

# Colombia's Capacity to Recover Criminal Assets: An Assessment Based on the 9 Principles of Asset Recovery

International Centre for Asset Recovery, Latin America | 2022



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## About This Assessment

This assessment contributes to the continuous improvement of beneficiary States' capacity to recover criminal assets originating from the perpetration of serious crimes such as corruption, money laundering and drug trafficking.

Sequentially, it also assesses the States' institutional and legislative response capacity to confront financial crime and the flow of criminal assets. In this context, the asset recovery value chain implemented in Colombia is examined, based on rules adopted by the organizations in charge of determining international standards.

However, this assessment does not claim to be exhaustive. On the contrary, it is presented as a working paper that provides an overview of the asset recovery problem in Colombia.

The assessment is divided into two main chapters. The first describes the institutional framework and main prerogatives Colombia provides for in the asset recovery process. The second chapter assesses the legal and institutional framework in terms of the nine (9) principles relating to the asset recovery process and international standards. Finally, a concluding section accompanies this assessment.

Oscar Solórzano, senior specialist at the Basel Institute on Governance, and Dennis Cheng, asset recovery specialist at the same institution, conducted the assessment. Its contents do not necessarily reflect the views of the Basel Institute on Governance or the University of Basel. Learn more about the Basel Institute on Governance and the authors on the final pages of this report.

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## Methodology

Colombia’s asset recovery system was assessed on the basis of the G20 principles on asset recovery and indicators developed by ICAR. Relevant baselines for the assessment include all international standards in the field.

The first phase of Colombia’s asset recovery system assessment was conducted on the basis of open source research. This initial document was shared with the relevant institutions in Colombia, who provided initial feedback.

The second phase was subdivided into two main activities. First, quantitative and qualitative information obtained from the relevant institutions through formal procedures based on public management transparency laws was analyzed. Second, the technical team conducted a field mission to Colombia between February 28 and March 4, 2022, conducting interviews with relevant authorities and officials involved with asset recovery in Colombia.

The information gathered during the field mission provided a clearer and more complete picture of the Colombian asset recovery system, since it incorporates information on how the system operates.

## Principles of asset recovery

*The key elements of a country's policy, practice and legal and institutional framework, as they relate to asset recovery.*



### PRINCIPLE 1

#### Asset recovery as a policy priority



### PRINCIPLE 2

#### Preventive measures in the financial system



### PRINCIPLE 3

#### Asset identification and tracing



### PRINCIPLE 4

#### Seizure and other securing measures



### PRINCIPLE 5

#### Confiscation of assets



### PRINCIPLE 6

#### Mutual Legal Assistance



### PRINCIPLE 7

#### Asset Recovery Office



### PRINCIPLE 8

#### Data collection systems



### PRINCIPLE 9

#### Asset management or administration agencies

## Limitations

From the Office of Foreign Affairs (OFA) in the Public Prosecutor's Office (PPO), for this assessment the field research team did not receive quantitative information requested on the amount of international cooperation assistance sent and received for NCBF and criminal confiscation proceedings in 2017 and 2021. Furthermore, from the Special Public Prosecutor's Office (PGN) it was not possible to access information on the amount of international cooperation assistance sent and received in NCBF proceedings and investigations for disciplinary offences associated with illicit enrichment.

It was also not possible to conduct interviews with the officials of these institutions, so the analysis of their involvement in the asset recovery system was based on information gathered in the initial open source assessment.

### **Extinción de Dominio (NCBF)**

The law "Extinción de dominio" or "Extinción del derecho de dominio" is a common model of law in Latin America. There is no standard translation for this law in English. Although it has sometimes been translated as "asset forfeiture", including in official documents, this risks being confused with wider forms of asset forfeiture, including criminal forfeiture. In this document we therefore refer to the extinción de dominio law as a form of "non-conviction based forfeiture" or "NCBF".

## Executive Summary

The legal process for recovering assets of illicit origin or destination, national or international, is regulated by the legal frameworks of the government institutions involved through four phases: identification, seizure or freezing, confiscation and restitution or disposal of assets.

In Colombia, the institutional value chain that makes this process possible consists mainly of the Financial Analysis and Information Unit (UIAF), the Public Prosecutor's Office (PPO), the National Police of Colombia (PONAL), the Comptroller General of the Republic (CGR), the Sociedad de Activos Especiales (SAE), the Ministry of Justice and Law, the Intersectoral Commission for Extinción de Dominio (NCBF), the Special Public Prosecutor's Office (PGN) and the Financial Superintendent of Colombia (SFC).

One of the key pillars of asset recovery is Law 1708, which in 2014 issued the Extinción de Dominio (NCBF) Code (non-conviction based forfeiture). Said code is a legal instrument whose autonomy, independence, jurisdiction and timelessness determine the stages of the process and the role of the parties involved, as well as the obligations, limits and guarantees of the rights of those affected. The Colombian experience in the field of NCBF has been echoed in several legislative actions in the region, where currently a dozen countries have this legal option with varying characteristics and scope of application.

Taking as a reference the principles developed by the G20, a strategic multilateral platform whose members represent more than 80% of the world's GDP, the key elements of the Colombian policy, practice and legal and institutional framework have been identified and grouped into 9 principles:



**Principle 1: Asset recovery as a policy priority.** National plans, sectoral plans and judgements were noted. Authorities are interested in asset recovery and NCBF. Nonetheless, human and financial resources need to be strengthened to make the system even more efficient.



**Principle 2: Preventive measures in the financial system.** In general, Colombia has a robust system for the prevention of financial measures, as determined by international standards. As of 2017, partial compliance with most recommendations to combat money laundering and the financing of terrorism has been corroborated. After a series of legislative adjustments, Colombia plans to request a re-classification of these recommendations in 2022.



**Principle 3: Asset identification and tracing.** In Colombia there are several government agencies with access to data source records that facilitate identifying, locating and tracing assets. They participate in several regional asset recovery networks, most notably FATF's Asset Recovery Network (ARN). However, some key competencies, mainly related to international and inter-institutional cooperation, could not be corroborated.



**Principle 4: Seizure and other securing measures.** Although there is an adequate, solid and orderly legal and institutional framework, some problems related to implementation, argumentation and compliance with deadlines are reported. This is due to the absence of an analysis of reasonableness, necessity and proportionality.



**Principle 5: Confiscation of assets.** This has been found to be largely compliant with international standards. It is reported that because much of the proceedings are conducted under the rules of the previous legislation, there are still some reported bottlenecks that cause delays in cases.



**Principle 6: Mutual Legal Assistance.** Tools for effective and timely international judicial cooperation are in place. But the coexistence of authorities with similar competencies represents a challenge in terms of efficiency and effectiveness in international asset recovery processes. Data on international asset recovery processes is not centralized and it is not possible to obtain more accurate data. However, the absence of international cases of recovery is an objective indicator that this sector needs particular attention.



**Principle 7: Asset Recovery Office.** Although it has not been implemented, the choice has been made to create multiple specialized research units or directorates. There seems to be no political will to centralize coordination in complex and emblematic international asset recovery cases.



**Principle 8: Data collection systems.** Asset data statistics are not publicly available. The country does not have an integrated centralized information system. However, at the time of the visit it was reported that such a system was under development.



**Principle 9: Asset management or administration agencies.** The country's current legislation regulates the mechanisms for the administration of assets. However, it is a challenge that Colombia is one of the countries that manages the largest amount of seized assets worldwide. Therefore, at the time of the field mission, prior alienation of these assets was the avenue of choice.

In conclusion, Colombia has a coherent legal and institutional framework, which allows it to efficiently handle asset recovery procedures, despite not having a dedicated office. On the other hand, factors such as the diversification of the institutions involved and deficient management of statistical information could jeopardize the efficiency and effectiveness of asset recovery at the international level. However, during the field research it was positive to note a political commitment to overcome such shortcomings.

# 1 Asset Recovery

## 1.1 Concept

Asset recovery is understood as a legal process, the purpose of which is to enable the competent authorities to recover assets of illicit origin or destination. Asset recovery processes can be domestic or international.

