



PERÚ

Ministerio
de Relaciones Exteriores

Peru: Restitution of assets. Regulation, Actions and Cases

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Addis Ababa, May 8, 2019



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1. Background

- 2000: Public disclosure of videos of corrupt practices during the government of Alberto Fujimori (1990-2000).
- Money from political corruption and other crimes, deposited abroad, begins to be localized and repatriated from Switzerland, USA, Cayman Islands, Mexico, Luxembourg and Panama.
- After year 2000, more cases:
 - Grand corruption: Lava Jato .
 - Illegal Mining, Drug Trafficking, Organized Crime.
 - Corruption in Callao Court of Justice.



2. International Agreements

- 22 International Bilateral Cooperation Agreements in criminal matters signed by Peru:
 - Argentina, Bolivia, Brazil, Canada, China, Colombia, South Korea, Cuba, Ecuador, El Salvador, Spain, France, Guatemala, Honduras, Italy, Mexico, Panama, Paraguay, Dominican Republic, Switzerland, Thailand, Uruguay.
- In addition, among other agreements:
 - 2003: MOU Peru - UNODC. For Technical Assistance
 - 2003: MOU Peru - Panama. Exchange of financial information on money laundering.
 - 2004: MOU Peru - El Salvador. Exchange of financial information on money laundering and terrorism financing.
 - **2004: MOU Peru-USA for transfer of assets seized by US / 20'275.911.02**

2. International Agreements

Perú is part of the following multilateral treaties:

- United Nations Convention against Corruption.
- United Nations Convention against transnational organized crime.
- United Nations Convention against the trafficking of narcotic drugs and psychotropic substances.
- Inter-American Convention against Corruption.
- Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

3. Cases of restitution of money from Switzerland and the USA

2000: Switzerland block the following accounts:

- Víctor Venero Garrido
- Vladimiro Montesinos
- Nicolás de Bari Hermoza

Bribery after the purchase of weapons

US \$ 124'000,000

August 2002: first restitution of assets from Switzerland to Peru for US \$ 77.5 million, less than two years after the case began.

U.S

Agreement between the Government of the Republic of Peru and the Government of the United States of America on the transfer of confiscated assets.

Approved by R.Leg. 28282

Ratified by D.S. 055-2004-RE (1-09-2004)

The United States transferred to FEDADOI:
US \$ 21'680,421

3. Cases of restitution of money from Switzerland and the USA

According to press reports the US \$ 129.7 millions recovered were spent on:

- Budget of national universities
- Purchase of Police uniforms
- Compensation for workers dismissed during the Fujimori era
- Demands of judicial workers
- Increase in salaries for the members of the Supreme Court
- Fees of judicial experts
- Of the total US \$ 4.3 million was destined to the victims of human rights violations.

Years later the Government has continued to compensate the victims with its own resources.



4. Lavajato case in Peru

	Case	Beneficiary	Alleged payment identified	Destination of the payment
#1	<u>Tramos 2 y 3 - Interoceánica Sur</u>	Alejandro Toledo	US\$ 9'626.010	Citibank London y Barclays Bank
			US\$ 10'373.990	Unidentified
#2	<u>Metro de Lima, Línea 1</u>	Jorge Cuba Hidalgo y otros	US\$ 8'100.000	Banca Privada de Andorra
#3	<u>Caso Programa OH</u>	Ollanta Humala	US\$ 3'000.000	Cash payment to Nadine Heredia
#4	<u>Vía Costa Verde - Tramo Callao</u>	Felix Moreno Caballero	US\$ 2'000.000	Cash payment to Luis Favre
		Gil Shavit	US\$ 760.000	CBH Bahamas
#5	<u>Vía Evitamiento del Cusco</u>	Jorge Acurio Tito	US\$ 1'250.000	Credit Andorra
#6	<u>Ositran - Interoceánica Sur</u>	Juan Carlos Zevallos Ugarte	US\$ 780.000	Banca Privada de Andorra
#7	<u>Rutas de Lima</u>	No identificado	US\$ 711.868	Unidentified

<https://lavajato.ojo-publico.com/articulo/los-pagos-de-odebrecht-en-peru/>



4. LavaJato case in Peru

	Case	Beneficiary	Alleged payment identified	Destination of the payment
#8	Carretera Callejón de Huaylas-Chacas-San Luis	César Álvarez Aguilar	US\$ 2'628.000	Standard Chartered Bank y Banco de Crédito
#9	Caso Andorra	Miguel Atala Herrera	US\$ 900.000	Banca Privada de Andorra
#10	Aportes a Perú Posible	Alejandro Toledo	US\$ 700.000	Cash payment to Avi Dan On
#11	Aportes a Fuerza 2011	Keiko Fujimori Higuchi	US\$ 1'000.000	Cash payment to Jaime Yoshiyama and Augusto Bedoya Camere
#12	Aportes al APRA	Alan García Pérez	US\$ 200.000	Cash payment to Luis Alva Castro
#13	Aportes a Alianza por el Gran Cambio	Pedro Pablo Kuczynski	US\$ 300.000	Cash payment to Susana de la Puente
#14	Campaña contra la revocatoria	Susana Villarán	US\$ 3'000.000	Unidentified
		Total amount	US\$ 45'129.868	



Problems with former presidents that affect the political system

- Alberto Fujimori (1990-2000) In jail.
- Alejandro Toledo (2001-2006) Extradition request sent to the USA.
- Alan García (1985-1990 and 2006-2010) Committed suicide in 17 April 2019.
- Ollanta Humala (2011-2016) Impediment of leaving the country.
- Pedro Pablo Kuczynski (2016-2018) Preventive detention.

