Asset Forfeiture Investigation Division is located.

As regards precautionary measures, those contained in the Code of Civil and Commercial Procedure may be ordered. No bond is required for their request or disposition. Economic assets for which precautionary measures have been decreed will be immediately transferred to the National Council for the Administration of Assets (CONAB). This entity may request the advance sale of the assets, the proceeds of which it will deposit in a special fund, in accordance with the same law. Advance sale applies to assets that are at risk of perishing, being lost, depreciation, or whose administration and maintenance entails a prejudicial or excessive cost to the State; it also applies to livestock or other animals.

CONAB may also deliver the assets for provisional use, in accordance with the conditions established by law. It may donate perishable consumer goods or those that strengthen or assist agencies responsible for combating and preventing the illicit activities described in the Asset Forfeiture Law in the fulfillment of their mission.

Expenses generated by the processing of the extinction of ownership action will be defrayed with the financial returns yielded by assets made available for administration. In turn, the expenses generated by the administration of the assets will be paid from the proceeds of the extinguished assets.

In an interview with La Prensa Grafica on January 15, 2021, Martin Martinez, a UNODC external consultant, said that the law needs reform to prevent its incompatibility with the country's Law on Illicit Enrichment. He noted that assets of some defendants were also being pursued in extinction of ownership proceedings and that the situation must be resolved in order to avoid constitutional problems over the prohibition against double jeopardy.

According to the information gathered, implementation of this law has yielded significant results for the country. In 2019 and 2020 its enforcement resulted in the extinction of 104 properties, yielding approximately \$13,992,197.69 million in assets and funds.

In addition, 90 percent of cases that have been prosecuted have ended in extinction of ownership; however, information online indicates an average of 26 cases per year, which seems to suggest that there is a selective application by the State, which perhaps targets the most important cases.

In an article in the online newspaper La Nación dated January 22, 2019, titled “How does extinction of ownership work in other countries?” Judge Miriam Gerardine Aldana Revelo, who hears cases involving extinction of ownership, explained that since the implementation of the Law in 2015, 123 extinction of ownership cases have been registered, for a value of \$161 million.

GUATEMALA

The Congress of the Republic of Guatemala enacted Decree Number 55-2010 (Law on Extinction of Ownership), which entered into force in 2011. In 2021, an initiative was presented proposing that real estate seized by the State under this law be used for housing, agricultural development, and health care projects.

The Attorney General, directly or through designated prosecutors, is responsible for directing and conducting the investigation to establish and substantiate the existence of one or more of the grounds for extinction of ownership and for initiating and pursuing the appropriate action. In accordance with their constitutional and legal powers, they may create special units for the investigation and pursuit of the action for extinction of ownership or assign it to any existing section (Law on Extinction of Ownership, Article 12). The investigation or pursuit of the action before the competent courts or the decision on the lawsuit will not require a criminal prosecution or a final or prior resolution from the courts hearing the criminal case.

The Ministry of the Interior forms special units of the National Civil Police that will cooperate and coordinate the investigation with the Public Prosecution Service.

The extinction of ownership action is judicial and pertains to real estate and assets, as well as being autonomous and separate. It is admissible with respect to any principal, accessory

or credit-related real right on any of the property described in Decree Number 55-2010, regardless of who exercises possession over them, or whoever is, acts as, or claims to be the owner, in any capacity, without prejudice to the rights of third parties acting in good faith, free of fault, or without pretense in the business. According to its legislation, the action may be brought against all assets that are susceptible to economic valuation, whether movable or immovable, fungible or non-fungible, tangible or intangible; shares and securities; any real right, whether principal or accessory, as well as any fruit, profits, products, yields from, or swaps related to, such assets.

Article 22 empowers the competent court, at the request of the prosecution, to order precautionary measures on assets subject to extinction of ownership. These precautionary measures may be as varied as suspension of ownership or accessory rights, whatever their form; annotation of the extinction of ownership action; seizure, intervention, immobilization, or sequestration of assets, of funds deposited in accounts or safety deposit boxes in the banking or financial system, and of those that may be deposited subsequently, of securities and their yields; or issuance of an order not to pay them when their sequestration or seizure is impossible, as well as any other precautionary measure that may be considered pertinent.

