

30 October 2015

English only

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**Conference of the States Parties to the  
United Nations Convention against Corruption**

**Sixth session**

St. Petersburg, Russian Federation, 2-6 November 2015

**Report of the international expert group meeting on effective  
management and disposal of seized or frozen and confiscated  
assets, held in Vienna from 7 to 9 September 2015**

*Summary*

This conference room paper has been prepared by UNODC as a summary of the discussions during the international expert group meeting on “Effective management and disposal of seized or frozen and confiscated assets”, held in Vienna from 7 to 9 September 2015. The document seeks to identify important issues with which countries are confronted in designing their own asset management structures for seized and confiscated assets.



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## Introduction

UNODC started in early 2014 to work with “Regione Calabria”, Italy, in the field of management, use and disposal of seized and confiscated assets. In April 2014, UNODC organized a first expert group meeting, which produced a series of findings and recommendations<sup>1</sup> in three areas: (i) international cooperation in identifying, seizing and confiscating criminal assets, particularly those of Mafia-based criminal organizations; (ii) domestic management, use and disposal of seized and confiscated assets; and (iii) management of returned assets in asset recovery cases. As a follow-up to the second workstream identified, UNODC organized an international expert group meeting from 7 to 9 September 2015, to deepen the analysis and exchange of national experiences concerning the effective management and disposal of frozen or seized and confiscated assets.<sup>2</sup>

In its article 31(3), the United Nations Convention against Corruption (hereinafter “the Convention”) requires States parties, in accordance with their domestic law, to adopt “legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property”. Considering that this obligation leaves a high level of discretion to States parties as to the means, methods and structures for the management of seized or confiscated assets, States may benefit from exchanging experiences and approaches with each other. In this sense, the Conference of the States Parties to the Convention, in its resolution 5/3 on “Facilitating international cooperation in asset recovery”, inter alia, “encourages States parties and the United Nations Office on Drugs and Crime to share experience on the management, use and disposal of frozen, seized and confiscated assets, and to identify best practices as necessary, building upon existing resources that address the administration of seized assets, and to consider developing non-binding guidelines on this issue”.

As more and more countries use the Convention as a framework on international cooperation for purposes of confiscation and asset recovery, it becomes essential to review and strengthen national procedures and structures with a view to appropriately manage seized or confiscated complex assets. In the last decade, as the issue of recovery of proceeds of crime has gained more prominence, several countries have improved their practices, offered innovative models, and been confronted with new challenges. It is, therefore, time to discuss and share these practices for the benefit of other jurisdictions facing similar situations.

### I. Policy objectives of domestic systems for the management and disposal of seized/frozen and confiscated assets

A presentation by UNODC highlighted that the variety of legal systems and their characteristics concerning the freezing, seizing and confiscating of assets, as well as the management of such assets, was intrinsically related to the different policy objectives pursued and defined at the national level. These policy objectives could range from depriving criminals of their ill-gotten assets to compensating victims, and undermining organized crime, terrorism and economic crime, to secondary objectives such as creating

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<sup>1</sup> See *Reported outcome of the expert group meeting on the management, use and disposal of frozen, seized and confiscated assets, held in Reggio Calabria, Italy, from 2 to 4 April 2014*, document CAC/COSP/WG.2/2014/CRP.1.

<sup>2</sup> See Annex for a list of experts.

an economically viable asset recovery system, preserving the value of seized or confiscated assets for the benefit of the State, society and victims, as well as ensuring accountability and transparency of and public confidence in the asset recovery system. National models could also combine different policy objectives. For this reason, there was not a “one size fits all” model, and each system could benefit from the practices and experiences of other countries in order to make informed policy decisions.

### ***International instruments***

The lack of specificity of existing international standards was also pointed out. In addition to the provisions of the Convention and the resolution of the Conference mentioned in the introduction, the following standards were also mentioned: the G8 Best Practices for the Administration of Seized Assets;<sup>3</sup> the European Union Council Directive requiring its member States to set up National Asset Recovery Offices;<sup>4</sup> the Financial Action Task Force (FATF) paper on best practices on confiscation (recommendations 4 and 38) and a framework for ongoing work on asset recovery;<sup>5</sup> and the Organization of American States (OAS) model regulations concerning laundering offences connected to illicit drug trafficking and related offences (in which article 7 addresses the administration of seized assets).<sup>6</sup>

### ***Recent change in the scope of national policy objectives***

Several experts explained that, in the recent past, their countries had experienced a major policy change from the mere imposition of prison sentences on convicted criminals to also seeking to deprive them and their criminal organizations from any ill-gotten assets. This new focus entailed not only immediate punitive consequences, but was also instrumental in preventing those assets from being reinvested in criminal activities.

One expert emphasized the importance of that change, but also pointed out the need to compensate victims and to mitigate damage done to society. Another expert pointed to the objective of general prevention pursued in his country’s asset recovery strategy, to serve as a symbol of justice delivered, beyond ensuring criminal convictions. Another expert explained that the main policy consideration for the system of confiscation in his country was that private property should also serve a social function, as indicated in the national Constitution. Considering that property of illicit origin did not serve a social function, it should be forfeited in accordance with the laws in place.

Another expert indicated that the system of confiscation and asset management should be based on the rule of law. While depriving criminals from their illicit profits was the primary and most important objective, the preservation of the value of assets was also

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<sup>3</sup> [G8 Best Practices for the Administration of Seized Assets](#), G8 Lyon/Roma Group, Criminal Legal Affairs Subgroup, 27 April 2005.

<sup>4</sup> [Directive 2014/42/EU](#) of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union.

<sup>5</sup> FATF, [Best Practices on Confiscation \(Recommendations 4 and 38\) and a Framework for Ongoing Work on Asset Recovery](#), October 2012.

<sup>6</sup> OAS/CICAD, [Model regulations concerning laundering offenses connected to illicit drug trafficking and other serious offenses](#), as amended in 2003. See also OAS/CICAD, Group of Experts for the Control of Money-Laundering, [Legal aspects in the establishment and development of entities specialized in the administration of seized and forfeited assets](#), 2012 and [Self-Evaluation Guide for the forfeiture and administration of assets](#), 2013. See also [OAS Hemispheric Drug Strategy](#) (paragraph 45) and its [Plan of Action 2011-2015](#) (objective 12).

important, as well as their destination, which should include resources for education in crime prevention

The importance of using the confiscation and asset management system to re-build social consensus, and not simply to deprive organized criminal groups of illicit assets, was also discussed, considering how such criminal groups could be infiltrating the economy. There was, therefore, the need for State actions compatible with the nature of the private sector and the aim of economic revitalization of affected communities, combined with preventive action, to enable the State to fill the space occupied by organized criminals in the life of the community.

### *Policy objectives and the design of asset management systems*

As a consequence of domestic policy decisions, some experts mentioned that in their countries the management of seized or confiscated assets was still exclusively in the hands of the prosecution service, the judiciary or a law enforcement agency, while positive experiences were highlighted of specialized offices, such as in **Colombia, France, Honduras, Mexico and Thailand.**<sup>7</sup> Also pragmatic reasons were given for the consideration of setting up a dedicated asset management office. For example, in **Romania**, once the Asset Recovery Office was set up within the Ministry of Justice in 2011, criminal asset recovery has become a priority objective of the national criminal policy, leading to an increase of over 300% in the value of seized assets and over 400% in the value of confiscated assets in the last years. The authorities have therefore decided to promote a draft law setting up a specialized asset management office, which has been submitted to the Parliament. The **Czech Republic** explained that it considered the establishment of a specialized asset management office aiming at preventing the decline of the value of seized assets over time, in order to maximize financial proceeds gained from seized assets at the time of confiscation and to reduce the workload of police investigators related to administration and management of seized assets.

An expert from the **United States of America** pointed out that such operations had gained considerable dimensions. As a consequence and for purposes of sustainability, a business model and professional structure had to be utilized. He indicated the historic reasons why the management of seized and confiscated assets in his country were attributed to a specific federal law enforcement agency, the United States Marshals Service (USMS). He also explained the practical advantages of the dedication of his agency to this work.

Another expert highlighted some key considerations in the creation of asset management offices, which was necessary due to the growing complexity – in nature and amount – of seized or confiscated assets: autonomy from law enforcement; neutrality; specialization in asset management; efficiency; and, transparency. Another expert also emphasized the advantages of a centralized management model, which allowed the dedicated agency to have an overview of all assets seized or confiscated in the country (in particular through the development of a database), and which could build its expertise over the years. Other experts underlined the importance of the accountability of the dedicated asset management agency, to be ensured by means of external and internal audits.

The expert from **South Africa** explained how the choices in his country's asset management model resulted from a risk analysis and were aimed at cost-effectiveness. An analysis of the available specialized capacity in the State and the potential for staff to be

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<sup>7</sup> See section IV for a description of these system's main features.

held personally liable for losses, as the State did not provide for insurance, led to the use of outsourced receivers from the private sector. While this may be a more expensive model, it has the advantage of keeping overhead expenses relatively low which is useful for States dealing with a small number of cases. In this regard there were constant efforts to dispose of seized assets and thus convert them into cash, in order to reduce the complexity of the management of those assets.

Another expert underscored the importance of reinvesting the earnings resulting from the management of such assets in capacity-building, especially for law enforcement, judicial and asset management agencies.

### *Challenges in developing domestic systems*

The expert from **Tunisia** indicated that in his country, the traditional judicial method of management of confiscated assets applied as a general rule. However, in March 2011 an asset recovery commission was created with the objective of tracing and confiscating exclusively all properties of the 114 persons related to the former political regime. During the same month, a committee was created to recover the assets of those persons having properties abroad, in accordance with the domestic legislation of the countries in which the properties were found. Several assets, often of a complex nature, were confiscated and recovered. In order to manage those assets, which has been a challenging endeavour, a commission was established in July 2011.

The expert clarified that due to the lack of capacity and experience, this ad hoc system led to the loss of value of many of those complex assets. As an example, he also pointed out that this committee managed some properties that had no market value (e.g.: religious radio station). In addition, some assets had a negative symbolic origin, which were not profitable. He agreed with the advantages of a separate and permanent asset management office to attain longer-term objectives while also contributing to an efficient judicial system.

With regard to difficulties in disposing of specific assets by sale, experts from **Colombia** and **Tunisia** outlined the challenges in finding potential buyers for assets tainted by their links with drug traffickers or the former political regime. An expert from **Italy** referred to a similar situation related to properties linked to the Mafia as presenting an opportunity for using such properties for social purposes, so as to build awareness among the community about the destination of ill-gotten assets and to enhance the credibility of the State.

The expert from **Tanzania** noted challenges in a system of confiscation based on criminal conviction, in which preservation of the value of assets pending criminal proceedings was essential. While the system allowed for the appointment of trustees, the costs of such services meant that in practice seized assets were still managed by law enforcement agencies. In this regard, economic considerations were an integral part of decision-making, with implications for the sustainability of related efforts.

Finally, an expert of the OAS mentioned the main challenges faced in the region to achieve the policy objectives of asset management and disposal systems, such as the need to improve legal instruments. She also stressed the main consequences of the absence of effective systems, including corruption, lack of trust in the Government, as well as the attraction that the wealth of criminals might exert on young persons.

## II. Effective legal frameworks for the management and disposal of seized/frozen and confiscated assets

Regardless of the legal system, the effective management of seized and confiscated assets requires core legal provisions, including on the use or disposal of assets prior to final confiscation, the handling of abandoned assets, the flexible use of restraining or seizure powers, as well as of conviction or non-conviction based (NCB) forfeiture powers. Moreover, legal systems require provisions allowing for the early identification and the protection of bona fide third parties.