Its consolidation is based on the application of different legal frameworks, which determine the competencies of government institutions involved in asset recovery processes. These legal frameworks also regulate the complex relationship between sovereign States and their various judicial and governmental institutions in international asset recovery processes.

### Box 1: The asset recovery process

Asset recovery is a legal process which consists of four phases:<sup>1</sup>

- 1. Identification of assets.** In this initial phase, administrative and judicial authorities trace and locate potentially criminal assets. Regulatory frameworks are required to promote the interoperability of the asset detection system in which the Police, the Financial Intelligence Unit (FIU) and the Public Prosecutor's Office play a leading role.
- 2. Seizure or freezing of assets.** The purpose of this phase is to prevent the dissipation, movement, transfer, disposal or destruction of criminal assets. Seizure is a temporary precautionary measure that affects the possession assets and their power of disposal.
- 3. Confiscation of assets.** This is the judicial phase of asset recovery. Confiscation is ordered by a judge at the end of a judicial proceeding and according to a specific established procedure. Confiscation constitutes a final decision affecting the ownership (title) of the asset. Confiscation has the effect of transferring ownership to the State.
- 4. Civil restitution or disposal of assets.** This is the final phase of the asset recovery process in an international context. The confiscation decision is enforced in the requested State and the confiscated assets are returned in accordance with the procedure stipulated, if applicable, in the return agreement.

These four phases are not necessarily consecutive. It is simply a theoretical systematisation for didactic purposes incorporated in the United Nations Convention Against Corruption (UNCAC), which allows for a simple and sequential understanding of an exceedingly complex process.<sup>2</sup>

1 United Nations Office on Drugs and Crime (UNODC) (2004). *United Nations Convention against Corruption*, New York, pp. 44-50. Available at: [https://www.unodc.org/documents/mexicoandcentralamerica/publications/Corrupcion/Convencion\\_de\\_las\\_NU\\_contra\\_la\\_Corrupcion.pdf](https://www.unodc.org/documents/mexicoandcentralamerica/publications/Corrupcion/Convencion_de_las_NU_contra_la_Corrupcion.pdf); United Nations Office on Drugs and Crime (UNODC) (2010). *Technical Guide to the United Nations Convention against Corruption*, New York, pp. 220-224. Available at: [https://www.unodc.org/documents/mexicoandcentralamerica/publications/Corrupcion/Guia\\_tecnica\\_corrupcion.pdf](https://www.unodc.org/documents/mexicoandcentralamerica/publications/Corrupcion/Guia_tecnica_corrupcion.pdf).

2 United Nations Office on Drugs and Crime (UNODC) (2004). *United Nations Convention...*, cit., p. 27.

## 1.2 Institutions

The purpose of this section is to describe the main characteristics of the institutions involved in the asset recovery process and which form its institutional value chain. The frame of reference is the asset recovery process described above (see *supra* Box 1).

### 1.2.1 Financial Analysis and Information Unit

In the context of the fight against money laundering and the financing of terrorism, the Financial Analysis and Information Unit (UIAF)<sup>3</sup> was created by Law 526<sup>4</sup> as a special administrative unit of the Colombian State, with legal personality, administrative and financial autonomy, of a technical nature and attached to the Ministry of Finance and Public Credit.<sup>5</sup>

The UIAF is an intelligence agency in charge of systematizing and analyzing information provided by regulated entities and other sources in order to identify, locate, collect, classify, preserve, analyze and produce financial information relevant to national security, the defense of democracy and the protection of human rights. UIAF is the country's financial intelligence body and a member of the Egmont Group.<sup>6</sup>

The UIAF plays a key (initial) role in the identification of criminal assets and provides financial intelligence to criminal and asset recovery proceedings. The UIAF centralizes and systematizes financial intelligence information and supplies it to the justice system, including the NCBF system, as it is called in Colombia.<sup>7</sup>

### 1.2.2 Public Prosecutor's Office

The Public Prosecutor's Office (PPO)<sup>8</sup> has constitutional status<sup>9</sup> and is part of the national justice system. It is responsible for the exercise of criminal prosecution and the proceedings for the NCBF within the framework of due process. The PPO participates in the design and execution of the State's criminal policy.<sup>10</sup>

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3 For more information on the UIAF, see <https://www.uiaf.gov.co/>.

4 Law No. 526 establishing the Financial Analysis and Information Unit, published on August 15, 1999, and its regulations contained in regulatory decree no. 1068, published on May 26, 2015, which refers to the provisions related to the UIAF. Available at: [https://www.Mincultura.Gov.Co/ministerio/oficinas-y-grupos/oficina%20asesora%20de%20planeacion/siteassets/paginas/impuesto-nacional-al-consumo-telefonía-m%3%b3vil1104-4563/dcto%20reglam%201068\\_15%20sector%20hacienda.Pdf](https://www.Mincultura.Gov.Co/ministerio/oficinas-y-grupos/oficina%20asesora%20de%20planeacion/siteassets/paginas/impuesto-nacional-al-consumo-telefonía-m%3%b3vil1104-4563/dcto%20reglam%201068_15%20sector%20hacienda.Pdf).

5 The main function of the Ministry of Finance and Public Credit is to define and implement the economic and fiscal policy of the State. See <https://observatorioplanificacion.cepal.org/es/instituciones/ministerio-de-hacienda-y-credito-publico-de-colombia>.

6 The Egmont Group is a united body of 166 Financial Intelligence Units (FIUs). It provides a platform for the secure exchange of expertise and financial intelligence to combat money laundering and the financing of terrorism. terrorism (ML/FT). See [https://egmontgroup.org/en/membership/list?field\\_region\\_value=americas](https://egmontgroup.org/en/membership/list?field_region_value=americas).

7 In this regard, Article 5 of Law No. 526 states that the unit, in fulfillment of its objective, shall communicate to the competent authorities and the entities entitled to bring an NCBF action, any relevant information within the framework of the comprehensive fight against money laundering, terrorist financing and activities that give rise to the NCBF action.

8 For more information on the PPO, see <https://www.fiscalia.gov.co/colombia/>.

9 For further details, see Article 249 et seq. of the Colombian Constitution, published in 1991.

10 To learn more about the mission, vision or functions of the Public Prosecutor's Office (PPO), see <https://www.fiscalia.gov.co/colombia/la-entidad/quienes-somos/mision-y-vision/>.

The PPO has directorates specialized<sup>11</sup> in money laundering, NCBF, financial investigations and tax crimes, which together make up the Delegate Office on Criminal Finance. The PPO is part of the FATF Asset Recovery Network (ARN).<sup>12</sup>

The PPO plays a key role in all phases of asset recovery in Colombia. Its powers include investigating financial crimes, as well as ordering the application of various precautionary measures to stolen assets within the framework of criminal proceedings and in NCBF proceedings, through the Specialized NCBF Directorate and its investigative body.<sup>13</sup>

### 1.2.3 National Police of Colombia

The National Police of Colombia (PONAL) is a public entity attached to the Ministry of National Defense.<sup>14</sup> PONAL is a national armed force created to serve the citizens of Colombia. Its primary purpose is to maintain conditions necessary to exercise public rights and freedoms as determined by the Colombian Constitution.<sup>15</sup>

Within PONAL's organizational chart, the Directorate of Criminal Investigation and Interpol (DIJIN), whose mission is to contribute to judicial investigations and support international investigations in its capacity as Interpol's focal point in Colombia, is of particular relevance.<sup>16</sup> This directorate has investigation groups for cases involving money laundering and NCBF.

The DIJIN contributes to the investigation and prosecution of criminal assets through financial analysts and experts, together with field operations and intelligence.<sup>17</sup>

### 1.2.4 Comptroller General of the Republic

The Office of the Comptroller General of the Republic (CGR) is an autonomous organ of the State with constitutional status. It is also the State's supreme fiscal control body. As such, its mission is to ensure the proper use of public resources and assets, and to contribute to the modernization of the State, through continuous improvement of different public entities.<sup>18</sup>

The CGR oversees individuals or entities that administer funds or assets of the nation. It is also responsible for establishing the liability of public servants and individuals who cause damage to the State's assets. The CGR imposes the corresponding financial penalties and

11 In this respect, see the organizational chart of the PPO which details the directorates specializing in criminal finance: anti-money laundering and NCBF. Available at: <https://www.fiscalia.gov.co/colombia/la-entidad/organigrama/>.