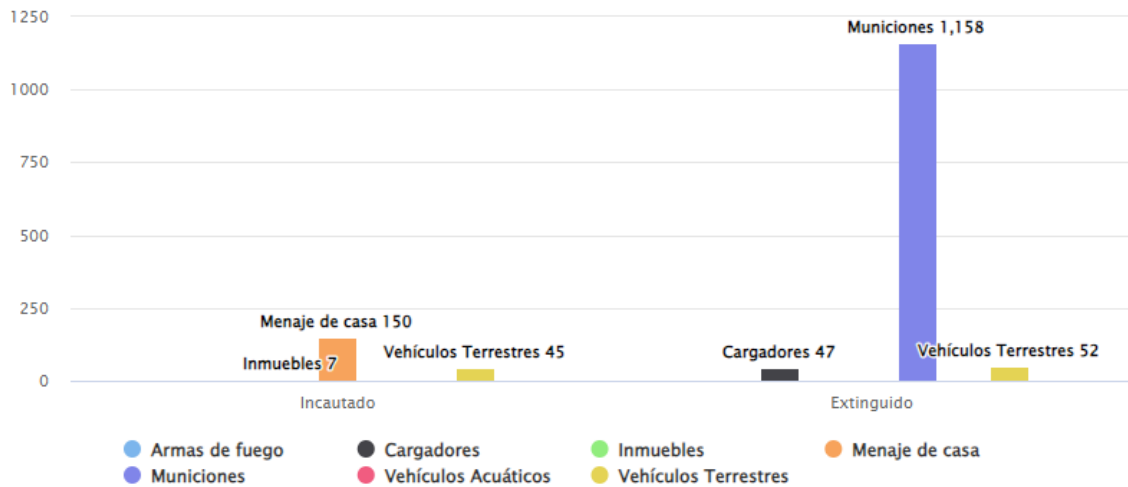
In urgent cases, precautionary measures may be ordered by the Attorney General or the designated prosecutor. The judge must be notified within 24 hours for confirmation or annulment.

Also, at the request of the prosecution, the competent court may authorize the advance sale of assets subject to precautionary measures. Such sales are authorized in the event that the assets are in danger of perishing, deterioration, depreciation, or devaluation, or when their preservation would incur harm or expenses disproportionate to their value or administration. The same shall apply in the case of livestock or other animals. The proceeds from the sale or auction of the goods will be deposited in a specific account, and these funds will await the decision of the competent jurisdictional body in the matter of extinction of ownership.

According to information on the web, in the first three years the court of first instance for extinction of ownership handed down approximately 40 convictions per year, resulting in the seizure of some US\$3.2 million worth of assets. The National Secretariat for the Administration of Forfeited Assets (SENABED) reports the following data on the receipt of seized and forfeited assets:

RECEPCIÓN DE BIENES INCAUTADOS Y EXTINGUIDOS

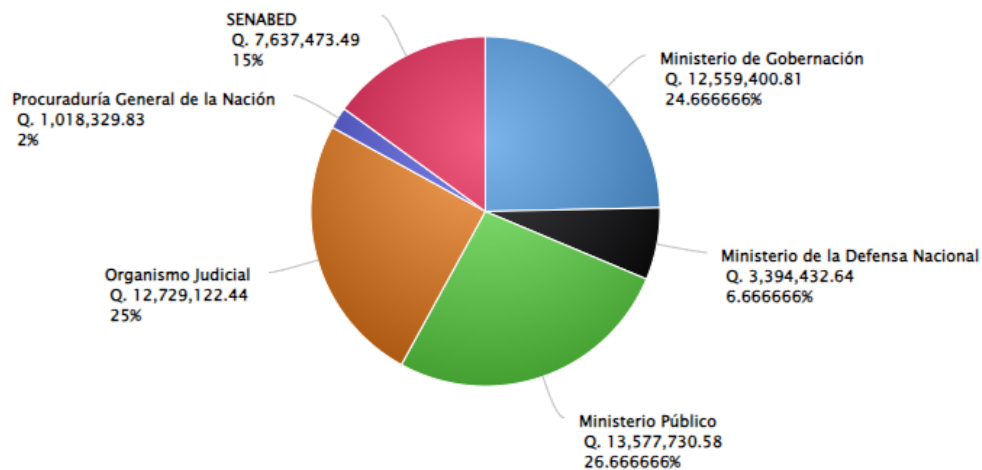
2023



In addition, SENABED provides information on its website about the distribution of forfeited funds, in accordance with Article 47 of its law:

DISTRIBUCIÓN DE DINEROS EXTINGUIDOS LED ARTÍCULO 47

2023



Highcharts.co

With respect to forfeited assets, SENABED may retain them for the fulfillment of its objectives or sell or auction them in accordance with its law. If it opts for auction or sale, it must verify the qualities, background, and probity of participants. In the case of real estate located on communal lands of indigenous peoples, the judge or court shall consult with the legitimate community authorities within the time periods established by this Law for the purposes of discovery and to form conclusions on the manner in which said real estate should be transferred in the name of the community in question and on their regulation in accordance with their own norms, customs, uses, and traditions; the competent judge or court shall record this in the respective proceedings and judgment.

