Peru: Restitution of assets. Regulation, Actions and Cases

Ana Teresa Revilla Vergara
Head of the General Office of Legal Affairs
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-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.


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

<table>
<thead>
<tr>
<th>Case</th>
<th>Beneficiary</th>
<th>Alleged payment identified</th>
<th>Destination of the payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>#1 Tramos 2 y 3 - Interoceánica Sur</td>
<td>Alejandro Toledo</td>
<td>US$ 9,626,010</td>
<td>Citibank London y Barclays Bank</td>
</tr>
<tr>
<td></td>
<td></td>
<td>US$ 10,373,990</td>
<td>Unidentified</td>
</tr>
<tr>
<td>#2 Metro de Lima, Línea 1</td>
<td>Jorge Cuba Hidalgo y otros</td>
<td>US$ 8,100,000</td>
<td>Banca Privada de Andorra</td>
</tr>
<tr>
<td>#3 Caso Programa OH</td>
<td>Ollanta Humala</td>
<td>US$ 3,000,000</td>
<td>Cash payment to Nadine Heredia</td>
</tr>
<tr>
<td>#4 Vía Costa Verde - Tramo Callao</td>
<td>Felix Moreno Caballero</td>
<td>US$ 2,000,000</td>
<td>Cash payment to Luis Favre</td>
</tr>
<tr>
<td></td>
<td>Gil Shavit</td>
<td>US$ 760,000</td>
<td>CBH Bahamas</td>
</tr>
<tr>
<td>#5 Vía Evitamiento del Cusco</td>
<td>Jorge Acurio Tito</td>
<td>US$ 1,250,000</td>
<td>Credit Andorra</td>
</tr>
<tr>
<td>#6 Ositran - Interoceánica Sur</td>
<td>Juan Carlos Zevallos Ugarte</td>
<td>US$ 780,000</td>
<td>Banca Privada de Andorra</td>
</tr>
<tr>
<td>#7 Rutas de Lima</td>
<td>No identificado</td>
<td>US$ 711,868</td>
<td>Unidentified</td>
</tr>
</tbody>
</table>

# LavaJato case in Peru

<table>
<thead>
<tr>
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<th>Beneficiary</th>
<th>Alleged payment identified</th>
<th>Destination of the payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>#8 Carretera Callejón de Huaylas-Chacas-San Luis</td>
<td>César Álvarez Aguilar</td>
<td>US$ 2,628,000</td>
<td>Standard Chartered Bank y Banco de Crédito</td>
</tr>
<tr>
<td>#9 Caso Andorra</td>
<td>Miguel Atala Herrera</td>
<td>US$ 900,000</td>
<td>Banca Privada de Andorra</td>
</tr>
<tr>
<td>#10 Aportes a Perú Posible</td>
<td>Alejandro Toledo</td>
<td>US$ 700,000</td>
<td>Cash payment to Avi Dan On</td>
</tr>
<tr>
<td>#11 Aportes a Fuerza 2011</td>
<td>Keiko Fujimori Higuchi</td>
<td>US$ 1,000,000</td>
<td>Cash payment to Jaime Yoshiyama and Augusto Bedoya Camere</td>
</tr>
<tr>
<td>#12 Aportes al APRA</td>
<td>Alan García Pérez</td>
<td>US$ 200,000</td>
<td>Cash payment to Luis Alva Castro</td>
</tr>
<tr>
<td>#13 Aportes a Alianza por el Gran Cambio</td>
<td>Pedro Pablo Kuczynski</td>
<td>US$ 300,000</td>
<td>Cash payment to Susana de la Puente</td>
</tr>
<tr>
<td>#14 Campaña contra la revocatoria</td>
<td>Susana Villarán</td>
<td>US$ 3,000,000</td>
<td>Unidentified</td>
</tr>
</tbody>
</table>

**Total amount**  US$ 45,129,868

Problems with former presidents that affect the political system

- Alejandro Toledo (2001-2006) Extradition request sent to the USA.
- Ollanta Humala (2011-2016) Impediment of leaving the country.
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 - FEDADDOI.

**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**


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/
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

<table>
<thead>
<tr>
<th>PRONABI</th>
<th>Valorización</th>
<th>Valorización</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Incautado</td>
<td>Decomisado</td>
<td></td>
</tr>
<tr>
<td>Inmuebles</td>
<td>1,736</td>
<td>205</td>
<td>1,941</td>
</tr>
<tr>
<td>Vehículos</td>
<td>2,732</td>
<td>171</td>
<td>2,903</td>
</tr>
<tr>
<td>Muebles</td>
<td>646</td>
<td>19</td>
<td>665</td>
</tr>
<tr>
<td>Dinero</td>
<td>US$10',520,753</td>
<td>US$ 556,277</td>
<td>US$ 11,077,030</td>
</tr>
<tr>
<td>Joyas</td>
<td>US$ 29,808,213</td>
<td>US$ 552,852</td>
<td>US$ 30,361,065</td>
</tr>
<tr>
<td>Insumos químicos</td>
<td>US$ 52,555</td>
<td></td>
<td>US$ 52,555</td>
</tr>
</tbody>
</table>

https://www.minjus.gob.pe/registo-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.**