### *National legal frameworks*

The expert from **Colombia** highlighted in her presentation positive aspects in her country's new Asset Forfeiture Code,<sup>8</sup> which included a specific chapter on the management of seized and forfeited assets. Such a specific legal basis was helpful in persuading authorities of the importance of asset management. The new Code sought to optimize asset forfeiture proceedings by allowing for the use of seized assets and the disposal of assets before final confiscation. It provided for six forms of asset management: 1) transfer of title, 2) contracting, 3) provisional destination, 4) provisional storage, 5) disposal or destruction, and 6) donations to public entities.

The expert from Colombia further indicated that, regarding the transfer of title, assets were sold through public auctions depending on their type and the status of the forfeiture process. While the administrator could decide on the sale of perishable goods, such as vehicles and chemical materials, the early sale of real estate required prior authorization from the competent prosecutor or judge. Such sales could be carried out notwithstanding fiscal obligations or mandatory insurance payments. Any property sale required first an assessment of its value. In case of a counter claim or a return decision, the sale price was returned, in addition to any interest earned on it.

The administrator might also lease the property to individuals based on contracts. The use of assets might also be provisionally transferred to public officials. In such case, clear procedures needed to be applied to avoid any potential conflicts of interest and to prevent corruption. Assets could also be donated to public entities.

The management of certain types of assets, such as buildings, could be very costly. Therefore, the Code adopted a flexible approach and established that when an asset did not generate income, the administrator was not required to pay taxes or pay for the maintenance of common areas, which could amount to as much as forty per cent of the actual rent, until transfer of the title was completed or the asset became self-sustainable.

The expert from **New Zealand** explained that the Criminal Proceeds Recovery Act of 2009 allowed the Official Assignee, a Court Officer appointed under statute and through the Official Assignee Compliance Unit (the agency authorized to manage and dispose of seized assets), to undertake any reasonable actions necessary to preserve the value of the restrained assets. This Unit could, for example, participate in any civil proceedings affecting the property. It could also apply to the court for the disposal of assets where necessary, as in the case of vehicles, businesses or any depreciating assets. Such flexibility was considered a key aspect of the asset management framework in New Zealand.

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<sup>8</sup> Law 1708 of 20 January 2014 (*Código de Extinción de Dominio*).

The expert of **Costa Rica** presented some experiences of its national Asset Recovery Unit in managing seized and confiscated assets of financial interest. This Unit could resort to three forms of asset management: 1) loan, 2) sale, and 3) donations. In all cases, the rights of bona fide third parties must be safeguarded. It was further explained that the Asset Recovery Unit did not require a judicial order for all proceedings related to the disposal of assets, given that the legislation required that the Unit conducted the proceedings only publicized sales for the knowledge of third parties. It was explained that the loan was not ideal for asset management, as the use of assets prior to confiscation required a court order. This method involved several challenges, especially in ensuring the return of assets in good condition. Sale seemed to be the most appropriate instrument that could be used in this area, and donations were also possible. Compensation was necessary if the accused was acquitted.

An expert from **Italy** presented on the flexible use of its distinctive system of conviction-based and non-conviction based (NCB) confiscation introduced in 1982, the so-called “preventive confiscation”. This system had resulted in the seizure of more than 40 billion Euros in assets. The expert indicated that recent legislation had extended the scope of preventive confiscation, which was no longer limited to organized crime, and could be applied to a wide range of offences, including corruption.

#### *Anticipated sale or use of seized assets pending final confiscation*

In the ensuing discussion, several experts noted the early sale as a useful tool in asset management. Experts from European countries stressed the importance of Directive 2014/42/EU, which required member States of the **European Union** to ensure the effective management of seized assets.

In other countries present, including the **Czech Republic**, **Honduras** and **Costa Rica**, legislation allowed for the early sale of immovable assets. The only legal requirement was that the asset must have been seized. It also permitted the advance disposal of movable assets in the following circumstances: 1) perishable goods; 2) assets that could quickly depreciate or be destroyed; 3) assets subject to deterioration; 4) assets that were costly to maintain; and 5) assets that were difficult to administer. It was explained that in **Romania**, the anticipated sale was reserved for movable assets, and no other conditions applied if the owner consented to the sale. If certain conditions were met, the sale could proceed even in the absence of such consent.

In **Brazil**, it was clarified that, while domestic legislation provided for conviction-based confiscation as a general rule,<sup>9</sup> provisional judgment or anticipated sale was possible in case of perishable goods or where the seized asset was subject to considerable depreciation or was difficult or expensive to maintain. Proceeds of such sales were deposited in a judicial bank account until final judicial decision.

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<sup>9</sup> It was explained that this general rule had the following exceptions: 1) a specific civil procedure against corruption (administrative improbity action), used when at least one accused was a public agent and at least one of the following elements were met: i) illicit enrichment; ii) an act that caused damage to the public treasury, or iii) an act that violated the “principles of public administration”, such as legality, publicity, impersonality. As possible penalties for such acts, legislation foresees inter alia: i) fine; ii) loss of public function; iii) forfeiture of assets illicitly obtained; 2) a general civil action in case of damage to the public treasury; and 3) another possibility of civil forfeiture has been provided for recently under the Anti-Corruption Law.

It was also explained that **Czech Republic** legislation (Act No. 279/2003 Coll. including its amendment Act No. 86/2015 Coll.) allowed for advanced sales of seized assets without approval of the accused. The law defined conditions for such sale: 1) perishable goods; 2) assets whose value could quickly depreciate, mainly motor vehicles and electronics; 3) assets that were costly to maintain, 4) assets that were difficult to administer, its management required special conditions and non-easily available expertise.

Costa Rica resorted to a special administrative contracting process (“*proceso sustitutivo de contratación administrativa*”), which was authorized by the General Comptroller’s Office, which speeded up the sale of assets. This instrument had provided profits to the State by preventing the deterioration of the assets over time, and allowing keeping the money in bank accounts until the final sentence of confiscation or return of the assets.

Questions were raised about the possibility for the owner to object to the decision to sell seized assets prior to confiscation. In that regard, some jurisdictions considered the approval of the accused the best way to balance a respect for the constitutional right to private property and the efficiency of the asset management system. In other systems, the lack of agreement could be dealt with by a court order.

It was mentioned that in **France** assets could only be sold by judicial order. The expert from **Australia** stated that in his system further judicial orders would be necessary if the original restraining order did not permit the sale of an asset. However, the owner of the asset could agree with the early sale, which could also be in his or her interest; this would not be ratified by an amending court order. The expert of the **Czech Republic** noted that, according to national legislation, the owner of the asset could appeal the decision to sell assets.

Some experts indicated that in their systems seized assets could not be sold or even used prior to a final judicial forfeiture or confiscation order. In this regard, the **OAS** mentioned the controversy surrounding the temporary use of assets in certain jurisdictions due to the fear that fundamental rights of the owners could be violated in case they needed to be returned upon acquittal or non-confirmation of charges.

Other experts noted that seized assets could be used by law enforcement agencies, such as the police for instance. However, it was stressed that although legislation might allow for such use, that was not the case for certain assets, due to their intrinsic nature, including the risk of considerable depreciation. In the **United States**, it was highlighted that the police was not allowed to use seized assets until they become forfeited by a final court decision.

In cases where the assets needed to be returned, the agencies that had used them were bound to guarantee their return and also offer compensation for the depreciation caused to the asset due to its use. In some jurisdictions, as a condition for the temporary use of assets, institutions had to provide a “guarantee”, in case the return of the asset was not possible due to its destruction. It was also pointed out that in cases in which assets needed to be returned to their legitimate owner, the State or the asset management office was allowed to retain part of the investment used to maintain or improve the condition of the seized asset.

In **Costa Rica**, in order to use the seized assets, preventive and law enforcement institutions needed to provide for an insurance against all damages that the asset could suffer, before they could receive the asset. They also needed to allocate a budget to cover damages not included in the insurance. Loans were granted through minutes containing images of the assets, and signed by four persons that were part of the process, including the

person responsible for the asset. Furthermore, Costa Rica could use the interests and the profit gained from the seized assets, and in case the assets should be returned to the legitimate owner by a judicial order, only the value of the asset should be given back.

A good practice that was identified consisted of conducting an assessment to check whether the accused had debts toward the State, for example due tax payments, prior to the return of the seized assets. If that was the case, the value of the debt was deducted from the amount that would be returned to the accused. For that, a high level inter-agency coordination was required.

#### ***Restraining assets as an alternative to seizing***

The possibility of restraining assets, instead of seizing and thus taking them into possession, was highlighted by some experts as a good practice in specific cases in which the administration or the transportation of the seized assets was not deemed convenient. Other practitioners mentioned that restraining assets was not applicable in their systems as this practice could represent a risk, given that the asset could be damaged or stolen if no prompt action was taken.

In other cases, the restraint of assets was applied as a way to ensure that the accused and his or her family were able to subsist and their fundamental rights were not unduly restricted. For example, in cases where a family owned several cars, it was common that the more valuable ones were seized, while at least one was left for the daily transportation of the accused or his or her family.

#### ***Abandonment of property***

In **Costa Rica**, it was explained that the abandonment of property, leading to confiscation, was covered in two special laws.<sup>10</sup> Pursuant to article 90 of Law 8204, the Asset Recovery Unit could request the Court to declare a seized asset as abandoned after one year of seizure, or three months after the end of the criminal process, if the identity of the perpetrator or the owner was not established and the property was of economic interest. In cases of organized crime, the time limit to declare a seized asset as abandoned was six months instead of one year, pursuant to Law 8754.

In **Colombia**, the Asset Forfeiture Code also regulated the abandonment of assets: the administrator could open a civil process to claim the ownership of the asset if no one had claimed ownership within three years for movable assets and five years for real estate. It further gave the administrator certain functions of judiciary police, including the eviction of illegal occupants or trespassers through a swift administrative procedure, considering that one particular challenge for asset management identified were cases of illegal occupancy of abandoned real estate.

#### ***Value-based confiscation and asset management***

Several experts highlighted the relevance of legal frameworks allowing for value-based confiscation, including as a very effective tool to recover the value of proceeds from clean property where the actual proceeds could not be traced. It could also facilitate and reduce the risks of asset management. The expert from **South Africa** expressed his preference for

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<sup>10</sup> Law 8204 (on narcotics, money-laundering and terrorism financing) and Law 8754 (on organized crime).

NCB confiscation to reduce or avoid administration expenses, as cases could usually be finalized rapidly without the long delays associated with a criminal trial.

The expert from **Belgium** explained that value-based confiscation – the seizure of clean money in a bank account instead of the actual proceeds, which could be a rapidly depreciating asset, such as a car –, allowed for a more practical asset management in criminal investigations.<sup>11</sup> Asset management on the basis of value-based confiscation or on the basis of early sales appeared to be preferable to the continued possession of the asset. The decision to sell could apply to replaceable assets, assets whose value was easy to determine and whose seizure might cause depreciation, damage or disproportionate costs. Only the responsible magistrate (either investigative judge or public prosecutor, depending on the legal system) could initiate the procedure to sell the asset. The owner should be notified and had the right to appeal the decision. When the decision was final, the Central Office for Seizure and Confiscation could then sell the asset through a public auction or through a specialized private company, for about the amount of its determined value. It was highlighted that the proceeds of the sale were deposited in the account of the Central Office. The proceeds plus interest were reimbursed to the suspect or accused if acquitted.