HONDURAS

The Law on Definitive Deprivation of Ownership of Property of Illicit Origin was enacted in Honduras in 2010. Its purpose is to fight organized crime and to protect the public interest for the benefit of society, the common good, and good faith.

It is also judicial, pertains to real estate and assets, and is public in nature, as well as being separate and autonomous from any other measure. It pursues assets that were acquired, used, or commingled in unlawful activities, but safeguards the rights of bona fide third parties.

It is incumbent upon the Public Prosecution Service to bring actions for extinction of ownership. It is also in charge of legal and technical supervision of asset investigations. In its execution, it will rely on assistance from the National Police and any other legally authorized entity.

At any stage of proceedings, for the purpose of preserving the availability of goods, proceeds, instruments or earnings, the Public Prosecution Service may request the court to order precautionary measures or to secure the goods, for which no prior notice or hearing is required. In exceptional circumstances, the Public Prosecution Service may order precautionary measures, also without prior notification or hearings, but only in urgent cases or to prevent assets from being concealed or their pursuit or availability hindered. This act may be annulled or confirmed by the court.

The law states that assets under precautionary or attachment measures, as well as those that are seized or abandoned, must be turned over to the Asset Management Office (OABI). OABI has powers of administration, custody, safekeeping, and destruction of such assets. It may authorize the provisional use of such assets. Also, in the case of livestock or assets that are at risk of perishing, being lost, depreciation, or devaluation, and whose administration entails disproportionate prejudice or costs to the State, it may sell them in advance in order to obtain a higher yield. This advance sale must be authorized by the court.

If the action is declared admissible, the assets will be ordered confiscated and assigned to OABI. In such instances, the assets will be auctioned when appropriate or assigned to the institutions that the Anti-Money Laundering Unit (UCLA).

It is considered to have had a significant impact in the fight against organized crime and corruption. In 21 court judgments alone, 74 assets of illicit origin, valued at approximately 300 million lempiras, were confiscated. Those assets are located both within the country and abroad.

MEXICO

Mexico enacted the National Asset Forfeiture Law in 2019. It was last reformed in January 2020.

Forfeiture actions proceed in cases where the assets are directly or indirectly related to an investigation of any of the crimes described in Article 22 of its Political Constitution, since they are the object, instrument, or proceeds of crime. They apply to assets whose legitimate origin cannot be proven, in particular, those that are the instrument, object, or proceeds of unlawful acts, regardless of where those acts were committed (Art. 7).

An action for extinction of ownership is a civil judicial proceeding, pertains to assets, and is brought in a special jurisdiction in proceedings that are primarily oral. Article 8 of the law defines it as a self-contained proceeding, distinct and separate from the criminal proceeding from which the information relating to the facts supporting the action was obtained and from any other proceeding initiated previously or simultaneously.

Mexican law established different statutes of limitations depending on the origin or utilization of the assets (Art. 11). In the case of assets of illicit origin, forfeiture is not subject to any statute of limitations. However, in the case of goods used for unlawful purposes, the limitation period for the action is 20 years, which begins when the goods were used to engage in unlawful acts.

The action is brought by the Public Prosecution Service, which, in accordance with the same law, conducts an investigation and amasses evidence in the preparatory stage.

Regarding precautionary measures, the Public Prosecution Service is responsible for requesting the judge to order the seizure of assets. This measure may be ordered before or during the trial. As these are measures that limit fundamental rights, their adoption requires a judicial order; however, in cases of urgency or necessity, which must be duly justified, the Public Prosecution Service may adopt them, but they must be subject to subsequent judicial review.

Article 178 establishes that the provisional and immediate immobilization of funds, assets, accounts, and other financial securities and instruments may be ordered during the seizure of property. In the case of a commercial establishment, a business, or real estate, the Administrative Authority must be notified so that it may be transferred to it for its administration.

Article 223 provides that the assets referred to in the law, which must represent an economic interest for the State, will be transferred to the Administrative Authority, with the exceptions indicated in the second paragraph of that provision. The Administrative Authority will dispose of, use, sell, and monetize them, taking into account the public interest, based on criteria of propriety of ultimate use.