12 FATF (2018). Mutual evaluation report of the Republic of Colombia, p. 120.

13 In this regard, see the organizational chart of the Public Prosecutor's Office, which details the specialized directorates in criminal finances. Available at <https://www.fiscalia.gov.co/colombia/la-entidad/organigrama/>.

14 On the creation of the National Police Corps, see Decree No. 1000 on the organization of this institution, published in 1891; Article 218 of the Colombian Constitution, published in 1991; and Law No. 62, which issued regulations on the National Police and created a public social security and welfare establishment for the National Police, published in 1993. Regarding PONAL, see <https://www.policia.gov.co/>.

15 For the purpose of the Colombian National Police, see Article 216 et seq. of the Colombian Constitution, Published in 1991.

16 To learn more about Interpol, see <https://www.interpol.int/es/Quienes-somos/Paises-miembros/Las-Américas/COLOMBIA>.

17 To learn more about DIJIN, see <https://www.policia.gov.co/dijin>.

18 On the functions of the CGR, see Article 267 of the Colombian Constitution published in 1991, which establishes that that fiscal control is a public function exercised by the Office of the Comptroller General of the Republic, which oversees fiscal management of the administration and of individuals or entities that manage the Nation's funds or assets.

other actions arising from the exercise of fiscal supervision. This control institution also seeks redress for public assets.

In the exercise of the so-called coercive jurisdiction, the CGR is empowered to recover public resources and assets that have deteriorated as a result of poor administration, or that have been misappropriated by officials or private individuals. In addition, the CGR acts as a contact point for Interpol's Global Asset Recovery Network and the Stolen Asset Recovery (StAR) initiative of the World Bank and UNODC.<sup>19</sup>

### 1.2.5 Special Assets Company

The Sociedad de Activos Especiales (SAE) is the Colombian institution in charge of managing recovered assets, or assets in the process of recovery. The SAE is a mixed economy institution attached to the Ministry of Finance and Public Credit. Its purpose is to administer assets subject to precautionary measures in asset NCBF, or whose ownership right has been extinguished.<sup>20</sup>

The Extinción de Dominio (NCBF) Code<sup>21</sup> of 2014 gives the SAE the power to administer the Fund for Rehabilitation, Social Investment and Fight against Organized Crime (FRISCO).<sup>22</sup> It has the following main duties:

- Take and keep up-to-date inventory of assets affected by precautionary measures within the framework of NCBF proceedings.
- Oversee the proper administration and disposal of assets.
- Supervise the use of the goods by the recipients or provisional custodians.
- Collaborate with the judicial authorities in the enforcement of orders for the return or final disposal of assets.
- Execute the prior alienation of movable assets with prior authorization from the case prosecutor or the judge presiding over the NCBF.<sup>23</sup>

### 1.2.6 Ministry of Justice and Law

The Ministry of Justice and Law aims to formulate, coordinate and execute public policy in the areas of legal order, defense and legal security; the fight against crime, transitional justice mechanisms; crime prevention and control; prison and penitentiary affairs; and the promotion of a culture of legality, harmony and respect for rights. It also coordinates relations between the Executive Branch, the Judicial Branch, the Public Prosecutor's Office,

19 Article 3.4 of Regulatory Resolution No. 247 establishes rules for National and International Cooperation on the Prevention, Investigation and Seizure of Assets, published in 2013. Available at: [https://www.cancilleria.gov.co/sites/default/files/Normograma/docs/resolucion\\_contraloria\\_0247\\_2013.htm](https://www.cancilleria.gov.co/sites/default/files/Normograma/docs/resolucion_contraloria_0247_2013.htm).

20 To learn more about SAE, see [https://www.saesas.gov.co/nuestra\\_entidad/quienes\\_somos](https://www.saesas.gov.co/nuestra_entidad/quienes_somos).

21 Law No. 1708, Extinción de Dominio (NCBF) Code, published in 2014.

22 FRISCO is a special account without legal personality. It is administered by the SAE with the aim of strengthening the justice sector, social investment, drug policy and assistance and reparations to victims of illicit activities, as indicated in Article 90 of the Extinción de Dominio (NCBF) Code.

23 Prior alienation or early sale of assets is the monetization of assets, whether movable or immovable, that threaten ruin, loss or environmental degradation. It may also be required if administration or safekeeping is concluded, according to a cost-benefit analysis, to cause disproportionate damage or disproportionate expense.

control bodies and other public and private entities for the development and consolidation of public policy in the field of justice and law.<sup>24</sup>

Decree 950 of 1995 created the Inter-Agency Coordination Committee for the Control of Money Laundering (CCICLA),<sup>25</sup> attached to the Ministry of Justice and Law, as the advisory body of the National Government and coordinator of the State's actions to combat money laundering.

On the other hand, the Ministry of Justice and Law leads the National Narcotics Council. According to Article 90 of Extinción de Dominio (NCBF) Law No. 1708-2014, said Council is in charge of outlining policies to strengthen the justice sector, social investment, drug policy, rural development and attention and reparation to victims of illicit activities through the Fund for Rehabilitation, Social Investment and Fight against Organized Crime (FRISCO). The National Narcotics Council is in charge of approving the percentages of funds recovered from the NCBF proceedings for each entity that is part of FRISCO.

### **1.2.7 Intersectoral Commission for Extinción de Dominio (NCBF)**

Created by Decree 1777 of 2016 as a body for coordinating and guiding the execution of functions that must be fulfilled in the framework of applying the NCBF process with appropriate administration and destination of the assets referred to in Article 91 of Law 1708 of 2014. The Commission is composed of the President of the Republic or his delegate, who chairs it, the Minister of Justice and Law or his delegate, the Minister of Finance and Public Credit or his delegate, the Public Prosecutor's Office or its representative, and the President of the Sociedad de Activos Especiales (SAE) or his delegate, who in turn acts as Technical Secretary.

Among its functions is to study the problems faced in practice by the parties involved in the NCBF process, in relation to the application of rules and procedures established in the Extinción de Dominio (NCBF) Code and the other rules that modify it.

### **1.2.8 Public Prosecutor's Office**

The Special Public Prosecutor's Office (PGN) is in charge of maintaining control over civil service. Its functions are: to exercise preventive oversight of the civil service; to exercise disciplinary power over civil servants; and to exercise the Public Prosecutor's role in judicial proceedings in pursuit of law and order. In this sense, it is responsible for warning of any fact that may be in violation of the regulations in force, without this implying co-administration or interference in the management of State entities.<sup>26</sup>

In accordance with the provisions of the Unified Disciplinary Code or Law 734 of 2002, the PGN is also in charge of initiating, advancing and ruling on investigations for disciplinary offences initiated against civil servants and private individuals who exercise public functions

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24 To learn more about the Ministry of Justice and Law, see <https://www.minjusticia.gov.co/>.

25 To learn more about the CCICLA, see the UIAF paper, published in 2014. Available at: <https://www.uiaf.gov.co/?idcategoria=27748&download=Y>

26 To learn more about the PPO, see <https://www.procuraduria.gov.co/portal/index.jsp>.

or manage state money. It also shares responsibility for the implementation of the UNCAC in Colombia and plays a very important role in the fight against public corruption.

### **1.2.9 Financial Superintendent of Colombia (SFC)**

The Financial Superintendent of Colombia (SFC) is a technical body attached to the Ministry of Finance and Public Credit with legal personality, administrative and financial autonomy and its own assets. It exercises inspection, surveillance and control over persons who carry out financial, stock market, insurance and any other activity related to the management, use or investment of resources collected from the public.<sup>27</sup>

It also aims to supervise the Colombian financial system in order to preserve its stability, security and confidence, as well as to promote, organize and develop the Colombian securities market and the protection of investors, savers and policyholders.