The expert from **France** explained that the French system distinguished between movable assets and cash. While seized cash was deposited by the court in an interest-bearing (1%) bank account of the Agency for the Recovery and Management of Seized and Confiscated Assets (AGRASC), the sale prior to confiscation of depreciating movable assets, not necessary for the investigation, was possible pursuant to a court order. The expert emphasized the importance of value-based seizure even in relation to direct proceeds of the offence. She also highlighted the importance to train the judges and investigators on taking a financial approach when choosing which goods to seize, and on prioritizing assets (preferably bank accounts), which were easier to manage.

### III. International cooperation in the management of seized/frozen and confiscated assets

The discussion focussed on specific challenges and good practices for cooperation across jurisdictions in the management of seized and confiscated assets, with a particular focus on the recognition and direct enforcement of NCB forfeiture. It also dealt with asset management-related orders for complex assets, as well as asset sharing among countries that contributed to the recovery.

The expert from the **Dominican Republic** made a presentation listing significant cases involving international cooperation and highlighting achievements of her office. Between 2011 and 2014, the Dominican Republic had 64 cases of international cooperation with 16 countries mostly in the Americas and Europe, and in 2013 and 2014 assets worth around \$7 million and \$322,222 respectively were recovered. The presenter then elaborated on the cooperation with the United States in the ‘Benitez case’. The case involved three Cuban brothers who had defrauded the United States Medicare system, invested in the Dominican Republic, and after the start of the investigation had escaped to Cuba. Eventually, through a large-scale operation involving several jurisdictions, \$22 million worth of their assets were traced and seized. Based on an asset sharing agreement with the United States, 20%

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<sup>11</sup> Other forms of asset management highlighted were the destruction or return of the asset in exchange of a bank guarantee or placing the good under the custody of a third party.

of seized assets were given to the Dominican Republic and the remaining amount returned to the United States. An expert from the United States added that asset sharing in similar cases was also used to compensate for expenses incurred.

Another presentation, by the expert from **South Africa**, focused more systematically on the issue of international cooperation in asset recovery. More specifically, he explained that the process of mutual legal assistance, which has often been very slow in the past, had to adapt to the speed of illicit financial flows, and that a number of innovations – some of which were contained in the Convention – could facilitate international cooperation in this area. These innovations were: the creation of specialized central authorities; the recognition and direct enforcement of foreign orders; law enforcement cooperation; and NCB recovery. The expert also referred to the cost of asset management during the mutual legal assistance process and asset sharing arrangements.

#### ***Creation of central authorities***

The creation of specialized central authorities, together with the use of modern technology (including fax and e-mails), have expedited the mutual legal assistance process, traditionally carried out through diplomatic channels. These central authorities, required under a number of international conventions, can receive requests for assistance directly from each other and are expected to have the expertise to promptly refer the request to relevant domestic authorities.

The expert from **China** highlighted that for the Mainland of China, the Ministry of Justice was the Central Authority for mutual legal assistance in criminal matters, and currently China had entered into more than 59 bilateral treaties and agreements on mutual legal assistance in criminal matters and was a State party to more than 20 international conventions related to international legal assistance in criminal matters.

#### ***Recognition of foreign freezing and confiscation orders***

A second innovation was the adoption of domestic legislation that allowed for the recognition of foreign freezing and confiscation orders. The International Cooperation in Criminal Matters Act in **South Africa** was an example of such legislation. Usually, the central authority approved such an order and once the foreign order was registered with the domestic court, it became an order of the court. The advantage of this approach was that it expedited the process. In some countries, evidence from a foreign State did not need to be placed before a domestic court and any challenges to the evidence had to be brought in the foreign State. Only compliance with the registration process – and not the merits of the case – could be challenged in the courts of the requested State.

In this context, a question was raised concerning the legal system of non-conviction-based confiscation provided by Italian law, which allows Courts to order “preventive measures” (mainly seizure and confiscation”) in cases of socially dangerous persons who owned assets considerably disproportionate to their income.

It was clarified that in **Italy** courts took such decisions at the outcome of an adversarial hearing. If the prosecutor proved that the concerned person was socially dangerous and the value of his or her assets was disproportionate to the income, the only way for the concerned person to impede the confiscation was to prove – or at least raise a reasonable doubt – that these assets had a legitimate provenance. First instance court decisions on confiscation might be appealed and even second instance courts could be challenged before the Supreme Court (“*Corte di cassazione*”) for legal issues only. It was clarified

that such an order would most likely be executed in South Africa. Another expert from **Italy** referred to a 2011 case with Switzerland, where a request for the transfer of banking information of an Italian suspect was accepted, even though the proceedings could not strictly be qualified as criminal under the circumstances. It was underscored that measures related to preventive confiscation should respect the fundamental rights of suspects as well as the rights of the defence and to a fair trial to satisfy the requirements of the requested States. However, it was reported that the Italian system had been deemed compatible with fundamental rights, namely the presumption of innocence and the fundamental property rights, both by the European Court of Human Rights and the Supreme Court of Italy. Other cases of recognition of Italian NCB orders were mentioned as a result of cooperation with Austria, France and Luxembourg. In general, it could be observed that the execution abroad of such NCB orders, even in countries that did not provide for this type of measure, was facilitated where the measures were complementary to a criminal trial in which the responsibility for specific offences generating profits had been established by means of traditional procedures for obtaining evidence.

It was also underscored that NCB measures were chosen by Italian authorities, not in order to avoid criminal liability standards and relevant guarantees, but instead in order to target – by means of an ad hoc procedure – proceeds (often fictitiously registered in the name of third parties), detected after years from the conclusion of criminal proceedings.

**Australia** also amended its laws to more easily recognize foreign orders. Previously this was a common characteristic only of ‘common law’ countries. Now even a freezing order by the Indonesian Corruption Eradication Commission – which was not a court, but a lawfully constituted body in Indonesia with the power to make such orders – had been recognized. The Commission could register the order with the court and that order then took effect. In **Romania**, foreign orders issued by a judicial institution could be executed, even when the measure ordered was not considered a criminal law sanction according to Romanian law, if the order was issued by a competent judicial authority, was connected to a criminal activity and referred to assets that were either proceeds or instrumentalities of the latter.

**Italy** had also implemented the 2006 Framework Decision of the Council of the European Union on mutual recognition of confiscation orders. Accordingly, it was possible to execute confiscation orders in the absence of dual criminality where the penalty for an offence was not less than three years imprisonment.

An expert from **Australia** mentioned that enforcing some decisions in connection with plea bargains in civil forfeiture orders was very difficult in many countries, in particular countries with a civil law legal system. An expert from the **Basel Institute on Governance** suggested that national authorities had to make an attempt to understand the nature and origin of the order and then verify procedural aspects and the compatibility between systems (a case was mentioned on a criminal seizure order from Brazil that had been enforced in the United States as an NCB forfeiture order). Ultimately, the existing differences between civil and common law systems could be overcome.

The expert from **Thailand** highlighted that in several cases information was sent to authorities in Hong Kong, Singapore, the United Kingdom or Switzerland to verify if certain assets were proceeds of crime, and then domestic procedures of the requested States were used to seize and return the assets. The same approach was used in requests from other countries (for example from China, the Netherlands or South Africa).

The expert from **China** highlighted the ‘Bank of China’ case, in which around USD\$3.5 million were stolen and moved, by three former bankers, to the United States through Hong Kong and Canada. The amount was returned on the basis of a bilateral agreement, namely the Agreement on Mutual Legal Assistance in Criminal Matters between the Government of China and the Government of the United States.

*Direct law enforcement cooperation*

A further innovation was to allow direct cooperation between law enforcement bodies. Some countries had adopted domestic laws that allowed mutual legal assistance requests to be accepted directly from specified foreign law enforcement bodies.

An expert from the **OAS** referred to challenges for international cooperation in the Americas, including different legal systems, lengthy procedures, different languages, and lack of resources. The **OAS** also encouraged the use of informal cooperation prior to issuing a formal request to overcome some of these challenges, including through the Asset Recovery Network (RRAG) of the Financial Action Task Force of Latin America (GAFILAT).

*Non-conviction based (NCB) forfeiture*

Obtaining a criminal conviction for confiscation could take a long time and be a complex process. NCB forfeiture, in contrast, used the normal civil litigation process and allowed the State to forfeit particular assets if it could prove that they were the proceeds or an instrument of crime, without the need to link that process to a criminal prosecution.

A case of returned assets from **South Africa** to Nigeria was an example that showed the potential of NCB forfeiture in international cooperation. In that case a senior official in Nigeria was arrested in the United Kingdom but returned to Nigeria where he had immunity from prosecution. At the request of Nigeria, and using evidence from the United Kingdom and Nigeria to show that property was proceeds of crime, South Africa froze his assets. In this case, the NCB forfeiture application was not opposed, as the official was reluctant to produce evidence that could otherwise be used against him. Evidence was supplied on affidavit at the Embassy of South Africa and assets were sold and returned within 15 months of the request.

As an indication of the stronger growing international experience in this field, it was reported by the expert from **China** that a Court of China had issued its first ever NCB forfeiture order and was seeking to have it executed in Singapore, where a multi-million RMB stolen money had been hidden by a Chinese corrupt official, who fled from China to Singapore.

In **France**, where only criminal confiscation was possible, foreign civil forfeiture orders might be executed. An example was provided of assets in southern France of an Italian citizen involved with the Mafia, which were seized based on an Italian request to execute a civil forfeiture order, because analogous results could have been reached in France. In **Brazil** as well, while NCB forfeiture was not a general rule, a request for execution of NCB orders could be fulfilled. **Australia** had NCB forfeiture and would expect that such an order be recognized “by analogy” in other countries, based on the fact that a fair trial and proper procedures had been completed in Australia.

The **United States** had no problem with recognizing NCB forfeiture orders but had no cases so far. Some countries had NCB forfeiture in their legal system, but could not ensure jurisdiction over assets outside its borders, requiring the cooperation of other States.

#### *Cost of asset management*

In cases that would take considerable time to be finalized, the costs of managing certain assets could pose major challenges. For example, businesses, such as a hotel, might be profitable, but the running expenses were high. They might also be difficult to run because they might be used for criminal purposes such as prostitution or drug dealing. Another example were houses, whose value might appreciate over time, but were expensive to maintain; in that case, efforts could be made to rent them out to generate income. Other types of assets such as live animals, including race horses, could be expensive to maintain, or might be at risk of dying while under seizure.

In order to reduce asset management costs it was important to plan properly and carefully assess the value of the assets and the costs of maintaining them during the freezing order period. If the asset might lose value over time, or the costs of maintaining them were high, it would be useful to seek an agreement with the owner for the sale of the asset, and the resulting cash to be kept in an interest bearing account. In cases involving mutual legal assistance, if an agreement could not be reached, it might be possible to persuade the court to order that this be done on the basis that it would be damaging to the victim State.

#### *Asset sharing practices*

It was explained that **South African** law allowed for the sharing of assets. Where the asset recovery attempt was not successful, each State would pay its own costs of the mutual legal assistance procedure. If the mutual legal assistance was successful, the requested State could deduct the actual litigation and asset management expenses, though this could be waived in certain cases. There were two possibilities; (a) the net proceeds could be shared equally between the States if there were no victims, for example in drug-related cases; (b) all the net proceeds could be returned to the requesting State if there were innocent victims, for example in fraud cases, or where the State was the victim of corruption. A similar approach was pursued in **Thailand**, regarding expense deduction.

In **Brazil**, there was a specific provision in the Anti-Money Laundering Law, providing that in the absence of another agreement, assets could be shared equally – while respecting the rights of bona fide third parties. In **Romania**, asset sharing was based on bilateral agreements or ad hoc negotiations. Otherwise, European Union rules were applied, according to which assets below 10,000 euros remained with the requested State, and above that were shared equally. In **Australia**, confiscated assets were placed in an account administered by the Minister of Justice, and in most cases where assets had been restrained at the request of a foreign country, the Minister would be likely to agree to return confiscated funds, after deducting expenses. An expert from the **United States** highlighted that the country had shared close to \$300 million of assets with 65 countries, hoping that part of it was spent on strengthening the confiscation infrastructure. It was also highlighted that the **OAS** was undertaking a study on asset sharing practices.