Advance sale is applicable when disposal is necessary due to the nature of the assets, or because they represent a danger to the environment or to health, or because with the passage of time they may suffer loss, depletion, or deterioration that may seriously impair their operation. It is also applicable in the case of fungible, consumable, perishable goods, livestock or other animals, or assets that depreciate considerably with the passage of time.

According to the 2022 Annual Activity Report of the Attorney General's Office, the Specialized Unit for Extinction of Ownership filed 101 lawsuits. According to that report, that amount represents an 80% increase compared to 2021, when it filed only 56 suits.

The report says: "As of December 2022, 23 favorable judgments had been obtained, resulting in the award of assets in favor of the Mexican State in the amount of \$217,632,519.67 pesos. Likewise, there are 124 lawsuits ongoing, which together imply an amount of approximate 472,174,478.00 pesos, which is remarkable, considering that the wealth and economic structures of criminal groups are affected, which has an impact on peace and social security, thus guaranteeing the correct application of public policies for the prevention of crime for the benefit of the populace. The foregoing does not include proceeds obtained through the abandonment of assets and/or their confiscation in criminal proceedings."

According to an update issued by the Attorney General's Office, which is available on the web page of the National Conference of Media Entrepreneurs (CONEME), in the year to August 18, 2023, 51 favorable judgments had been returned, signifying "a total of 138,813,749 pesos for the Mexican State." It mentions that the cumulative total of favorable judgments for 2022 and the year to the cut-off in 2023, was 74.

PERU

In August 2018, Peru issued Legislative Decree No. 1373 on Extinction of Ownership. The law arose from the need for regulatory reform of State mechanisms and instruments for combating organized crime. Peru found that the law on extinction of ownership had shortcomings and inaccuracies that impaired its effectiveness as a tool for the recovery of assets or proceeds from criminal activities. Among those shortcomings, they mentioned the fact that the action for extinction of ownership was not separate from the criminal proceeding, as well as a lack of specialization on the part of practitioners.

So that the extinction of ownership proceeding is self-contained and pertains to real estate and assets. The specialized prosecutor for extinction of ownership initiates and directs the investigation. The proceeding may be initiated ex officio or at the request of the specialized criminal prosecutor, the judge, the public prosecutor, the public registrar, the notary public or any person so obligated by law. It is the duty of the Specialized Police Division, under the direction of the specialized prosecutor, to collaborate in the investigation.

The specialized prosecutor may request precautionary measures from the judge, either ex officio or at the request of the public prosecutor. The Specialized Prosecutor may, by exception and when warranted by reasons of urgency, execute the precautionary measure of immobilization, seizure, attachment, or registration of any assets during the asset investigation stage. In such cases, the judge has 24 hours to confirm or deny the measure. Article 15.7 provides that precautionary measures are requested, granted, and executed before the existence of the asset investigation is made known to the wanted party.

Non-registrable assets are immediately placed under the administration of the National Seized Assets Program (PRONABI). The decree empowers PRONABI, when so authorized by the judge, to publicly auction seized assets when, due to their nature or characteristics, they may be subject to loss or deterioration. Assets may also be auctioned in advance when the cost of their custody or conservation is onerous.

Article 3.1 states that the judgment declaring extinction of ownership has the effect of transferring the assets to the State, represented by PRONABI.

SUMMARY TABLES

This study was the result of information received in the responses to the questionnaire that was distributed, as well as that yielded by research in certain cases, due to a lack of response to the questionnaire.

To facilitate understanding of the information contained in this study, it has been summarized below by country; however the columns are not uniform owing to the sources of information.

ARGENTINA

Pre-conviction forfeiture

Country	Pre-conviction forfeiture	Enforcement of pre-conviction forfeiture	Obstacles
Argentina	Some forms are contained in the Criminal Code. There is also a regulation in the Federal Code of Criminal Procedure, but only for the federal criminal courts	Since 2011. Only for economic and financial crimes. There is a draft bill to extend it to all crime.	Insufficient resources allocated to the system for the administration of seized and forfeited assets should be increased in order to reorganize and improve the system overall. Cultural difficulties related to some judges' and prosecutors' conceptions. The Criminal Code conditions its enforcement to the impossibility of bringing the person to justice, which reduces the number of cases.