Pursuant to the Inter-administrative Cooperation Agreement between the Ministry of Foreign Affairs, PPO, SFC and UIAF,<sup>28</sup> the SFC is responsible for informing all entities subject to its supervision of the obligation and procedure for the immediate delivery of financial information on the existence of funds and/or assets in the name of a natural or legal person designated by the United Nations Security Council or by a Member State of the United Nations if said persons are suspected of being terrorists, committing acts of terrorism, financing terrorism, or participating in the proliferation of weapons of mass destruction. That is in order to proceed with the freezing of their assets or funds.

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27 To learn more about the SFC, see <https://www.superfinanciera.gov.co/jsp/index.jsf>.

28 For details of the Inter-Administrative Cooperation Agreement between the institutions and the SFC, see <https://www.superfinanciera.gov.co/inicio/nuestra-entidad/relaciones-internacionales/memorandos-de-entendimiento-suscritos-por-la-sfc-61091>.

## 2 Principles of Asset Recovery

This section identifies and assesses the key elements of Colombia's policy, practice and legal and institutional framework as they relate to asset recovery. These key elements have been selected for their proven relevance to asset recovery processes and are expressed in principles developed by the G20.<sup>29</sup> On the other hand, the obligation of States to adopt asset recovery mechanisms is based on various international normative instruments, recommendations (soft law) and recognized good practices in the field.

### 2.1 Principle 1: Asset Recovery as a Policy Priority

This principle assesses whether Colombia considers asset recovery a priority in its criminal policy. The current section also includes a brief investigation into the existence of high-level support for this policy based on open sources of information such as implementation plans, implementation assessments or reports and data on how resources are allocated to the institutions responsible for policy implementation and enforcement.

#### 2.1.1 Criteria

- Adoption of a national asset recovery policy.
- Adoption of an asset recovery implementation plan.
- Availability of resources for implementation of the policy and plan.

The summary and conclusions of this section are based on the analysis of official documents, strategic plans, public policies on illicit asset recovery and statements made by members of the current government, which demonstrate the Colombian government's political commitment to strengthening asset recovery as a criminal policy.

In this regard, the following national and sectoral plans and pronouncements stand out:

- **2018-2022 National Development Plan - Pact for Colombia, Pact for Equity (PND).**<sup>30</sup> The PND was promulgated in 2019 by the national government, with the participation of the Superior Council of the Judiciary and the National Planning Council.<sup>31</sup> The PND consists of 16 public policy objectives (structural pacts). The first objective of Chapter I, "Pact for legality: effective security and transparent justice for all to live in freedom and democracy", lays the foundations for a frontal fight against corruption and the strengthening the judicial branch. In order to achieve the PND objectives, the State has allocated a total of 132 trillion Colombian pesos (COP),<sup>32</sup> of which just over 3 trillion<sup>33</sup> are earmarked to battle corruption. In addition, the PND defines the strategy

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<sup>29</sup> The G20 is the international forum that brings together the world's leading economies. Its members represent more than 80% of the world GDP, 75% of world trade and 60% of the world's population. See <https://g20.org/about-the-g20/>.

<sup>30</sup> Government of Colombia DNP (2018). 2018-2022 National Development Plan. Pact for Colombia pact for equity. Available at: [https://ccong.org.co/files/867\\_at\\_BasesPND2018-2022.pdf](https://ccong.org.co/files/867_at_BasesPND2018-2022.pdf).

<sup>31</sup> By means of Law No. 1955, the 2018-2022 National Development Plan - Pact for Colombia, Pact for Equity, is enacted, published in 2019.

<sup>32</sup> Approximately USD 35,232,349,179 (exchange rate as of May 24, 2021).

<sup>33</sup> Approximately USD 829'956,000 (exchange rate as of April 19, 2021).

to combat money laundering, the financing of terrorism and organized crime.<sup>34</sup> On the other hand, in December 2018, the Coordination Centre against the Finances of Transnational Crime Organizations and Terrorism was created to strengthen the fight against financial crime and the recovery of assets (NCBF).

- **Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Action Plan.**<sup>35</sup> The Plan has short, medium and long-term objectives. Among them we can find provisions on strengthening preventive measures, powers and responsibilities of the competent authorities and other institutional measures. These can include adjustments to the regulation on Politically Exposed Persons (PEPs), Designated Non-Financial Businesses and Professions (DNFBPs), beneficial owners of legal persons, etc. These provisions are aimed at improving mechanisms for identifying illicit assets among the plan's main objectives.
- **Future Path: 2018- 2020 Comprehensive Policy to Tackle the Drug Problem.**<sup>36</sup> Policy presented at the 46th meeting of the OAS Group of Experts for the control of Money Laundering (GELAVEX) in June 2019.<sup>37</sup> This policy defines principles for intervening on the multiple causes and effects of the drug problem.<sup>38</sup> The policy is based on four strategic pillars, including the fourth pillar designed to have an impact on criminal economies and income. It should be noted that the four pillars rest on a fifth, cross-disciplinary pillar: the transformation of the territory and transit of legal economies. The fourth pillar has two strategic objectives: interrupt the financial flows of criminal organizations and affect the accumulation and capital flows of criminal organizations and their networks, through NCBF, criminal confiscation and recovery of assets abroad.
- **National Risk Assessment (NRA).**<sup>39</sup> Colombia's National Risk Assessment (NRA) commenced in 2019 for the purpose of quantifying, assessing and understanding the risks of money laundering and the financing of terrorism (ML/FT) in order to structure the action plan of the new public policy on AML/CFT. This public policy will be the road map guiding different actors and sectors of the system to focus resources and capacities.<sup>40</sup>
- **National Policy against Money Laundering, the Financing of Terrorism and Financing of Weapons of Mass Destruction (CONPES 4042-2021).** This policy<sup>41</sup> has the general purpose of strengthening the AML/CFT system and sets out four specific objectives, including: overcoming the gaps identified in GAFILAT's MER and assigning the Prosecutor's Office and the Ministry of Justice to prepare analyses "that

34 The 2018-2022 National Development Plan formulates as a fourth strategy the increase of the effectiveness of the Anti-Money Laundering System to pursue sources financing terrorism and organized crime. See, Government of Colombia DNP (2018). *National Plan...*, cit., p. 14.

35 UIAF (2019). *Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Action Plan for Colombia by the Financial Action Task Force of Latin America (FATF)*, pp. 1-7. Available at: [https://www.uiaf.gov.co/recursos\\_user/Nota 2 Plan seguimiento GAFILAT.pdf](https://www.uiaf.gov.co/recursos_user/Nota%20Plan%20seguimiento%20GAFILAT.pdf).

36 Ministry of Justice of Colombia (2018). *Future Path, Comprehensive Policy to Tackle the Drug Problem 2018*, Bogotá, pp. 61 et seq. Available at: [http://www.odc.gov.co/Portals/1/Docs/POLITICA\\_RUTA\\_FUTURO\\_ODC.pdf](http://www.odc.gov.co/Portals/1/Docs/POLITICA_RUTA_FUTURO_ODC.pdf).

37 Colombia continues to fight against drug trafficking and its networks, see [https://www.minjusticia.gov.co/Sala-de-prensa/Paginas/ Colombia-sigue-luchando-contr-el-narcotrafico-y-sus-redes.aspx](https://www.minjusticia.gov.co/Sala-de-prensa/Paginas/Colombia-sigue-luchando-contr-el-narcotrafico-y-sus-redes.aspx).

38 Strategies envisioned to achieve this objective include: generate specialized bi-national or multinational bodies for the exchange of financial intelligence; optimize the powers of inspection, surveillance and control bodies; and develop tools to help access information related with the beneficial owner of companies registered in the country. [https://www.uiaf.gov.co/sistema\\_nacional\\_ala\\_cft/ evaluaciones\\_nacionales\\_riesgo/evaluacion\\_nacional\\_riesgo\\_2019/informe\\_ejecutivo\\_enr\\_2019](https://www.uiaf.gov.co/sistema_nacional_ala_cft/evaluaciones_nacionales_riesgo/evaluacion_nacional_riesgo_2019/informe_ejecutivo_enr_2019).