#### IV. Specialized Asset Management Offices, court-appointed asset managers and subcontractors

The management of assets creates a multitude of practical challenges requiring specialized professional skills to maintain their value, manage them cost-effectively and ensuring their sale at market value. In this session, different approaches taken in setting up specialized asset management offices were discussed.

##### *Specialized Asset Management Offices, including preparatory steps for their establishment*

The expert from the **Czech Republic** presented an initiative that aimed to establish an asset management office within the Ministry of Interior in order to ensure appropriate asset management. Among financial benefits under consideration were the increase of finances obtained from seized and movable assets through fast sales before confiscation and cost-savings due to proper storage management. Non-financial benefits were also considered, including a reduction in the workload of police investigators related to the administration and management of assets, the setting up of uniform standards to improve cost efficiency, as well as the establishment of strengthened quality level of asset management, based on the direct link between police and the Ministry of Interior. The absence of such a solution could present considerable annual losses for society, including the increased risk of legal actions against the State due to the deterioration of seized assets brought by accused persons, in case charges against them were not pursued. In its plans, the Czech Republic was considering a system for the centralization of assets in only five warehouses across the country and an immediate division of assets for short-term, long-term and specialized storage, depending on whether assets were for immediate sale after seizure, for sale after confiscation or required special treatment. This approach aimed at reducing the amount of assets destined for long-term storage, thus reducing warehousing costs. In the current legal framework, the management of seized companies was handled by receivers.

Experts generally agreed that the creation of an asset management office could be necessary, as it allowed for the monitoring of the assets and their accountability from the moment of seizure until their disposal.

In terms of structure, the autonomy of the asset management office was also considered. In **Honduras**, such an office had initially been established within the prosecution service, but because that was considered to lead to an excessive concentration of functions and for reasons of autonomous functions, it was later moved to the Secretariat of the Presidency.

The expert from **Mexico** presented the structure and broad competences of the national “Asset Administration and Alienation Service” (SAE). It was an autonomous institution, which concentrated the role of managing and disposing of inter alia seized, forfeited and abandoned assets. The specialization of the organs of investigation, prosecution and asset management was the result of the separation of their functions, and the experience of the SAE in managing public assets.

The Service had been created by the Federal Law on the Administration and Disposal of Public Sector Assets of 2002 and began operating in 2003. SAE’s scope of action resulted from the concentration of the following functions, previously performed by different Federal Government units: clearing trusts, divestiture of state-owned entities, management of seized property, investment units, management of illegal assets from foreign trade and management of portfolios and non-monetary assets from the Federal Treasury. The

presence of SAE brought positive effects for the rest of the public administration, since it allowed reducing costs by concentrating activities, increasing transparency and accountability, generating specialization, and helping with the reintegration of various assets into the economy. The results obtained by SAE were due to the implementation of special procedures for: the reception, custody, operation, optimization, liquidations, sales and, where applicable, destruction of entrusted assets with attachment to the principles of transparency and accountability.

The expert from **France** gave a presentation on the setting up of AGRASC. The agency was created in 2011 to match the evolution of legislation, which included wider possibilities to seize and confiscate assets, the modernization of seizure in criminal cases in accordance with a new law of 9 July 2010, and the creation of the unit for the identification of criminal assets ('PIAC').<sup>12</sup> This Agency played a key role in providing information to public creditors before restitution, improving compensation, and providing training and assistance in international cooperation cases.

In addition to providing assistance to investigators and judges in issues related to real estate and businesses, AGRASC centralized the management of money seized during criminal proceedings, including cash as well as any types of bank accounts, and dealt with the management of complex assets. It also played an important role in the sale of movable property before judgment, notably in partnership with the National Property Disposal Office, the National Chamber of Court-accredited Auctioneers and the National Chamber of Accredited Commodity Brokers. In relation to assets located in France, but wanted by foreign authorities, AGRASC could not enforce foreign orders directly. However, once a domestic judicial order was issued, the asset would be seized and then could be managed by AGRASC.

The presentation of **Thailand** focused on the asset management function carried out by its Anti-Money Laundering Office, with the responsibilities to maintain a system for asset accounting; to maintain and safe-keep assets; to permit stakeholders or public agencies to take assets into custody for use, pending finalization of cases; to rent out assets; to appoint paid managers to take care of assets, or to sell movable assets in auctions. Although the Office was considered successful, challenges were highlighted in relation to the diversity and complexity of assets (e.g. farm animals and wildlife species, companies, specific savings accounts), which required a variety of methods for maintenance and managing, as well as staff with specialized skills.

#### *Court-appointed asset managers and subcontractors*

The expert from **France** reported that his country could also make use of subcontractors. Since 1 July 2015, AGRASC had entered into a partnership agreement with the National Council of Receivers, to allow for the appointment of interim receivers when businesses needed to be administered and when this task was entrusted by the courts to the Agency.

The expert from **New Zealand** presented the role of the "Official Assignee", created to preserve the value of certain assets, when directed by the court, and to alleviate the burden of asset management from the police and other enforcement agencies. The Official Assignee Compliance Unit became a trusted enforcement body and the only agency in the country authorized to manage and dispose of seized assets connected with the proceeds of crime. An interim study to assess the effectiveness of the system was initiated and it was

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<sup>12</sup> Further explained below, under V (A).

intended to compare the results obtained in the country to three regimes used in foreign jurisdictions.

Some delegates commented that their jurisdictions allowed subcontractors to manage certain types of assets. In **Belgium**, it was possible to use contractors. In the case of **South Africa**, one of the reasons for the country's outsourcing model, in which private receivers undertook the actual asset management, was the risk related to entrusting public agencies to maintain complex assets, which could reflect badly on its asset recovery programme in cases of corruption or any damage. South Africa's system also allowed for private receivers to contract insurance services to prevent liability, for example in cases of loss, which was not a possibility for public agencies.

**Thailand** considered hiring private receivers as an option for the management of immovable assets or movable assets unsuitable for relocation; for assets causing maintenance burdens; for assets that were not sold in auctions for conversion into cash, or where permission of use by public agencies for public benefit were not recommendable measures.

The seizure of companies devoted to legal business, but used as a front to launder money or to conduct other illicit activities presented challenges. In particular, it was difficult for subcontractors, in certain circumstances, to take over the business and make it profitable, while running it in a licit way. Such a challenge should be considered in pre-seizure planning (see section V-A) below).

Regarding the management of seized assets within preventive proceedings, specific provisions existed in **Italy** to optimize their value or minimize their deterioration. According to the Anti-Mafia Code, when deciding on seizure, the court appointed an administrator, who was tasked with the custody, conservation and administration of seized assets, also in order to increase, if possible, their value. It was highlighted that the judicial administrator had three roles according to the model used: 1) collaborator of the judicial authorities in the identification of assets; 2) manager, in the management of seized assets; and 3) promoter of the reuse of confiscated assets for institutional and social purposes, in a more proactive role, providing information and expertise for the decision to be taken by the National Agency for the Administration and Disposal of Seized and Confiscated Assets from Organized Crime (ANBSC).

#### *Considerations for the financing of specialized asset management offices*

In discussing the financing of the system, many experts agreed on the benefits of implementing a self-financing system. Some stressed that although steps were taken in that direction, they were not able to accomplish self-financing in their own jurisdictions and they did not see it as feasible in the short term.

**Belgium** was one example of such a jurisdiction, as the asset management office was financed by the State budget. Concern existed about the action of managers, who were contractors, in making assets profitable. An assessment was made on the basis of taxes paid in the preceding period and the previous income of the business. As for **New Zealand**, it was explained that, unlike Canada and the United States, the confiscated assets fund was not currently used to directly cover the salaries of employees of the agency, which were paid from the general budget instead.

Experts stressed the need to carry out cost-benefit analysis to quantify the costs of the agency in relation to the profits. Some experts mentioned the importance of improving the

management of seized assets as a way to improve financial benefits that should be reinvested into the system.

Regarding the achievement of self-financing systems, the expert from **Colombia** identified as a good practice the payment of subcontractors with a percentage of the profits that were gained through the administration of the seized assets. This practice could provide an incentive for subcontractors to make the management of their assets more profitable. In the case of **Thailand**, managers were paid out of the revenue from management of the asset, and new legislation was in discussion that would make the Anti-Money-Laundering Fund responsible for such payments.

Regarding the forms of financial support for the administration of seized and forfeited assets, the **OAS** identified the following good practices: investments with seized money; management of productive assets; early sales; declaration of abandonment; and the disposal of forfeited assets.

## V. Specific Issues

### A. Pre-seizure planning

In his presentation, the **United States** expert from the USMS, the agency responsible for property custody and management in the Department of Justice's Asset Forfeiture Programme, explained the agency's role over the asset lifecycle, which started with pre-seizure planning, followed by actual custody or seizure, the management of the assets, and finally the disposal of forfeited assets. The first step, pre-seizure planning, was essential for the success of the subsequent steps, including for purposes of limiting future liability and judicial review and providing for an economically viable model. Pre-seizure planning could be defined as "anticipating and making a collaborative, informed decision about what property was being seized for forfeiture, how and when it was to be seized and, most importantly, whether it should be seized or targeted for forfeiture at all".

For an informed decision to be taken, considering the actual value of the property and its expenses, an analysis was conducted on ownership (by public information sources and title search, which included the chain of ownership, existing liens, potential claimants, as well as utilizing law enforcement resource) and value (including the broker price opinion, circumstantial appraisal, an estimation of the net equity). A visual "drive-by" (to observe "for sale" signs, signs of occupation or abandonment, verification of whether property matches the description, state of maintenance and repair needs) could also be part of pre-seizure planning. This had the purpose of avoiding the seizure of assets that were not worth keeping, for instance, due to their high maintenance cost, perishability or size. Examples were provided of common disposal issues that could have been prevented through careful pre-seizure planning, including inaccurate description of assets, ownership issues, failure to identify third party claimants or to serve proper notice, contamination or safety hazards, negative equity, all of which created liability for the asset management fund. It was also explained that courts were not involved in pre-seizure planning.

During the discussion, it was clarified that in the United States, fictitious attributions of properties to relatives or other third persons by criminals, which if confirmed did not prevent seizure or forfeiture, were an important part of the investigative work on assets ownership within pre-seizure planning, which could also include simple surveillance of the subject or the asset. Surveillance may also identify vehicles registered in "front" entities,

which may lead to additional assets. However, that strategy employed by criminals to hide properties of illicit origin could pose problems in other jurisdictions, especially where the assets of accused individuals were not systematically investigated and identified. It was also clarified that in case of mortgages of high value on real estate to be seized, this liability would be considered in estimating the value of the property and viability of seizure. In relation to the ability of carrying out pre-seizure planning as part of international cooperation, it was further clarified that it was possible, as part of an informal exchange of information, to facilitate informed decisions before seeking to establish and enforce foreign court orders of seizure or confiscation.

The expert from **Brazil** explained that in his domestic legal system there was no freedom for law enforcement and adjudicating bodies to choose whether or not to seize certain proceeds of crime. Therefore, financial cost-effectiveness was not the main purpose of asset confiscation. In his experience, the punitive message of depriving criminals of any ill-gotten gains was crucial, and this was still a message that needed to be better understood by all investigative and adjudicating bodies in the country.