5. Political, Legislative and Institutional Evolution

- "National Policy against Money Laundering and Terrorism Financing".
- "National Plan against Laundering of Assets and Terrorism Financing 2018 to 2021".
- "National Program and Plan for Integrity and Fight against Corruption 2018 - 2021".
- "Judicial Reform": constitutional referendum December 2018.
- "Political Reform": proposals April 2019.

5. Political, **Legislative** and Institutional Evolution

Before 2000, the Peruvian Penal Code only included classic typifications of bribery, embezzlement, influence peddling and illicit enrichment. It did not allow to sanction cases like those of Montesinos and organized crime.

2000:

- Law 27378. Benefits for effective collaboration in the field of organized crime.
- Law 27379. Exceptional measures limiting rights in preliminary investigations.

2004:

Law 28476. Special Fund for the Administration of Money Illegally Obtained in Damage to the State - FEDADOI.

2007:

Legislative Decree 992. Regulates the process of loss of ownership.

5. Political, **Legislative** and Institutional Evolution

2012:

Legislative Decree 1104. Modifies the Legislation on loss of ownership. Regulates the reception, qualification, custody, security, conservation, administration, allocation in use, disposition, auction and, if required, return of seized goods or loss of ownership.

2013:

Supreme Decree N ° 069-2013-PCM. Establishes the guidelines for the distribution of the auction of confiscated goods, and declared in Loss of Domain, should be used preferably for:

- fight against illegal mining,
- corruption and
- organized crime.

With the proceeds of the first auctions carried out by the CONABI, more than US \$ 600,600 was transferred to the Public Prosecutor's Office for the creation of Special Prosecutor's Offices for Money Laundering offenses.

<http://www.pcm.gob.pe/2013/10/ejecutivo-creara-fiscalias-especializadas-en-lavado-de-activos/>

5. Political, **Legislative** and Institutional Evolution

2017:

Supreme Resolution No. 120-2017-RE.

Constitute a Multisector Working Group in charge of the Repatriation of Assets Coming from Illicit activities in the Swiss Confederation and the Grand Duchy of Luxembourg.

2018:

Legislative Decree 1373 on Extinction of Domain:

- Creates the process of domain extinction as an independent and autonomous criminal policy tool of the criminal process.
- Establishes a process that only applies to property rights.
- The burden of proof is reversed, the State assumes illegality.
- Creates stages and deadlines on the basis of a specialized sub-system of Domain Extinction, with rooms, courts, prosecutor's offices and police units specialized in the matter.

2019:

Suprem Decree 007-2019-JUS Regulation of the the D.Leg 1373.

5. Political, Legislative and Institutional Evolution

Financial Intelligence Unit

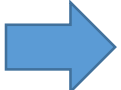
Receive, analyze and transmit information for the detection of money laundering

Secretary of Public Integrity (Affidavit of Interest)

Statement of Interest of 14,189 public officials

<https://dji.pide.gob.pe/consultas-dji/>

PRONABI

Fedadoi (2005 – 2011)  Conabi (2012-2016)  Pronabi 2017- a la fecha

From 2012 to date, our country has not received repatriated funds.



5. Political, Legislative and Institutional Evolution

PRONABI, is competent to proceed to the sale by public auction of those goods confiscated or declared in loss of ownership-

Proceeding after all the expenses inherent to the administration of the goods are covered, to distribute among the entities involved in the fight against organized crime, in similar percentages: Public ministry, Judicial Power, National Police and Public Prosecutors

PRONABI has distributed to each one US \$ 503,000 in two years:

<https://pronabi.minjus.gob.pe/el-pronabi-subasto-predios-y-vehiculos-por-mas-de-1-millon-623-mil-soles/>

5. Political, Legislative and Institutional Evolution

Assignment of temporary use of goods –942 assets for an approximate value of US \$ 98'000,000

Prioritization Criteria:

- To the entities that collaborate against organized crime: Public Ministry, Judicial Branch, Ministry of Interior, Public Prosecutors, among others or that have not been benefited with assignments in temporary use.
- In favor of the National Penitentiary Institute, as well as of the Local Governments or Minor Populated Centers, that develop mechanisms of support to the communities surrounding the penitentiary establishments.
- In the case of vehicles, priority is given to the National Police and to the entities that collaborate in the activities of citizen security, fight against crime and organized crime.

<https://www.minjus.gob.pe/criterios-de-evaluacion-asignacion-temporal-de-bienes/>

5. Political, Legislative and Institutional Evolution

PRONABI	Valorización	Valorización	Total
	Incautado	Decomisado	
Inmuebles	1,736	205	1,941
Vehículos	2,732	171	2,903
Muebles	646	19	665
Dinero	US\$10´,520,753	US\$ 556,277	US\$ 11,077,030
Joyas	US\$ 29,808,213	US\$ 552,852	US\$ 30,361,065
Insumos químicos	US\$ 52,555		US\$ 52,555

<https://www.minjus.gob.pe/registro-nacional-de-bienes-incautados/>

Lessons Learned

- **Citizenship:**

Role of civil society in the supervision of legality.

Need to internalize what "money laundering" implies.

- **International cooperation:**

Information exchange.

Technical assistance.

Institutional strengthening.

- **Prevention - Institutionalization of transparency in public management:**

Use of resources.

Statements of interests.

Access to information on seized assets.

- **New focus on the fight against corruption: leadership and independence of prosecutors and judges.**