39 UIAF (2019). *Executive Report: National Risk Evaluation*, pp. 1-11. Available at: [https://www.uiaf.gov.co/sistema\\_nacional\\_ala\\_cft/ evaluaciones\\_nacionales\\_riesgo/evaluacion\\_nacional\\_riesgo\\_2019/informe\\_ejecutivo\\_enr\\_2019](https://www.uiaf.gov.co/sistema_nacional_ala_cft/evaluaciones_nacionales_riesgo/evaluacion_nacional_riesgo_2019/informe_ejecutivo_enr_2019).

40 UIAF (2019). *Executive Report...*, cit., p.4.

41 National Council of Economic and Social Policy, National Planning Department (CONPES) (2021), *National Policy on Anti-Money Laundering, Countering the Financing of Terrorism and Countering the Financing of the Proliferation of Weapons of Mass Destruction*. Available at: <https://www.cerlatam.com/wp-content/uploads/2021/08/4042.pdf>.

contribute to the understanding of illicit economies and money laundering.” The amount spent to develop this policy according to its own authorities is COP 10,392,000.00.<sup>42</sup>

It is important to consider some statements by the highest authorities of the Colombian government, which highlight the importance of asset recovery as an integral part of the fight against money laundering, corruption and the financing of terrorism. For example, the current Vice President of the Republic, Marta Lucía Ramírez, made the following statement during the commemoration of the VII National Day for the Prevention of Money Laundering in 2019, “Asset recovery and NCBF are of the utmost importance of determining the outcome of corruption cases.”<sup>43</sup> Here speech highlighted the need to strengthen human and financial resources of institutions and the need for coordination between the authorities to make effective use of technological tools and the capacities of the State and the private sector to detect, dismantle and freeze assets.<sup>44</sup>

On the other hand, it is worth highlighting the participation of the Permanent Mission of Colombia to the UN, in approving the United Nations General Assembly Resolution:<sup>45</sup> “Prevent and combat corrupt practices and the transfer of proceeds of corruption by facilitating asset recovery and returning such assets to legitimate owners, in particular to the countries of origin, in accordance with the United Nations Convention against Corruption.” During the session, Colombia reaffirmed its unrestricted commitment to the fight against corruption and transnational organized crime.

Finally, in the GAFILAT MER in relation to immediate outcome 8 (confiscation), it has been pointed out that Colombian authorities give high priority to NCBF and seek to recover illicit assets as a criminal policy objective. In this regard, the PPO had as a strategy within the framework of the 2016–2020 Strategic Plan,<sup>46</sup> “Strongly impacting organized crime” through investigations into the finances of criminal organizations, with the aim of increasing the confiscation of assets from illicit origin and thereby achieving one of the main objectives of the authorities by dismantling criminal networks through a well-coordinated criminal asset recovery policy.<sup>47</sup>

Colombia does not have a specific asset recovery plan. However, the different plans analyzed foresee concrete actions to strengthen it and show a clear political will to progressively implement an (improvement) plan for its asset recovery policy. The leading regional role that Colombia has played in recent decades in asset recovery through NCBF is a clear testimony to this political will.

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42 Approximately USD 2,766,036 (at the exchange rate of October 18, 2021).

43 On the statement by the Presidency of the Republic of Colombia on the National Day for the Prevention of Money Laundering, see <https://id.presidencia.gov.co/Paginas/prensa/2019/Recuperacion-activos-y-extincion-de-dominio-determinantes-para-combatir-la-corrupcion-Vicepresidenta-de-la-Republica-191029.aspx>.

44 For more details of Vice-President Marta Lucia’s statement, see <https://fb.watch/7zINgnAkbC/>.

45 Colombia succeeds in passing the anti-corruption and asset recovery resolution at the United Nations. See <https://www.cancilleria.gov.co/newsroom/news/colombia-logra-aprobacion-resolucion-corrupcion-recuperacion-activos-naciones-unidas>.

46 FGN (2020). *2016-2020 Strategic Plan*. Available at: <https://www.fiscalia.gov.co/colombia/wp-content/uploads/Plan-estrategico-2016-2020-003-.pdf>.

47 GAFILAT (2018). *Colombia Mutual Evaluation Report...*, cit., p. 57.

## 2.1.2 Field Mission

During the meetings Colombian authorities involved in the implementation of NCBF pointed out that special attention must be focused on strengthening human and financial resources to make the system more efficient.

The analysis of quantitative data highlights the following indicators.

Colombia's NCBF system has the following human resources:

<b>Total number of prosecutors in the NCBF system<sup>48</sup></b>	
Ca central level of investigation assets (PPO)	51
Regional	21
Second instance	4
<b>Total</b>	<b>76</b>
<b>Total number of CTI and DIJIN investigators</b>	
DIJIN	32
CTI	37
<b>Total</b>	<b>69</b>
<b>Total number of judges at national level</b>	
First instance	11
Second instance	3
<b>Total</b>	<b>14</b>

Source: Specialized Directorate for NCBF and Statistical Development and Analysis Unit, SCJ.

On the other hand, the burden of the NCBF processes for each institution from 2017 to 2021 is:

Period	2017	2018	2019	2020	2021
Active cases under investigation (PPO)	8504	7759	7657	7138	6876
Active cases prosecuted (Courts)	1010	1349	1499	1469	1639
Number of second instance judgments at the national level	N/D*	N/D*	N/D*	85	46**

Source: Specialized Directorate for NCBF and Statistical Development and Analysis Unit, SCJ.

\*According to the data provided by the Statistical Development and Analysis Unit, SCJ, data for periods 2017 to 2019 is not available as it has not yet been broken down.

\*\*The data on sentences for in 2021 corresponds to the month of September 2021.

The annual average number of prosecutions from PPO investigations in the NCBF proceedings and second instance sentences are as follows:

Period	2017	2018	2019	2020	2021
% investigations in prosecution	11.88%	17.39%	19.58%	20.58%	23.84%
% judgments in prosecution	N/D*	N/D*	N/D*	5.79%	2.81%

Source: Own analysis.

The above percentages are benchmarks and do not precisely measure the success of the NCBF process (given that a single case can involve a large number of assets), but they can provide a reference as to the effectiveness and the relationship between the resources and the results of the overall process. Thus, data provided by the Sociedad de Activos Especiales (SAE) indicate that on average 86% of the assets it manages are seized, and 14% are subject to NCBF judgments.

Authorities pointed out that one of the major problems in the jurisdiction of NCBF is the limited number of judges in the system, which is reflected in the limited number of sentences issued. Law 2197 on citizen security insists on the creation of NCBF courts and states that the resources obtained should be used to strengthen the system.

In the same vein, according to article 215, Law 1708 of 2014, Colombia should have at least five (5) NCBF chambers in the judicial district courts of Bogotá, Medellín, Cali, Barranquilla and Cúcuta. However, Colombia has a single Superior Chamber in Bogotá, composed of 3 judges. This same regulation provides for the creation of fifty-six (56) courts specialized in NCBF in the different municipalities of Colombia. However, to date, there are eleven (11) courts with the same number of judges at the national level. As a consequence, according to the latest available data, SAE estimates a NCBF process can last an average of 10 years in Colombia. According to judges' estimates, it can take 14 years if the case is processed under Law 793; and 5 years if processed under Law 1708.

On the other hand, it should be noted that in 2022 the Public Prosecutor's Office, applying the institutional policy, Argenta,<sup>48</sup> prioritized 300 cases in the specialized Directorate for NCBF, defining some criminal phenomena that the PPO has identified as strategic objectives. Within the Directorate these phenomena have been translated into thematic axes such as environment, drug trafficking, smuggling, human trafficking and migrant smuggling, which also meet the prioritization criteria defined in the PPO's internal regulations. The Directorate has worked with all judicial police agencies, which have NCBF teams, to match the cases prioritized by them and the PPO.

48 See <https://www.fiscalia.gov.co/colombia/hechos-concretos/asi-operara-argenta-estrategia-para-atacar-financiacion-de-redes-criminales/>.