The experts from **Colombia** and the **Dominican Republic** likewise emphasized the important message to the community of seizing or disposing of confiscated assets of criminals, notwithstanding their value, and the powerful negative message of allowing assets to remain with the accused or his family pending final conviction. The expert of the **United States** clarified that there were exceptions to the economically selective approach that had been explained, in cases of “compelling law enforcement reasons”, which could justify seizing and forfeiting economically non-viable assets, an approach also followed by **France**.

It was explained that a key feature of the **South African** law was that the Court could order that the receiver could compel the individual to disclose all of his or her assets under oath (and the risk of committing perjury), which could also facilitate the tracing of hidden assets. The careful planning of simultaneous seizure operations on several assets was also important so as to prevent warnings and the moving of assets. The South African expert further explained that pre-seizure planning was a phase also used to examine whether a seizure court order should provide for the authorization of activities by the receiver aimed at generating revenues where possible. In the case of seizing animals, arrangements could be planned, for example, for zoo or game park to house the animals in the interest of their business, while at the same time covering their elevated maintenance costs. He also raised the challenges in seizing companies or businesses with mixed licit and illicit use, such as bars or restaurants also operating brothels. He further indicated that in his country there has been a strong trend to rely less on confiscations based on criminal convictions in comparison with NCB forfeiture, due to the much shorter period of time required to finalize the case and dispose of confiscated assets. By detaching the confiscation process from the investigatory and prosecutorial elements inherent to criminal proceedings, the process of pre-seizure planning and asset management could also be made more efficient.

The expert from **France** explained that pre-seizure planning procedures were currently not defined in the national legal system, but were part of the day-to-day work of AGRASC. The rationale behind the 2010 legislative modifications instituting AGRASC was to facilitate the work of investigation officers and magistrates, so as to enable dedicated staff to plan good quality seizures. As part of that work, the Agency made efforts to anticipate the consequences of seizures, including preventing future liability in the management of assets. For instance, in accordance with the law, money in bank accounts could be seized (such as deposit accounts) and transferred to the bank account of the agency, except for

some kind of bank accounts (such as saving accounts, that were seized but only blocked, and thus normal interest rates continued to apply, thus preserving the assets in a simple manner). At the investigation stage, it was explained that a law enforcement unit (the Criminal Asset Identification Platform, “PIAC”) was dedicated to criminal asset identification. That specialized unit included among its staff financial investigators, and they worked to anticipate matters that would arise upon seizure of assets. Importantly, this unit made a complete investigation of licit and illicit assets. This was of particular relevance in cases of value-based seizures, which were encouraged, as they facilitated maintenance of the value in the long-term, and in practice reduced litigation concerning the values of maintained seized properties. However, due to its size, that unit only intervened in high-profile cases.

The expert also explained that AGRASC was commonly consulted by judges as to the viability of seizures (that was highly recommended for immovable assets). Often, after judicial decisions had already been made, AGRASC provided information to magistrates to seek pragmatic approaches, in particular in cases in which seizures could not lead to the successful liquidation of assets in the future. The expert also explained the possibility of seizures, maintaining the assets in possession of the suspects, which included the institution of depositaries, which could be useful in cases of works of art of difficult mobility and expensive storage, or airplanes, for example.

New legislation in **Colombia** made reference to the importance of a cost-benefit analysis to be carried out prior to the seizure of assets. This was relevant in order to determine if the assets were worth being seized or not, as experience showed that in many cases a considerable volume of assets were seized with no clear purpose.

An expert from the **OAS** indicated that pre-seizure planning was an absent step in most States of the region. She also stressed the importance of considering the need for all involved agencies to participate in pre-seizure planning, to prevent inconsistent findings. Finally, she observed that the practice of resorting to value-based confiscation was increasing in the region.

It was clear that pre-seizure planning, including strategies for anticipating any issues that could arise in the future management and disposal of assets, was a crucial step which – if neglected – could impose high costs on the State. It was also generally observed that those officers responsible for decisions on seizure of assets in the respective legal systems should consult with competent asset management agencies in advance to ensure that practical aspects of implementing the decision could be taken into account. In particular it was observed that the seizure of functioning companies, with the potential benefits that their successful management could present, deserved careful consideration and planning.

## **B. Managing complex assets**

The discussion revolved around the peculiar characteristics of the asset management system, as well as professional skills required to handle complex assets, including real estate, corporate assets, vessels, cattle and wildlife.

The experience in **Italy** was based on the cooperation between a judge and a professional judicial administrator. It was stated that in complex cases, this cooperation could involve a group of professionals responsible for the management of the assets until final confiscation and transfer to the “National Agency for the Administration and Disposal of Seized and

Confiscated Assets from Organized Crime” (ANBSC), established in 2010. Asset management was complex both from the quantitative and the qualitative perspective, as there were around 35,000 confiscated assets in Italy at this moment, of which 75% were managed by a judge, assisted by a judicial administrator, and the remaining cases by the ANBSC, with a total value of around 35 billion euros.

Challenging cases were discussed. The case presented by **Honduras** concerned the seizure of the hotel and zoo “Joya Grande”, a tourist resort near the capital. Pre-seizure planning was explained, to assess the business and all the risks involved. The primary task upon seizure was to identify the personnel involved in criminal activities, to avoid major disruptions of the operations and unnecessary dismissals of experienced staff, which could pose concerns for the caring of the animals. During the evaluation and review of financial documents, it had been found that some computers, operations and accounting records were missing. Subsequently, it was established that \$70,000 were needed to keep the zoo operating (including veterinary service, food and maintenance). As the zoo had been controlled by a criminal organization, registry and licenses were non-existent and some of the activities undertaken by the company were unlawful. Nevertheless, it was decided not to interrupt the business and to ensure that the zoo could continue its operation. It was closed for only 12 hours, and then quickly reopened. After the assessment phase, a trustee was appointed, and the income became regular. A bridging loan was used to pay electricity and other bills, and was paid back very quickly, given the positive income. The place remained a domestic tourist attraction, and the value of the whole resort, comprised of the hotel, swimming pool and zoo with rare animals, increased. The main challenge for the authorities was to ensure not only the proper conduct of business, but also to guarantee a source of income and jobs for the local community, as well as to ensure the well-being of the animals. The Agency in charge of administration and management jointly cooperated with local municipalities in infrastructure projects and efforts were in place to guarantee coordination among police, administrator, judiciary, as well as at international level.

Another case presented by **Italy** related to a hotel in Rome. It involved two main problems identified upon seizure: employees were illegally employed and the building was in an unlawful situation concerning permits and licenses. With regard to employees, a cooperative had been instituted, whose president was found to be the brother-in-law of a main suspect, and authorities concluded that the cooperative was part of the same illicit business. Eventually, the cooperative was seized and new agreements and labour contracts were concluded directly with the hotel. The director of the hotel was also found to have links with criminal activities. He enjoyed a permanent contract, and did not cooperate with the judicial administration. Consequently, he was fired. He challenged unsuccessfully that decision and a new director was hired. Concerning the building, whose roof garden had been found to be illegal, temporary use of the roof garden was initially granted. Subsequently, seizure was lifted altogether on grounds that at the time of seizure the construction was complete. Then an appeal was lodged against the Local Police demolition order, and the hotel subsequently experienced a considerable success, was revitalized and even mentioned in the Michelin Guide.

Another experience in **Italy** related to real estates, notably from “Regione Calabria”, which had been successfully leased under free lease contracts with various associations. In these cases those who leased the properties would clean them up and restore them under the free lease. The first problem faced in some of these cases was that criminals went bankrupt, so authorities firstly had to sign a protocol with the competent bankruptcy office. In order to avoid delays, a specific procedure protocol was put in place between the “Preventive

Measures” and the “Bankruptcy” sections of the Court. The project aimed at involving and informing the community, including about property renovation.

It was deemed important to overtly show that properties had been seized from the mafia and that the enforcement system functioned.

The property forfeited and handed over to the cooperative “SoleInsieme” would constitute the first case study of a project dedicated to controlling, managing, improving the use of goods seized from the mafia in the metropolitan area of Reggio Calabria, which was to be considered, from a social and economic perspective, particularly sensitive. Based on an agreement signed with the ANBSC, when a decision on definitive forfeiture was issued, the property would be assigned on a more permanent basis to the cooperative.

The case of “Italgas”, the national listed gas company, was also presented by **Italy** to illustrate the application of a special measure under article 34 of the Anti-Mafia Law, in which the main goal was to free the company from criminal infiltration. The company, in which the Government held a majority of the shares, was a major provider of gas with 3,000 employees, 53,000 km of network across hundreds of municipalities, five million customers, and the annual turnover amounted to billions. The case originated from evidence in six contracts in which the infiltration of criminals and possible links to ‘Cosa Nostra’ were found. The State intervened only on the managerial side, to assess if there were further elements of infiltration and any elements of other criminal offences related to the company, which operated in a strategic sector for the economy. The powers of the board of directors were suspended and handed over to a court-appointed administrator. At the same time, the powers of the shareholders were left untouched, and the board of directors continued to exercise its typical powers. Extraordinary powers were executed under the coordination of a judge. The first task of judicial administration was to maintain the business and its value; another one was to manage this company in respect of the legal framework within the larger group where it belonged, to maintain its membership in this group, notably in relation to its budget, financial interests and profit. Another challenge was the negative relation with employees and management. Authorities took over the task to ‘clean’ the company, and appointed a panel of three judicial administrators, from amongst the best available experts, to ensure actual execution of the measure at the moment of issuing the seizure order. Preliminary meetings and preparatory steps were undertaken. These asset managers further organized a structure with 30 additional assistant administrators across the country to support the activities of the company. Considerable efforts were spent on eliminating criminal infiltration and eventually judicial administrators prepared an action plan with short and medium term goals. The special Supervisory Board that had been established and accepted by the shareholders approved these six and 12-month goals.

A further case from **Italy** was that of the “Rappa Group”, comprised of a large group of companies with diverse activities, from property developers to television companies and car dealers. In order to maintain the level of production, tasks and businesses, the authorities decided to change the board of managers, with the assistance of judicial administrators, harnessing positive results. The multifaceted business could continue, despite its forfeiture.

The discussion that followed pointed out several common issues. Experts stressed the importance of the independence of asset management offices from the judiciary and law enforcement agencies that had been involved in issuing the forfeiture order for the proper and effective management of complex seized or confiscated assets. Another key issue in managing complex assets related to the continuity of businesses, in situations where the

management was transferred from criminals to legal authorities. This continuity had to be guaranteed and the leadership change ensured in a swift manner.

Experts also agreed on the need for cooperation among all stakeholders, including fiscal authorities, insurance, social security and insolvency agencies. It was noted that local municipalities and the police did not necessarily cooperate with the agency in charge of managing the seized assets, and even less with private administrators. The discussions further pointed to the need to address related insolvency and bankruptcy matters, and coordinate them with the management of seized or confiscated assets. Further, it was mentioned that unforeseen costs could arise, such as the withdrawal of funds and loans by banks, which had supported illegal companies with cash flows, but after seizure took decisions to review contracts with the company. Cooperation of relevant stakeholders during this transition phase was deemed essential.

Managing businesses could be time and resource intensive. An example was given of a farm managed from an almost insolvent position to profitability, and then sold. This could only be done through the use of contracted assistance, including a farm manager, share-milkers, several farm labourers and all the supply and logistic assistance qualified to run a medium-sized farm. Often assets were tied up in a complex web of companies and internal company loans and trusts. Legal support was necessary to handle such cases and outsourced lawyers could be an option for such extraordinary cases.