Extinction of ownership

Argentina	Information
Type of action	Since 2019. Self-contained proceeding, independent of all other judicial processes.
Competence	Federal Courts with jurisdiction in civil and commercial matters. In the autonomous city of Buenos Aires, the Federal Civil and Commercial Courts will have jurisdiction. The Office of the Prosecutor for Extinction of Ownership is empowered to conduct investigations, file lawsuits, and initiate asset forfeiture actions.
Limitation	20 years from the date when the property subject to the forfeiture action was acquired by the owners or possessors. If the date cannot be determined, the statute of limitations will begin to run from the date of the alleged commission of the crime under criminal investigation.
Precautionary measures	Prosecutors inform the Office of the Prosecutor for Extinction of Ownership, which may instruct the prosecutor to request them.
Advance sale	It may be ordered by the judge at the request of the Public Prosecution Service. It is applicable when the assets are at risk of perishing, deteriorating, or devaluing, or when their conservation is excessively costly.
Enforcement results	It has only been applied in one case involving laundering of drug trafficking proceeds. The lawsuit described 45 real estate properties variously located in the Federal Capital, the province of Buenos Aires, Salta, and Mar del Plata. It also included 30 luxury vehicles, motorcycles, jewelry, and cash. Precautionary measures were ordered, but ownership of the assets was not extinguished.

BOLIVIA

Extinction of ownership

Bolivia	Information
Type of action	Since 2017. A special legal mechanism of a judicial nature pertaining to real estate and assets that is independent of any other judicial or administrative action.
Competence	The Public Prosecution Service is responsible for investigating, filing, advancing, and concluding proceedings for extinction of ownership.
Limitation	There is no time limit. The action may be brought at any time because of the illicit origin of the goods.
Precautionary measures	The judge is responsible for applying the precautionary measures of preventive annotation, sequestration, seizure, and withholding of funds from bank accounts. The Public Prosecution Service may also issue a substantiated resolution on precautionary measures, for which it must inform the Specialized Judge within two days.
Advance sale	DIRCABI may monetize in advance those that are consumable, perishable, fungible, difficult to preserve, or susceptible to technological deprecation, as well as animals.
Obstacles	Lack of human and financial resources to carry out thorough, effective investigations.

COSTA RICA

Pre-conviction forfeiture

Country	Pre-conviction forfeiture	Enforcement of pre-conviction forfeiture	Obstacles
Costa Rica	Emerging capital proceeding	Since 2009. Applies to assets whose lawful origin cannot be substantiated.	Lack of resources for judicial and administrative enforcement. Need for reform of the process, for clarity.

ECUADOR

Extinction of ownership

Ecuador	Information
Type of action	Since 2021. It is judicial, pertains to real estate and assets, as well as being self-contained and independent.
Competence	The Attorney General's Office and the Prosecutor General's Office are parties in the proceedings. The former files the indictment and the latter conducts the asset investigation.
Limitation	15 years counted from the date on which the assets subject to the process were acquired.
Precautionary measures	They must be requested of the competent judge by the Attorney General, the Prosecutor General, or their delegate.
Advance sale	The State Prosecutor General's Office may request it of the judge of first instance, both for assets subject to precautionary measures and for livestock, as appropriate. It is a requirement that such assets be at risk of perishing, deterioration, depreciation, or devaluation, or their conservation and care would be prejudicial or entail disproportionate expenses relative to their value or administration.

Obstacles	Raising awareness of the law and of the nature, requirements, and purposes of the extinction of ownership action as separate and autonomous from other matters, including, logically, criminal matters.
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EL SALVADOR

Extinction of ownership

El Salvador	Information
Type of action	Since 2013. It is judicial, pertains to real estate and assets, and is self-contained and independent.
Competence	The Attorney General's Office, through the Specialized Prosecution Unit for Extinction of Ownership, directs the investigation to establish and substantiate the concurrence of one or more of the requirements it envisages. For this purpose, it has the collaboration of the National Civil Police where the Asset Forfeiture Investigation Division is located.
Limitation	No
Precautionary measures	Those contained in the Code of Civil and Commercial Procedure may be ordered.
Advance sale	It is requested of the specialized court by the public prosecutor and it applies to assets that are at risk of perishing, being lost, depreciation, or whose administration and maintenance entails a prejudicial or excessive cost to the State; it also applies to livestock or other animals.
Obstacles	The law needs reform to avoid its incompatibility with the country's Law on Illicit Enrichment, due to the fact that some of the assets of some defendants are also prosecuted in forfeiture proceedings, and the problem must be solved to avoid inconsistency with the Constitution over the prohibition of being tried twice for the same act.