## 2.2 Principle 2: Preventive Measures in the Financial System

Conventions and international standard-setting bodies in the fight against corruption and money laundering establish that States must require financial institutions to verify the identity of their customers, to maintain adequate record keeping and accounting systems and to take reasonable measures to determine the identity the beneficial owners of funds deposited in high value accounts. Paper trails are crucial to asset recovery processes in the financial system.

Principle 2 assesses preventive measures in the financial system, based on Mutual Evaluation Reports (MERs), the most recent follow-up reports by the International Financial Action Task Force (FATF) and FATF-style regional groups.<sup>49</sup>

### 2.2.1 Indicators

For the analysis of principle 2, the following FATF recommendations and their indicators have been considered (recommendations related to asset recovery):<sup>50</sup>

- Recommendation 10: customer due diligence.
- Recommendation 12: politically exposed persons (PEPs).
- Recommendation 22: DNFBP – customer due diligence.
- Recommendation 24: legal persons - beneficial owner.
- Recommendation 25: transparency and beneficial ownership of legal arrangements.

Furthermore, the assessment on principle 2 is based on data from the Colombia Mutual Evaluation Report (MER) on compliance with the FATF and GAFILAT Recommendations.

### 2.2.2 Implementation of Recommendations

The MER provides a summary of Colombia's ML/FT measures as of June 2017. The document analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Colombia's ML/FT system.

49 GAFILAT (2018). Mutual evaluation report of the republic of Colombia, Bogotá. Available at: <https://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/GAFILAT-Mutual-Evaluation-Colombia-2018-Spanish.pdf>.

50 For the FATF's 40 recommendations, see <https://www.cfatf-gafic.org/index.php/es/documentos/gafi40-recomendaciones>.

## Box 2: IV Mutual Evaluation Round 2018 - Extracts

### Recommendation 10: Customer Due Diligence.

#### Partially met.

- The MER estimated that although the system prohibits the existence of anonymous or fictitious name accounts, Customer Due Diligence (CDD) measures are not enforceable on regulated entities through a law.<sup>51</sup>
- The MER also notes that shortcomings exist with regard to the identification of the beneficial owner of legal persons and structures by financial institutions, foreign exchange companies, savings cooperatives and postal payment operators.<sup>52</sup>
- Accordingly, the recommendations follow-up action plan<sup>53</sup> recognizes Recommendation 10 as a priority, and it is expected that regulations will be adopted to bring the Colombian regulatory system in line with FATF standards. In this context, at the end of 2020, Draft Law 341/2020 was presented in Congress.<sup>54</sup> Article 19 of said Law introduces the obligation for any natural or legal person to implement a risk prevention and risk management system to carry out due diligence measures on an ongoing and effective basis.

### Recommendation 12: Politically Exposed Persons (PEPs): Enhanced due diligence.

#### Partially achieved.

- According to the FATF standard,<sup>55</sup> with respect to foreign PEPs (customer or beneficial owner), in addition to standard CDD measures, financial institutions should have an appropriate risk management system to determine whether a customer is a PEP; obtain senior management approval to establish or continue the business relationship; take reasonable measures to establish the source of wealth and source of funds; and conduct enhanced ongoing monitoring. In addition, reasonable measures should be required to determine whether the customer or beneficial owner is a PEP, whether it is local, or it has been entrusted with a prominent position within an international organization. Requirements applied to PEPs must be extended to their families or close associates.
- In this regard, the Colombian MER notes partial coverage of the recommendation for international PEPs and those designated with prominent functions by an international organization.<sup>56</sup> For example, Regulation 2564/2016<sup>57</sup> provides that the requirements for adequate risk management by operators of postal payment services do not extend to persons entrusted with a prominent public function in an international organization or to the beneficial owner. On the other hand, the same regulation does not have adequate mechanisms for risk

51 GAFILAT (2018). *Evaluation report...*, cit., p.144.

52 GAFILAT (2018). *Evaluation report...*, cit., p.111.

53 UIAF (2019). *Action Plan...*, cit., p.7.

54 UIAF (2020). *Management Report*, Bogotá. Available at: [https://www.uiaf.gov.co/recursos\\_user/editores/60798/SAF/Planes/Informes/Informe\\_de\\_Gesti%C3%B3n\\_2020.pdf](https://www.uiaf.gov.co/recursos_user/editores/60798/SAF/Planes/Informes/Informe_de_Gesti%C3%B3n_2020.pdf).

55 GAFILAT (2018). *Evaluation report...*, cit., p.152.

56 GAFILAT (2018). *Evaluation report...*, cit., p.194.

57 Enhanced measures for PEPs are regulated in Art. 6.2.4 of Resolution No. 2564, which established rules on the Money Laundering and Terrorist Financing Risk Management System for Postal Payment Operators, published 6 December 2016. Available at: [https://www.uiaf.gov.co/caracterizacion\\_usuarios/perfiles/reportantes/ministerio\\_tecnologias\\_informacion\\_29352/28580](https://www.uiaf.gov.co/caracterizacion_usuarios/perfiles/reportantes/ministerio_tecnologias_informacion_29352/28580).

management, and does not require the authorization of senior management for the approval of a new business relationship or the continuation of an existing one.

- As part of the second phase of the enhanced monitoring action plan, it was decided to make the necessary regulatory changes to improve monitoring of PEPs. In this regard, the Presidency of the Republic submitted a draft decree for public consultation to amend Decree 1081 of 2015.<sup>58</sup> The Draft aims to extend the list of persons considered PEPs to include foreign PEPs, legal persons and private estates with a PEP as beneficial owner. In addition, publicity of the list is also envisioned. The deadline for comments on the draft law expired on 12 February 2021.

**Recommendation 22: Designated Non-Financial Businesses and Professions (DNFBPs) - customer due diligence.**

**Partially met.**

The MER concluded that:<sup>59</sup>

- The betting industry does not have an adequate CDD process. Furthermore, a number of persons and companies listed by the FATF are not classified as regulated sectors within the Colombian system, such as dealers in precious metals and stones.
- On the other hand, certain sectors included as DNFBPs by GAFILAT, such as the real estate sector, notaries, lawyers and accountants, are not included as subjects obliged to comply with the requirements of the Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Risk Management System.
- CDD obligations are not contained in a law as required by the standard.

In response, the UIAF has included within phase 2 of its action plan, “make the corresponding regulatory amendments that will contribute to improving the rating of the FATF recommendation related to the regulation and supervision of DNFBP.”<sup>60</sup>

**Recommendation 24: Legal persons - beneficial owner.**

**Partially met.**

The MER concluded that:<sup>61</sup>

- The MER considered there are improvements with regard to the transparency of information on legal persons (basic information is publicly available - documentary support). However, the authorities find it difficult to obtain and maintain accurate information regarding the identification of the beneficial owner, particularly in the case of complex corporate structures, and where foreign ownership or some form of foreign control is involved.<sup>62</sup>

58 The Draft by which some articles of Decree 1081 of 2015 are to be amended is the Decree Draft, *Whereby the Sole Regulatory Decree of the Presidency of the Republic Sector is issued, in relation to Politically Exposed Persons. (PEP)*, draft subject to 2020 discussion. Available at: <https://dapre.presidencia.gov.co/AtencionCiudadana/convocatorias-consultas/consulta-proyecto-decreto-pep-modifica-1081-210125>.

59 GAFILAT (2018). *Evaluation report...*, cit., p.161-163.

60 UIAF (2019). *Action Plan...*, cit., p.6.

61 GAFILAT (2018). *Evaluation report...*, cit., p. 14.

62 GAFILAT (2018). *Evaluation report...*, cit., p. 169.

- The main problem of availability and access to beneficial ownership information is that databases are not updated in real time, and in many cases the authorities have to rely on the books kept within the companies, which are rarely digitized and up to date.<sup>63</sup>
- For these reasons, the GAFILAT rated effectiveness and technical compliance as moderate. As a priority, it mandated a mechanism to maintain accurate and up-to-date information on beneficial owners to be established and immediately available to the competent authorities.<sup>64</sup>

**Recommendation 25: transparency and beneficial ownership of legal arrangements. Mostly achieved.**

- The FATF considered that the registration, operation and supervision of the commercial trust, the most relevant legal structure, is comprehensively and thoroughly regulated.
- In this respect, the operation of such companies is subject to authorization by the Financial Superintendent of Colombia and to State control, inspection, supervision and intervention.
- Competent authorities also have access to trust company information, albeit with some shortcomings with regard to beneficial ownership and penalties for non-compliance.<sup>65</sup>

In addition, it is important to note that the Basel AML Index<sup>66</sup> has placed Colombia in the 32nd risk ranking, with an index of 4.6 (medium-low risk), taking into consideration risk scores based on data from 16 publicly available sources, such as the FATF, Transparency International, the World Bank and the World Economic Forum.