Experts stressed the importance of a careful evaluation of costs and benefits of options available, taking into consideration the interest of safeguarding the value of assets and seeking a positive economic balance, considering that in most cases seized assets would eventually be confiscated and become public assets. However, authorities needed to be careful when appraising assets, given that in some cases the economic value, primarily considered, needed to be combined with the value of specific assets for the community. It was not always possible to increase or maintain the economic value of certain assets, which could and should be compensated from other more profitable assets for a sustainable model. Such an approach would send a strong message not only to criminals, but also to society, about the positive contribution of the system of asset seizure and forfeiture, as well as its management. The discussion also addressed the important role of capable and skilled judicially-appointed administrators. In analysing the costs and benefits involved in certain seizure decisions, it was suggested that it should be assessed if an expert administrator might be needed, to ensure that assets were as profitable as possible and remained useful for the communities.

A suggestion was made to prepare a manual to facilitate the management of complex assets. The discussion indicated that such a manual should be based on good practices and detailed explanations of steps to be taken, from identifying criminal infiltration to managing businesses.

### **C. Asset recovery funds**

The discussion focused on the different types of asset recovery funds, their constitution under national law and the variety of approaches related to the allocation of such funds.

The experience of **Brazil** was shared, noting the absence, at the moment, of a specialized agency for the management of seized and confiscated assets. Criminal judges were responsible for the management of seized assets and they could appoint managers (court administrators or receivers). As a general rule, the proceeds of all confiscated assets in

criminal proceedings were deposited into a special fund, the Penitentiary Fund (FUNPEN), established in 1994. Such proceeds could only be used to improve the penitentiary system. Approximately \$600 million were deposited in FUNPEN at that moment. Two exceptions existed to that general rule. The first related to the proceeds of confiscated assets in drug cases, which were deposited in an Anti-Drug Fund (FUNAD) managed by the National Anti-Drug Secretariat (SENAD). Such proceeds were subsequently invested in or used by drug prevention or law enforcement bodies on the basis of project applications. The second exception related to confiscated assets in money-laundering cases, which should be allocated to the Union or the States, depending on the jurisdiction over the predicate offence. Such assets could be used by the anti-money laundering authorities. It was indicated that Brazil was working on a draft regulatory decree to provide for the allocation of confiscated assets in the federal sphere. The draft decree provided for the creation of a committee that would analyse and decide on the projects in which proceeds of confiscated assets should be invested and on the institutions that would benefit from such assets.

The experience of the **United States** was also presented, in particular the ‘Federal Asset Forfeiture Program’, which included two Federal Assets Forfeiture Funds: the Department of Justice (DoJ) Assets Forfeiture Fund (JAFF), established in 1984, and the Treasury Asset Forfeiture Fund (Treasury Fund), established in 1994. It was noted that states had their own asset forfeiture funds.

The JAFF was a special fund established to receive the proceeds of forfeitures pursuant to any law enforced or administered by the DoJ, as well as the federal share of forfeitures under state, local and foreign law, and the proceeds of investments of Fund balances. All funds deposited into the JAFF were considered “public” monies, i.e. funds belonging to the federal government. The monies deposited into the JAFF were available to cover all expenditures in support of the asset forfeiture programme allowed under the Fund statute. As of 30 September 2014, there were 21,117 assets in the JAFF, valued at \$2.2 billion. Seized cash and proceeds of anticipated sales from seized property were deposited in the Seized Asset Deposit Fund (“SADF”) which was a holding account established administratively by the DoJ. In general, the entitlement to the funds in the SADF was still under dispute. Thus, these funds were considered “non-public” monies and were not available for governmental purposes. The DoJ invested idle balances in the SADF into Treasury bills, and the interest, once the principal was confiscated, accrued to the JAFF to help defer operational costs of forfeiture.

The disposal of property forfeited to the United States was an executive branch decision and not a matter for the court. The JAFF was largely self-sustaining and relied minimally on appropriated funds from the national budget. Forfeited funds could be used for “forfeiture operations expenses” (i.e. asset management and disposal, third-party interests, case-related expenses, training and printing, contracts to identify forfeitable assets, awards based on forfeiture, up to 25%) and for “general investigative expenses” (i.e. awards for information, purchase of evidence, joint law enforcement operations). The DoJ retained 20% of the forfeited proceeds as overhead expenses, while the rest was shared with state and local law enforcement agencies which had assisted in the forfeiture process (based on the number of work hours). This was done under strict auditing controls that limited how such funds could be spent, namely, only for limited law enforcement purposes. This process was known as “equitable sharing” and applied only to forfeitures for which there was no identifiable victim. It was specified that forfeited funds could not be used on behalf of those agencies that decided on what asset to return or to forfeit (such as prosecutors).

Every year the JAFF was audited by an independent auditor and the DoJ annually reported to Congress on the status of the funds including on every confiscation valued at over \$1 million. It was indicated that the size of the JAFF had grown considerably over the past ten years. Annual net deposits increased from nearly \$580 million in 2005 to \$4.5 billion in 2014. Much of this growth could be attributed to a number of large fraud and economic crime forfeiture cases, especially where sizable assets had been seized and forfeited in order to compensate victims of crime. From 2010 to 2014, the JAFF had returned over \$2.6 billion to victims. It was also indicated that although the JAFF had at this moment excess money, no funds were spent on social programmes or anti-drug programmes. It was emphasized that this could be an area to be explored as a partnership with the private sector.

Similar to the JAFF, the Treasury Executive Office for Asset Forfeiture (TEOAF) administered the Treasury Fund. The Treasury Fund was the account for depositing forfeitures made pursuant to laws enforced or administered by participating Treasury and Department of Homeland Security agencies. The main difference between the JAFF and the Treasury Fund was that in the case of the first one the management of assets was to a large extent internally handled by the USMS, while the Treasury opted in most cases to outsource the management of assets subject to confiscation under its control.

The expert from **Honduras** provided an overview of the legal framework of the Office on the Management of Seized and Confiscated Assets (OABI) and explained how the office, established in 2014, was self-sustainable. OABI had a fund used to cover the costs related to the administration of assets, including its operational costs. OABI was allocated 10% of all confiscated proceeds,<sup>13</sup> 40% of the fines imposed on financial institutions for failure to comply with anti-money-laundering measures, in addition to a percentage of the return on investments made by the fund in the national financial system. OABI could also lease or enter into other contracts to maintain the productivity and value of the assets, or ensure their use to the benefit of the State. The income from those activities would be distributed in case of a final confiscation decision. Otherwise, it would be reimbursed to the owner, after deducting the administrative expenses incurred by OABI.

Furthermore, the expert indicated that OABI ensured self-sustainability of companies and businesses that were seized. A feasibility study was always conducted before selecting companies which could be managed. OABI could even grant “bridge loans” to allow seized businesses to continue to operate, generating employment, wealth and development in areas where seizures were made (as in the case reported under section V-B). Moreover, OABI made use of seized assets which covered certain operational and infrastructure needs of its main and regional headquarters, such as the temporary use of seized vehicles that formed the entire OABI fleet (22 vehicles) and the temporary use of seized household equipment.

In the case of **Colombia**, the new Asset Forfeiture Code established a dual purpose for the use of proceeds from seized and forfeited assets: in addition to compensating Colombian society for the damages caused by drug trafficking, through Government policy (50%), the resources also funded the costs of managing and forfeiting assets (25% for the forfeiture office and 25% for the judiciary). It was also explained that an important portion of such proceeds was used in social investment, mainly in the framework of prison administration, social housing projects in disadvantaged areas

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<sup>13</sup> The remaining 90% were equally distributed between programmes and institutions in the preventive sector and programmes and institutions in the law enforcement and justice sector.

of the country, educational and other socially-oriented programmes. It was indicated that part of the proceeds from seized and forfeited assets would also be devoted to the peace process with guerrilla movements.

On the distribution of funds derived from seized and forfeited assets, it was indicated that in **Costa Rica** 30% of such proceeds were allocated for preventive programmes, 30% for repressive programmes (including public prosecution and police services), 30% for the Alcoholism and Drug Dependence Institute, and 10% for the management of assets. Examples of confiscated assets were given, including a luxury property, nine small planes used by the police for air surveillance, and several luxury cars.

In the ensuing debate, an expert from **Italy** indicated that several dedicated funds were established in the country (i.e. anti-drug fund, fund against usury, fund against extortions, fund of solidarity with victims of Mafia crimes, and fund of solidarity with victims of terrorism). Those funds received money from the State's budget, and not directly from the proceeds of confiscated assets. Such proceeds, when consisting of cash, were on the contrary deposited in a single Justice Fund, which operated like a small bank and was managed in a very conservative way by a specialized company controlled by the Ministry of Finance, called "Equitalia Giustizia". Risky investments were not allowed; for example, real estate or stocks could not be purchased. Only conservative investments intended to preserve the value of the fund were possible. After final judicial forfeiture decision, the agency managing the fund had to channel all the confiscated assets to the State's budget. The Ministry of Finance could then share the amount equally between the Ministry of Interior (for security-related activities) and the Ministry of Justice. It was also pointed out that the Italian legislation was evolving, including proposals to modify the Anti-Mafia Law.

An expert from **Mexico** indicated that SAE's proceeds from confiscated assets served to reinforce the rule of law and the Federal strategy to fight crime. Once the assets had been confiscated and the indicted persons found guilty at trial, SAE was entitled to sell those assets through auctions. The Mexican Law mandates that the proceeds from assets that come from crime related cases should be destined first to assist the victims of abduction; what is left of the proceeds is divided in equal shares among: 1) crime prevention activities, 2) the judiciary system, and 3) treatment of health problems related to drug dependence.

Several speakers underlined the importance of the economic viability of the confiscated assets to ensure their self-sustainability. The necessity to use a portion of the fund to compensate victims and to support the asset management programme was also stressed. Oversight, transparency and reporting were also mentioned as key elements of asset management funds.

Some speakers indicated that the existence of an asset forfeiture fund facilitated asset sharing at the international level, considering that where proceeds of confiscated assets were directly transferred to the State's budget, legal obstacles could pose difficulties to any subsequent asset sharing. Moreover, it was stated that a country with a fund managed in a transparent manner would more likely receive proceeds from other countries in the context of asset sharing and asset recovery. Other speakers indicated that despite the lack of a separate asset forfeiture fund, a policy and a legal framework were in place in their respective countries allowing for the return or sharing of funds out of State budgets.

## D. Safety and specialized training of asset managers

### *Safety considerations*

The expert from **South Africa** emphasized the safety of asset managers as a key issue in dealing with seized or frozen assets. He also highlighted the safety aspect with regard to other persons involved in the process and to the assets themselves. He stated that proper planning was vital, both for the seizure itself and for safety aspects. Various threats could arise relating in particular: to the time of the seizure of the property; to the nature of the asset involved; to the nature of the persons involved; or to the safety of the property itself.

Threats during the seizure phase usually related to those affected by the seizure, often persons with links to organized crime. In cases of simultaneous seizures at multiple sites, challenges could also present themselves. There was often a need to arrange for armed police to be present at the execution of seizure orders, because locals could react unexpectedly and sometimes violently during the operation, and asset managers usually did not carry firearms. It should not be overlooked that organized crime leaders sometimes enjoyed popular support, as they tended to look after their neighbourhood, inter alia by providing employment and scholarships.

Sometimes the assets themselves were dangerous. For example, in drug cases toxic fumes from drug manufacturing could pose a threat; cases involving armed criminals required the involvement of law enforcement agents with skills to properly disarm firearms and ammunition; cases involving wildlife, such as lions, rhinos, elephants, snakes and other dangerous animals, required specialists to deal with them; officers could face exposure to chemicals in illegal mining; exposure to ammonia leaking from rusted canister during the search of a seized fishing trawler; exposure to nuclear materials requiring special precautions and experts at the time of search and seizure of the material. Fortunately, in most of these cases planning and preparation was carried out prior to the seizure of the assets, minimizing risks and ensuring the safety of those involved in the operation.