GUATEMALA

Extinction of ownership

Guatemala	Information
Type of action	Since 2010. The extinction of ownership action is judicial, pertains to real estate and assets, as well being as self-contained and independent.
Competence	The action is exercised by the Attorney General's Office through designated prosecutors. The Ministry of the Interior forms special units of the National Civil Police that will cooperate and coordinate the investigation with the Public Prosecution Service.
Limitation	No
Precautionary measures	They are requested of the competent judge by the prosecutor's office. In urgent cases, precautionary measures may be ordered by the Attorney General or the designated prosecutor. The judge must be notified within the 24 hours for confirmation or annulment.
Advance sale	The Public Prosecutor's Office requests it of the competent judge when the assets are in danger of perishing, deterioration, depreciation, or devaluation, or when their preservation would incur harm or expenses disproportionate to their value or administration. It can also be requested for livestock or other animals.

HONDURAS

Extinction of ownership

Honduras	Information
Type of action	Since 2010. It is also judicial, pertains to real estate and assets, as well as being public in nature, self-contained and independent from any other action.
Competence	It is incumbent upon the Public Prosecution Service to bring actions for extinction of ownership. It is also in charge of legal and technical supervision of asset investigations. In its execution, it will rely on assistance from the National Police and any other legally authorized entity.

Limitation	No
Precautionary measures	The Public Prosecution Service may request them of the court at any stage of the proceedings. In exceptional circumstances, the Public Prosecution Service may order precautionary measures, also without prior notification or hearings, but only in urgent cases or to prevent assets from being concealed or their pursuit or availability hindered. This act may be annulled or confirmed by the court.
Advance sale	It must be authorized by the court. It is applicable to livestock or assets that are at risk of perishing, being lost, depreciation, or devaluation, and whose administration entails disproportionate prejudice or costs to the State.

MEXICO

Extinction of ownership

Mexico	Information
Type of action	Since 2019. It is a civil judicial proceeding, pertains to assets, and is brought in a special jurisdiction in proceedings that are primarily oral. It is a self-contained proceeding, distinct and separate from the criminal proceeding from which the information relating to the facts supporting the action was obtained and from any other proceeding initiated previously or simultaneously.
Competence	The action is brought by the Public Prosecution Service, which, in accordance with the same law, conducts an investigation and amasses evidence in the preparatory stage.
Limitation	Mexican law established different statutes of limitations depending on the origin or utilization of the assets (Art. 11). In the case of assets of illicit origin, forfeiture is not subject to any statute of limitations. However, in the case of goods used for unlawful purposes, the limitation period for the action is 20 years, which begins when the goods were used to engage in unlawful acts.
Precautionary measures	The Public Prosecution Service is responsible for requesting them of the judge. This measure may be ordered before or during the trial. As these are measures that limit fundamental rights, their adoption requires a judicial order; however, in cases of urgency or necessity, which must be duly justified, the Public Prosecution Service may adopt them but they must be subject to subsequent judicial review.

Advance sale	It is applicable when disposal is necessary due to the nature of the assets, or because they represent a danger to the environment or to health, or because with the passage of time they may suffer loss, depletion, or deterioration that may seriously impair their operation. It is also applicable in the case of fungible, consumable, perishable goods, livestock or other animals, or assets that depreciate considerably with the passage of time.
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PERU

Extinction of ownership

Peru	Information
Type of action	The last reform dates from 2018. It is self-contained and pertains to real estate and assets, as well as being independent and judicial.
Competence	The specialized prosecutor for extinction of ownership initiates and directs the investigation. The proceeding may be initiated ex officio or at the request of the specialized criminal prosecutor, the judge, the public prosecutor, the public registrar, the notary public or any person so obligated by law. It is the duty of the Specialized Police Division, under the direction of the specialized prosecutor, to collaborate in the investigation.
Limitation	No
Precautionary measures	The specialized prosecutor may request them of the judge, either ex officio or at the request of the public prosecutor. The Specialized Prosecutor may, by exception and when warranted by reasons of urgency, execute the precautionary measure of immobilization, seizure, attachment, or registration of any assets during the asset investigation stage. In such cases, the judge has 24 hours to confirm or deny the measure. Article 15.7 provides that precautionary measures are requested, granted, and executed before the existence of the asset investigation is made known to the wanted party.
Advance sale	It must be authorized by the competent judge and is applicable when the cost of custody or conservation of the goods is onerous.