Enforcing non-conviction-based confiscation in Europe: can UNCAC provide the plug adapter?

Oscar Solórzano | CoSP 8 | Abu Dhabi
Objectives

- Advocate for an interpretation of *favourability* that promotes NCB confiscation as a valid basis to recover ill-gotten assets.

- Encourage the introduction of an obligation to “*sufficiently explain*” the decision of the requested State to refuse MLA on the grounds that NCBC is irreconcilable with its legal framework.

- Pledge for a policy dialogue aiming at revising such a rule or practice to meet UNCAC’s standard.
What is confiscation?

Confiscation

Pecuniary sanctions

Other

Civil reparations

Fines
European Court of Human Rights

“[T]he forfeiture of property ordered as a result of civil proceedings *in rem*, without involving the determination of a criminal charge, is not of a punitive but of a preventive and/or compensatory nature.”

*Dassa Foundation v. Liechtenstein, 10 July 2007, Appl. No. 696/05
And many more...*
**Peru’s NCBC law: Extinción de dominio**

<table>
<thead>
<tr>
<th></th>
<th>Extinción de dominio</th>
<th>Traditional criminal confiscation</th>
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<tbody>
<tr>
<td><strong>Procedural focus</strong></td>
<td>In rem</td>
<td>In personam</td>
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<td></td>
<td>Against the illicit assets.</td>
<td>Against individual or company.</td>
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<tr>
<td><strong>Standard of proof</strong></td>
<td>Balance of probabilities: 50%+1.</td>
<td>Beyond reasonable doubt: 95%.</td>
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<td>Criminal conviction not required.</td>
<td>Must follow a criminal conviction.</td>
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<td><strong>Spread</strong></td>
<td>Similar laws in Latin America + many common law countries; some also with civil law tradition.</td>
<td>Near universal</td>
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</table>
What fundamental rights are affected?

Property

Procedural
NCBC procedures are better placed to recover illicit assets
Finding the right adapter plug in MLA

Lesson 2
Specialisation is the way to go

Lesson 3
Let’s connect

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Banco de la Nación
Peru Ministry of Defence

Bank Novaya Moskva
State-owned arms company Rosvoorouzhenie

$126,000,000

$16,018,466

$8,563,039

FIBI Bank
Lenwich Trading Ltd.

Bank Credit Lyonnais
Yuri Khozyainov

$708,459

Bank Leumi
Hawkeye Management

The money route