It is important to note that, as part of the Colombian government's response to the results of the MER and obligations under international instruments, Decree 830 of 2021 was recently published,<sup>67</sup> which aims to broaden the scope of application for PEP. This is intended to comply with article 52 of the United Nations Convention against Corruption, as it relates to preventing and detecting transfers of proceeds from crime. The decree also seeks to address recommendations of the FATF and the Organization for Economic Co-operation and Development (OECD).

On the other hand, on December 27, 2021, the National Tax and Customs Office (DIAN) of Colombia issued Resolution 000164, which regulates articles 631-5 and 631-6 of the Colombian Tax Law in order to establish the terms and conditions applicable to the Single Registry of Beneficial Owners (RUB) and the Unincorporated Structures Identification System (SIESPJ), considering the recommendations of the FATF. In addition, Law 2195

<sup>63</sup> UIAF (2019). *Executive report...*, cit., p. 6.

<sup>64</sup> GAFILAT (2018). *Evaluation report...*, cit., p. 15.

<sup>65</sup> GAFILAT (2018). *Evaluation report...*, cit., p. 171.

<sup>66</sup> The Basel AML Index is a ranking compiled and published by the Basel Institute on Governance, which establishes an annual independent review, which assesses the risk of money laundering and the financing of terrorism (ML/FT). See <https://baselgovernance.org/basel-aml-index>.

<sup>67</sup> Decree 830, Sole Regulatory Decree of the Presidency of the Republic, in relation to the regime of Politically Exposed Persons (PEP), published in July 2021. Available at: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=167367>. <https://dapre.presidencia.gov.co/normativa/normativa/LEY%202195%20DEL%2018%20DE%20ENERO%20DE%202022.pdf>.

of 2022 has recently been approved,<sup>68</sup> establishing the principle of CDD, among other developments related to beneficial owners. These policy efforts have recently led to the reclassification of 5 of the FATF recommendations identified in the MER.<sup>69</sup>

The FATF recommendations discussed in this section were, for the most part, rated partially compliant. While Colombia has made notable efforts, there are significant shortcomings, due in part to the absence of systematic and homogenous regulation for all monitored sectors with regard to CDD measures.

On the other hand, shortcomings in the treatment of foreign PEPs and in the identification of the beneficial owner of persons and certain legal structures are being addressed by national authorities. In this regard, efforts made by Decree 830-2021 are noteworthy<sup>70</sup> as it mandates, inter alia, that the Administrative Department of the Civil Service must indicate in the Public Employment Information and Management System (SIGEP) the civil servants considered PEP. However, to date there is still no database with the name and identification number that would allow a natural person to be identified as a PEP.

On the other hand, in accordance with the recent regulatory provisions mentioned above, due diligence is required of beneficial owners who must register with the DIAN. Both provisions are all the more important given the major threats facing Colombia, such as corruption,<sup>71</sup> money laundering, illicit enrichment and drug trafficking.<sup>72</sup>

In view of the plans, national risk assessments and recently published standards, the commitment of the Colombian State to improve its system of due diligence and prevention in the financial system, in order to comply with international recommendations and conventions, should be commended.

### 2.2.3 Field Mission

Colombian authorities mentioned during the field mission that at the GAFILAT plenary in December 2021, Colombia was upgraded by five recommendations to the highest rating. This is considered by the UIAF as an important achievement of its management, since after the 2018 MER, Colombia was left on enhanced follow-up for 15 recommendations.

It should be noted that this reclassification was possible thanks to some legislative adjustments promoted by the UIAF and led by the national government. Said adjustments were focused on issues such as correspondent banking, wire transfers, statistical systems, guidance and feedback and controls to higher risk countries. In addition to the above, a register of beneficial owners of legal persons and structures without a beneficial owner was created by law, which will be administered by the National Tax and Customs Office (DIAN).

68 Law 2195 (Jan 18, 2022). Available at: <https://dapre.presidencia.gov.co/normativa/normativa/LEY%202195%20DEL%2018%20DE%20ENERO%20DE%202022.pdf>.

69 UIAF, press room. <https://www.uiaf.gov.co/index.php?idcategoria=31053>.

70 Available at: [https://www.funcionpublica.gov.co/eva/gestornormativo/norma\\_pdf.php?i=167367](https://www.funcionpublica.gov.co/eva/gestornormativo/norma_pdf.php?i=167367).

71 GAFILAT (2018). *Evaluation report...*, cit., p. 52.

72 GAFILAT (2018). *Evaluation report...*, cit., p. 54.

Taking into account legislative progress made in 2021 and 2022, Colombia will again request a reclassification of the recommendations related to identifying PEP and due diligence in 2022.

The UIAF authorities recognize that their work is primarily directed at the PPO. However, its relationship with the Special Public Prosecutor's Office (PGN) and the Comptroller General of the Republic (CGR) is complex and lacks the necessary legal basis. Especially with the CGR, due to the Intelligence Law (Law 1121) limitations, UIAF officials pointed out that there are problems in sharing intelligence with this institution. The UIAF further confirmed that, despite recent amendments to PEPs, there is still no official and public database of PEPs in Colombia.

## 2.3 Principle 3: Asset Identification and Tracing

### 2.3.1 Standard

United Nations international conventions require State Parties to adopt the necessary measures to identify and trace criminal assets for seizure and subsequent confiscation by the competent authorities.<sup>73</sup> To comply with the treaty mandate, the competent authorities in the country should have tools that enable them to identify and trace property subject to confiscation in a timely manner, to access sources of financial and banking information, and to record movable and immovable property and tax and fiscal information. These prerogatives should be considered basic investigative tools for all asset investigation entities.

### 2.3.2 Analysis Methodology and Sources

Standards in this area<sup>74</sup> and the assessment of Colombia's capacities in relation to principle 3 were undertaken based on the results of the MER (FATF Recommendations 30 and 31) and the findings of the G20 Anti-Corruption Working Group.<sup>75</sup> The standards also correspond to the conventions outlined above.

In response to Recommendation 30, institutional competencies were assessed with regard to the proper identification, tracing and freezing of assets or other measures aimed at seizure for confiscation.

In line with Recommendation 31, the extent to which the identified authorities have adequate financial, human and technical resources to carry out asset investigations was analyzed. This included particular emphasis on analyzing the capacity to access information sources needed in investigations and prosecutions, and whether a wide range of relevant investigative techniques are available.

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73 United Nations Office on Drugs and Crime (UNODC) (2004). *United Nations Convention...*, cit., p. 25; United Nations Office on Drugs and Crime (UNODC) (2004). *United Nations Convention against Transnational Organized Crime and the Protocols thereto*, p. 21. Available at: <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-s.pdf>.

74 United Nations Office on Drugs and Crime (UNODC) (2004). *United Nations Convention...*, cit., pp. 17, 44-45.

75 In June 2010, the G20 Anti-Corruption Working Group (ACWG) was established to prepare recommendations for leaders to consider regarding how the G20 could continue its contributions to international anti-corruption efforts. To learn more about this working group, see <https://star.worldbank.org/g20-anti-corruption-working-group>.

Finally, applying the findings of the G20 Anti-Corruption Working Group led to analyzing whether Colombia has a register of bank accounts and whether authorities conducting the investigation have guaranteed access. In addition, this review verified whether the authorities have mechanisms that allow them to determine a natural or legal person's ownership of luxury goods, financial trusts, etc.

### **2.3.3 Institutional Framework and Competencies**

In Colombia there are several government agencies that have access to records of information sources for asset identification, location and tracing. In addition, government agencies participate in several regional asset recovery networks, most notably FATF's Asset Recovery Network (ARN).