Personal threats could be made to persons involved in asset recovery and the related criminal case. This included the police, asset recovery lawyers, financial investigators, and enforcement staff. Where required, protection was available at the expense of the State, whether through police protection or through the hiring of private protection details. However, it was more difficult in cases involving private court-appointed asset managers as the State could not always provide the necessary security, and private security might be an expensive option.

Sometimes criminals would rather destroy or damage property than allow the State to take possession of it. Therefore, there was a need for proper insurance and security arrangements, at least for real estate, but ideally also for other valuables. In **South Africa**, threats arose from integrity problems within the police. For example, property had been stolen from police custody or had been negligently released upon the request of the criminal. Another issue mentioned was the loss of money and value (including potential increase in value) due to fluctuations in value of foreign currency.

A new sophisticated threat occurring in **Italy** was that organized criminals tried to sabotage day-to-day activities through illicit action by an insider employee. Often criminals established a new company to compete with the company that was seized, to regain lost market shares and to diminish the value of the seized brand. In some cases, especially in the past, there was the view in wide sectors of society that the State power to

seize and confiscate companies could damage the public and private economy as such seizures and confiscations resulted often in the failure of once profitable companies.

Another problem was threats against judges resulting in them fearing to take action to seize assets. Often receivers were also hesitant to become responsible for an asset because, for example, in the case of a company, they might have to lay off people, which could constitute a threat to the asset manager's security.

The risk to the judicial administrator was not only of a personal nature but could be fundamentally linked to the activities and management choices that the asset managers made as the professional choices taken could represent a risk to the value of an asset and hence to society. The asset manager could be made personally liable for this. This risk was often underestimated and therefore not included in any insurance policy. This underlined the need for specialists to support asset managers to minimize such risks.

### *Specialized training*

The expert from **Mexico** explained that the human factor strategy was a core element of SAE's long term projects. Its staff received a Diploma course in Management and Disposal of Assets, jointly designed by SAE and the "Universidad Panamericana". The design phase involved a process of consultation with those responsible for the fundamental areas of the SAE. It was taught exclusively to SAE's staff over a duration of 120 hours, and it served as an introduction to the purpose and main functions of SAE, its legal nature and essential processes. It further sought to improve staff performance in the management and disposal of assets, thus contributing to the achievement of the agency's goals. This diploma blended theoretical elements and practical aspects through the collaboration of university professors and a group of SAE instructors.

**New Zealand** presented an overview of its Criminal Proceeds Management Manual and training support for staff. The OACU provided to staff and contractors a comprehensive Manual that covered legal, operational and safety aspects of the criminal asset management function. Some of the subjects covered in the Manual included: the role of the Official Assignee (OA) in criminal proceeds management and the supporting law; a section-by-section analysis of the Criminal Proceeds (Recovery) Act 2009 as it affected the OA function; a brief discussion of the role of the Official Assignee under the asset seizure provisions of the Terrorism Suppression Act 2002; a step-by-step process for OA agents dealing with different types of assets in the field; OA policies and procedures for dealing with high-risk areas; and forms and precedents for staff and agents to use in the management of assets and cases. The Manual included the OACU Health and Safety Policy and Memorandum of Understanding with the Police. Both of these documents helped guide staff and agents in what was inherently a relatively high-risk occupation.

In New Zealand, training was provided to staff through the use of a combination of monthly and annual training sessions. The monthly sessions used video conferencing technology to ensure all teams around the country could participate. These sessions used the Manual as a guide for content along with case studies and a focus on specific issues. Coaching was applied through current practice, internal knowledge, experience and expertise and, occasionally, through the use of outside experts. Annual training workshops were usually held over a three-day period and covered a range of issues and topics, including mostly regional matters of interest, and also some international topics.

The expert from New Zealand emphasized that the job of an asset manager presented high risks. Hence specialized safety and tactical training was provided for all staff and primary

contractors, as was training on improvised explosive devices (IEDs). Wearing uniforms and protective equipment was mandatory in field operations. Distinctive uniforms helped differentiate OACU staff and contractors from the police or other law enforcement staff during operations. For health and safety – but non-evidentiary – purposes, all staff was trained to use drug-testing kits in preparation for cases involving clandestine laboratories, cars or other assets contaminated with drugs.

In **Italy**, there were several training initiatives, courses and workshops offered by public and private institutions, such as the National Institute of Judicial Administrators (INAG) or various universities in Milan, Palermo, Reggio Calabria, and Pisa. A multidisciplinary approach to the training of judicial administrators was said to be a good practice through the convergence of legal and non-legal skills, involving economists and judges. The need for the development of a new ethical approach and role for the judicial administrator was highlighted. This could be achieved through cooperation among judiciary and scientific institutions, thereby addressing issues involving societal and ethical values, and not purely descriptive training. The dialogue between the judiciary and society and the involvement of NGOs, such as “Libera” (a civil society association against Mafia and organized crime) in the training for asset managers and the actual management of seized assets was mentioned as key to impacting on the public perception of the legality and therefore the probity and public acceptance of the asset management process in Italy.

#### **E. Databases, asset registration, data management, use of data, and related procedural issues**

Several examples of national databases were presented and some of their features were discussed. In particular, databases should provide an overview and allow for the traceability of all seized and confiscated assets, and should be accessible by all relevant stakeholders, with varying levels of access. It was emphasized that databases were instrumental in enabling national systems to achieve their aims, including facilitating the return of seized property or its disposal, where appropriate, and compensation for victims. For that purpose, the security of the database and the ability to maintain the integrity of its data were essential, and related needs could evolve over time, in line with cybersecurity innovations. The ability to audit such systems was also a fundamental consideration.

In the case of **New Zealand**, the national database was designed for both insolvency administration and criminal assets management. A new system under development would enhance the current capabilities of the system that keeps track of all assets from their initial seizure until disposal. It was explained that practitioners would be able to access the case and asset management system from anywhere through a secure environment. The expert from **Colombia** also emphasized the importance of traceability of the assets throughout their entire life cycle.

The expert from **France** presented the database used by AGRASC since 2011, which was considered a key element to ensure the traceability of all data, allowing for follow up on every aspect of asset management. The logic behind the creation of the database included ensuring compliance with the EU Charter of Fundamental Rights and Directive 95/46/EC with regard to the protection of personal data. A specific unit composed of two staff members was created to manage the database, which at the moment contained 45,000 files with key information about assets, such as their main characteristics, case number, identification details, and to which judicial file they were linked. As the number of seized

assets continually increased, the database presented some limitations. A new database was expected to be launched in 2016, with the aim of improving statistics, facilitating the work of users and increasing the security process. As part of efforts to increase transparency and to communicate the actions of the AGRASC to magistrates, investigators and the public in general, an annual report was published.

An expert from **Italy** further presented the database used by the Tribunal of Rome since March 2014 in order to keep track of seized and confiscated assets. The IT platform was developed by the Tribunal of Rome and covered the municipality of Rome and other municipalities where immovable assets were found. It was accessible to public institutions and authorized private entities and was accompanied by a website developed free-of-charge by an asset disposal company. Assets in the database were identified by a number of descriptors, such as type, sub-type or location, and photos would also be added. It also ensured the traceability of the asset through the entire asset management process, and reflected all modifications concerning judicial orders and concerning the status of the assets in real time. It was explained that Italy was also developing a new integrated system named 'SIT.MP', which would serve prosecutors and judges, including Courts of Appeal, and provide them with access to information related to seized and confiscated assets within the preventive proceedings (non-conviction based), covering their entire lifecycle. The system was partially implemented, and the Ministry of Justice intended to further develop it, so as to include information on seizure and confiscation ordered in criminal proceedings, and to integrate it with other databases belonging to other authorities, such as the Supreme Court and the National Anti-Mafia Directorate (the SIDDA/SIDNA data system), and the Tribunal of Rome. The Tribunal of Reggio Calabria also planned a database to keep track of seized and confiscated assets. The system would communicate with the data system of the ANBSC.

The expert from **Colombia** presented the country's database 'Matrix', which included all information about an asset and allowed it to be traced from seizure until final disposal. The database was managed and updated by the personnel of the asset management unit, which catalogued the assets under certain categories, such as rural and urban immovable assets, vehicles, companies, movable assets and chemical substances. The inventory control was designed with support of the Prosecutor's Office and contained basic identifying information on each asset, including photographic records, and the "status" of the assets regarding the judicial proceedings. Due to the high volume of assets, there were 35 people responsible for the management and update of the database. For transparency purposes all documents associated with the asset were scanned and kept within the national agency.

The delegate of the **United States** referred to the Consolidated Asset Tracking System (CATS) that was launched in 1993, maintained by the Asset Forfeiture Management Staff (AFMS). The system was designed to track seized assets throughout the forfeiture life-cycle, which included seizure, custody, notification, forfeiture, claims, petitions, equitable sharing, official use and disposal of assets seized by federal law enforcement agencies.

The expert from **Brazil** explained the general framework under which the creation of the national database had been conceived, namely the National Strategy to Combat Corruption and Money-Laundering. The National Seized Assets database was maintained by the National Council of Justice (CNJ), which was the body in charge of the administrative, financial and functional control of the judiciary. The CNJ was in charge of registering and updating basic information about assets that judges requested be seized, both at federal and state levels. The system provided information about the general characteristics of the seized assets and classified them. However, there was no accurate data on the value of all

seized assets registered in the database, which was currently estimated at around \$700 million.

The expert of **Costa Rica** underlined that at the moment, the national database system was considered secure and was intended to support the administration and control of seized assets in line with the principles of transparency and efficiency. The assets could be traced throughout all phases and basic information about them was constantly updated according to the guidelines that were consolidated in a dedicated handbook. In terms of costs, it was mentioned that the national database had been developed using freely available software.

The expert from **Mexico** referred to the characteristics of the database system used by the SAE, which was the 'Integral System of Asset Management' (SIAB). Each asset was associated with a case number and the system contained updated information about all seized assets in the country, their administration and disposal. At the moment, SIAB contained more than two million entries and three million pictures, and included seized assets since 1999.

### *Challenges*

The expert from **Brazil** underscored that limited data accuracy was one of the main challenges of the national system, together with the diversion from the original purpose of the database. In this regard, information on seized instruments of crimes and objects serving as evidence were also included in the database, which was not in line with the original intention to use the system in support of the management of seized and confiscated assets. As further challenges, reference was made to the importance of improving the standardization of registries; the lack of taxonomy and of specific training for employees to efficiently and consistently register the assets; and the need to accurately complete the registries. Although a handbook on seized assets had been published in 2011 by the CNJ, it did not include a chapter on the registration of assets. Efforts to improve the system were in place, in cooperation with the OAS through its BIDAD Project (see section VI below).

In **Italy**, a safety challenge faced was the retaliation by owners of seized assets, especially in areas where the Mafia is particularly active. The Italian expert suggested that databases should also be able to keep record of such events, in particular for information and possible action by asset management offices. The expert from **Colombia** made reference to events of invasion of seized assets. In those cases, the incidents were recorded in the database and the asset administration agency could exercise its legal authority to evict the squatters. However, as the situation could be dangerous and involve minors, the staff of the agency normally acted along with a police officer.

In **Italy**, the limitations of the integrated database system were presented as follows: i) the system did not include confiscations based on ordinary criminal law proceedings; ii) the system did not communicate with the data system of the Supreme Court, which also needed immediate information on assets; iii) the system was not precise concerning the evaluation of assets due to a lack of cooperation between judges and national agencies. In this regard, the project of reform of the Anti-Mafia Code established that judicial administrators, after the seizure of an asset, would have to immediately communicate to the prosecutor and the defendant the evaluation of each asset and the defendant could contest this evaluation. In this case, the judge would have to immediately arrange for an expert evaluation of the assets.

The expert from the **Dominican Republic** commented that it was important to improve the communication between the director of the asset management office and the prosecuting

and judicial authorities, in order to enhance the asset administration system and its database. Both the Prosecution's Office and the judiciary played a significant role in providing relevant information on pre-seizure considerations and at the different seizure phases, which needed to be uploaded into the database.

The expert from **South Africa** commented that it was important to have a central database system with basic information about seized assets and their ownership, especially for use in future investigations. A good practice was shared regarding the use of an electronic system with bar codes on all seized assets to ensure that they could be easily verified during audits, and to prevent irregularities in their use and disposal. The misspelling of names of people involved in cases or categories of assets could also be a major challenge for those capturing the data. In this regard, to facilitate data entry, it could be useful to ensure that the system worked with "drop-down lists" from which to choose the respective categories or names.

## **F. Effective final disposal of assets, social reuse and compensation of victims**

A discussion was also conducted on the effective final disposal of assets, including its timeliness, value for money and protection of buyers, as well as social reuse and compensation of victims.

Experts from **Italy** and **Honduras** elaborated on the social reuse of assets in their countries.

### ***Social reuse***

Giving priority to the transfer of seized property to the community was a unique feature of the **Italian** asset disposal legal system. As such, and for reasons of transparency, this feature allowed local authorities to use the assets, compensating the community for the damages caused by organized crime. The system had multifaceted purposes, including the aspect of crime prevention policy (as it prevented offenders from using their assets in order to further finance their criminal activities), the symbolic perspective (as it reduced the popular status of organized crime figures) as well as economic and social aspects.

The issue of managing such assets had recently been brought to the forefront given the increase in the value of seized assets (in 2014 the amount seized by the section on "Preventive Measures" of the Tribunal of Rome had been of 1 billion euros). The Tribunal of Rome had therefore sought to conclude agreements with various associations for the administration of seized assets (e.g. association of merchants, regional administrations, and non-governmental organizations such as Libera). The concrete use of the assets depended on the type of property. Buildings, for example, might remain in custody of the respective family at its own cost, if used as a family residence (in case it had no other home). Unoccupied buildings might be dedicated to the public or to social reuse after consultations with city officials, e.g. loaned to police stations or used to house displaced families or victims of domestic violence. If the owner was proved innocent the beneficiary had to return the building. However, in Rome around 95% of seized assets were ultimately confiscated.

In the case of businesses, an issue of utmost concern was legalizing their status, as such enterprises might be tainted by criminal activity (e.g. printing mill used for producing fake

receipts). In case of seized businesses a primary objective was to maintain the workforce and a viable option was normally to rent it to another business that could keep it running. There were currently 260 active businesses in the system, out of which 25 were restaurants. Several examples of property put to social reuse were provided, and comparisons between the pre- and post-seizure situation were made, including a public park, a cinema hall and a sports field. The expert also elaborated on the “Mafia Capitale” case of 2014, in which the competent public prosecutor had decided not to undertake any criminal forfeiture but only to carry out preventive seizures of all involved businesses and 239 immovable assets.

With regard to movable assets, cash that was owned by a natural person was transferred into a State bank account, and assets that were owned by companies were managed by a judicial administrator (not a liquidator) to continue the business of the company.

The expert from **Honduras** presented the system of social reuse in place in his country. A partnership between OABI, the National Department of Social Intervention and the Government allowed for the loan of buildings to be used by the community through the so-called “Casa Hotel”, a system of hotel facilities for the temporary accommodation of e.g. displaced families, families affected by natural disasters, and families that had to flee because they had been targeted by organized criminal groups.

Another example of social reuse concerned a type of asset that typically raised significant management concerns, namely livestock. A partnership with the National University of Agriculture allowed for the setting up of “home gardens” – small family farms, which were part of a larger strategy of social inclusion. Some 700 families had benefited from this arrangement so far. The economic value of such an operation reached approximately \$13 million. Confiscated real estate had also been used for building penitentiary facilities, one of which was currently operational and three more were planned.

An expert from **OAS** stated that the reuse of assets by public institutions, such as law enforcement agencies was important, but even more so was the social reuse that was visible to the community and provided for more transparent accountability. Since crimes in some countries were a source of employment, it was also important for managers of such assets to ensure that they did not send the wrong message to civil society by poor administration of seized assets under the responsibility of the State.

#### *Systems for the sale of confiscated assets*

The expert from **Belgium** presented “Finshop”, a department within the Ministry of Finance, authorized to organize the public sale of confiscated assets, either through open or closed bidding. The Federal Police might also apply for the purpose of reuse of assets, and Finshop could make use of its own shop to sell confiscated assets. Selling confiscated real estate could prove difficult in **Belgium** as it might involve residents and mortgages, and often it was easier to wait for the owner to default on loans, which would lead to a bank’s intervention. However, managing companies was not a frequent problem, as most businesses went bankrupt during criminal proceedings.

Several speakers raised the issue of mortgages or other forms of guarantees or creditor’s privilege and the way they impacted the legal situation of seized and confiscated assets.

### *Challenges related to destroying certain confiscated assets*

The expert from **Belgium** elaborated on problems related to the high cost of destroying assets that were not suitable for other forms of disposal, for example seized illicitly produced chemicals or drugs, or fake goods or medication. An example was given of a case of 100,000 bottles of altered wine, which would cost 300,000 Euros to destroy and had been stored for five years already, incurring storage costs, noting that it might be usable by the candy industry.

### *Compensation to victims*

In **Belgium**, compensation to victims was facilitated by the possibility of victims to declare themselves as *partie civile* in a criminal trial, to the effect of tasking the Ministry of Finance with executing the court decision on their behalf. This option was also available to foreign countries and nationals who needed to be compensated. However, it required the foreign government or nationals to be aware of the ongoing proceedings in Belgium. A case of money-laundering involving Belgium and the Netherlands, in which victims in the Netherlands faced considerable difficulties to be compensated because the case had been concluded in Belgium without a determination of the victims' status, and money had already been sent to the Treasury.

In **Romania**, a seizure could not only be executed for the purpose of confiscation but also to ensure the future compensation of victims. An expert from the **United States** stated that compensation to victims was a topic of major interest in the country. It was mostly possible through confiscation, with \$2.6 billion having been awarded in compensation in the past four years by the DoJ Asset Forfeiture Programme. The process of returning money to victims was a laborious administrative process, particularly when there was a large number of victims involved. Victims were compensated pro rata. Notifying potential victims could be a challenge, especially in international investigations and even more so in international corruption cases, when even properly identifying the victims could be subject to discussions. Another issue were the different approaches of countries. Often United States authorities were compelled to initiate a NCB proceeding against assets in the country, and made agreements to send the money back to victims in other countries. The costs were borne by the Government to avoid double victimization by inter alia requiring additional legal procedures, or the payment of lawyers in two jurisdictions.

According to the **OAS** expert, victim compensation should be seen as a priority, especially as NCB confiscation had become more widely regulated throughout Latin America (e.g. in El Salvador, Guatemala, Honduras, Mexico, Peru; also a draft law was under discussion in Costa Rica).

## **VI. Concluding remarks and way forward**

The meeting noted that the seizure or freezing of criminal assets entailed a holistic approach encompassing investigation, appropriate judicial processes and an adequate and effective system of asset management. The greater the volume and complexity of criminal assets identified and seized or frozen prior to confiscation, the greater the need for an appropriate asset management regime.

In conclusion, the Group highlighted several ongoing and future activities in the area of management of seized and confiscated assets, aimed at building capacity and increasing the exchange of experiences among practitioners in this field.

***The Criminal Assets Management and Enforcement Regulators Association (CAMERA)***

In March 2009 an association named the “Criminal Assets Management and Enforcement Regulators Association” (CAMERA) was formed by founding agencies from Australia, Canada, Jersey, New Zealand and the United Kingdom.<sup>14</sup> CAMERA aims to assist litigators, criminal asset managers and confiscation enforcement agencies from around the world in establishing and maximizing expertise in the use of criminal asset confiscation as an effective crime fighting tool. The main purposes of CAMERA are:

- To promote liaison, cooperation and discussion amongst proceeds of crime litigators and administrators from Government departments, agencies and public bodies;
- To promote the use of existing State agencies with similar skill bases to assist in the regulation of confiscation legislation at minimum cost and maximum return;
- To promote the use of member agencies as trustees and managers of confiscated assets and funds;
- To be recognized more broadly as a body able to promote and assist with effective and efficient systems for the enforcement of restraining or freezing orders and confiscation orders and the disposal of criminal assets; and
- To provide a means for practitioners to exchange knowledge, develop skills, and promote training to enhance the effectiveness of member agencies in carrying out their responsibilities.

***OAS-CICAD Seized and Forfeited Asset Management Project (BIDAL)***<sup>15</sup>

Since 2008, the Anti-Money Laundering Section of the Inter-American Drug Abuse Control Commission (CICAD/OAS), through its Seized and Forfeited Asset Management Project, has provided technical assistance to Member States of the region interested in developing and improving systems to efficiently recover, manage and dispose of assets connected to illicit activities. Attention has been paid to ensuring the maximum benefit from such assets, while avoiding corruption and misappropriation in their use and disposal.

The main objectives of the BIDAL Project are:

- To provide legal advice and recommendations to Governments on how to improve their domestic legislation in line with international and regional standards;
- To strengthen the technical capacities of key practitioners involved in identifying, tracking, locating, freezing, registering, seizing, forfeiting, administering and disposing of assets;
- To create or strengthen asset management offices with highly-qualified and specialized personnel;
- To enhance the communication channels among investigators, Financial Intelligence Unit analysts, law enforcement agents, prosecutors, judges, asset administrators and other key actors involved in asset recovery, management and disposal processes;

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<sup>14</sup> Additional information can be found at the website: [www.criminalassetsmanagement.org](http://www.criminalassetsmanagement.org).

<sup>15</sup> Additional information can be found at the website: [www.cicad.oas.org/lavado\\_activos/bidal\\_eng.asp](http://www.cicad.oas.org/lavado_activos/bidal_eng.asp).

- To provide specific training for practitioners involved in each of the aforementioned phases;
- To promote international cooperation and mutual legal assistance in asset recovery, sharing and administration among OAS and non-OAS Member States;
- To organize regional seminars for practitioners from a variety of jurisdictions to share their experiences and exchange lessons learned on the topic.

In addition to the CAMERA and BIDAL projects, reference was also made to an initiative in Italy for networking among private sector professionals who are active in supporting courts and State agencies in the management of seized or confiscated assets, under various designations, such as administrators, trustees or receivers, and which may also benefit from the exchange of experiences at regional or international levels.

Finally, the Group discussed its immediate next steps. UNODC provided a tentative timeline for completion of this report, its circulation among the participating experts and incorporation of any feedback provided within a maximum of two weeks, for finalization by mid-October.

It was also agreed that subsequently, UNODC would work on a document to be named, in principle, “Compilation of good practices in the management of seized or confiscated assets”, following the thematic structure of this report and of the agenda of the expert group meeting, aimed at presenting highlights of the different national systems discussed, as well as lessons learned. For this purpose, UNODC would extract portions of the written contributions provided by the experts in preparation of this meeting, to fit the thematic structure. Ideally, a first draft would be shared with the experts by the first half of December, with feedback to be provided within one month. Subsequently, the text would undergo a peer review organized by UNODC as a second step of quality control, aiming at producing a final version by April 2016.

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## Annex

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