### Box 3: Capacities to Identify and Trace Illicit Assets

Entity	Competencies	Notes
<b>Financial Information and Analysis Unit (UIAF)</b>	It centralizes, systematizes and analyzes open-source information, as well as information provided by reporting entities (see supra 2.2.1).	<ul style="list-style-type: none"> <li>The UIAF identifies suspected illicit assets in the financial system and reports them to the PPO (STR).<sup>76</sup></li> <li>The UIAF is Colombia's representative to FATF.<sup>77</sup> In this activity, it coordinates actions to identify assets with its counterparts in foreign jurisdictions through the Egmont Group.</li> <li>In general terms, the UIAF may request the information it deems necessary from any public or private entity.<sup>78</sup> Banking, stock exchange and tax confidentiality is not enforceable against its requests for information.</li> <li>Directly, the UIAF has access to cash transaction reports, foreign exchange transaction reports, wire transfer reports, notarial operations, annual tax returns of legal and natural persons, as well as information on trusts for developing public infrastructure.<sup>79</sup></li> </ul>
<b>Public Prosecutor's Office (PPO)</b>	Constitutionally mandated, <sup>80</sup> the PPO is the institution responsible for conducting criminal investigations, and as such has the responsibility to identify and trace criminal proceeds and instrumentalities of crime, as well as assets of illicit origin and destination within the framework of the Extinción de Dominio (NCBF) Code.	<ul style="list-style-type: none"> <li>The CTI and PONAL, through DIJIN, also identify and trace assets in the course of money laundering and NCBF investigations, as long as they are authorized by the PPO. When acting within the framework of an open process or investigation, the exception is financial and medical information, which require authorization through a supervisory judge.</li> </ul>

76 The Suspicious Transaction Report (STR) is understood to be the report that describes possible money laundering operations by a natural or legal person.

77 Law no. 1186, *Memorandum of Understanding between the Governments of the States of the Financial Action Task Force of South America Against Money Laundering (FATF of South America)*, published Nov. 28, 2008. Available at: [https://www.uiaf.gov.co/sistema\\_nacional\\_ala\\_cft/normatividad\\_sistema/leyes/ley\\_1186\\_2009](https://www.uiaf.gov.co/sistema_nacional_ala_cft/normatividad_sistema/leyes/ley_1186_2009).

78 Law no. 526, creates the Financial Analysis and Information Unit and Article 9 details UIAF information management. See Law no. 526 ... cit., p. 5.

79 GAFILAT (2018). Evaluation report..., cit., p. 42.

80 The Colombian Constitution, published in 1991, refers to the duties and obligations of the PPO in Article 250.

It has specialized units and divisions for this purpose<sup>81</sup> and is supported by the Technical Investigation Corps (CTI), with judicial police functions, and also by the Colombian National Police (PONAL), which is a civilian armed force entrusted with public safety.

- To identify and trace property and objects of crime, the PPO may request information from the Superintendent of Notaries and Registry, which must provide all information requested with respect to real estate registered under its purview.<sup>82</sup>
- In addition, it has access to information on companies registered with the Commercial Registry and information registered by the Chambers of Commerce. It is also authorized to obtain financial records held by regulated entities and any other person.
- To carry out an investigation in the financial system, the PPO uses a selective database query, with information generally provided by the UIAF, which is authorized by the supervisory judge.
- Under Colombia's adversarial model,<sup>83</sup> the public prosecutor is empowered to carry out searches and seizures of real estate, ships, aircraft or motor vehicles;<sup>84</sup> intercept communications;<sup>85</sup> retrieve information transmitted over communication networks;<sup>86</sup> conduct surveillance and monitoring of persons and surveillance of things;<sup>87</sup> and to use undercover agents.<sup>88</sup> All of the above measures require subsequent judicial review, with some exceptions.<sup>89</sup> The opposite is true for database searches,<sup>90</sup> where prior authorization of the supervisory judge is required, as it impacts fundamental rights such as the defendant's informational autonomy in this specific case.<sup>91</sup>

81 According to their organizational structure, the existing Specialized Directorates are against criminal organizations, corruption, drug trafficking and money laundering, with a specialized directorate for NCBF and financial investigations. See <https://www.fiscalia.gov.co/colombia/la-entidad/organigrama/>.

82 Decree 2723, which modifies the structure of the Superintendent of Notaries and Registry, was published in 2014. Available at: <http://www.suin-juriscal.gov.co/viewDocument.asp?ruta=Decretos/1484831>.

83 At this point, it is worth mentioning that the Colombian legal system has two procedural laws in current criminal matters, one that regulates inquisitorial processes: Law No. 600 published on July 24, 2000. Available at: [https://oig.cepal.org/sites/default/files/2000\\_col\\_ley600.pdf](https://oig.cepal.org/sites/default/files/2000_col_ley600.pdf); and other for adversarial criminal processes: Law no. 906, published Sept. 1, 2004. Available at: [https://www.defensoria.gov.co/public/Normograma%202013.html/Normas/Ley\\_906\\_2004.pdf](https://www.defensoria.gov.co/public/Normograma%202013.html/Normas/Ley_906_2004.pdf).

84 Criminal Procedure Code, adversarial system (CPCa), Article 214 et seq.

85 Colombian Constitution, Article 250; CPCa, Article 235.

86 CPCa, Article 236.

87 CPCa, Article 239 and Article 240.

88 CPCa, Article 242 and 242-A.

89 Colombian Constitution, Article 250; CPCa, Article 235.

90 CPCa, Article 244.

91 Public Prosecutor's Office (2009) *Prosecutor's Office Procedures Manual in the Colombian Adversarial Criminal Justice System. Colombia*, p. 62. Available at: <https://www.fiscalia.gov.co/colombia/wp-content/uploads/2012/03/spoa.pdf>.

- The Extinción de Dominio (NCBF) Code<sup>92</sup> specifies various investigative and asset-tracing techniques for the purpose of collecting evidence:<sup>93</sup>
  - Searches and Records.
  - Interception of Communications.
  - Surveillance of Things.
  - Monitoring and Surveillance of People.
  - Selective Searches in Databases.
  - Retrieving Information Left Behind When Surfing the Internet.
  - Analysis and Infiltration of Criminal Organizations.
  - Undercover Agents.
  - Listening to and Recording Those Present.
  - Any others that technical or scientific development may offer to assist in investigations.

#### **Comptroller General of the Republic (CGR)**

The Comptroller General of the Republic is the State's supreme fiscal control body. As such, it seeks the proper use of public resources and public goods.

- Its offices include the National and International Cooperation Unit for the Prevention, Investigation and Seizure of Assets, which, in addition to conducting policy formulation in the area of international cooperation, participates in networks aimed at asset search and detection domestically and abroad. In addition, it acts as a focal point in Interpol's Global Asset Recovery Network.
- It includes the Property Search Group, which is responsible for searching for information aimed at locating domestic and foreign assets of persons allegedly responsible in processes involving tax liability, forced collection activities or requiring the intervention of the CGR's involvement as a civil party or victim in criminal proceedings. It also processes and responds to requests to search for assets for relevant purposes.

<sup>92</sup> Law No. 1708, Extinción de Dominio (NCBF) Code. Published in the Official Journal 49039 on Jan. 20, 2014.

<sup>93</sup> Extinción de Dominio (NCBF) Code, Article 158 et seq.

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		<ul style="list-style-type: none"><li>• The CGR acts as the focal point for the Global Contact Point Platform in the network set up by INTERPOL and also for the Stolen Asset Recovery Initiative of UNODC and the World Bank (StAR Initiative).<sup>94</sup></li></ul>
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<b>Superintendent of Companies</b>	<p>The Superintendent of Companies is a technical body attached to the Ministry of Commerce, Industry and Tourism, with legal personality, administrative autonomy and its own assets. It exercises the inspection, surveillance and control of commercial companies, as well as the powers specified by law in relation to other entities, legal persons and natural persons.</p>	<ul style="list-style-type: none"><li>• In the context of determining the administrative liability of legal persons for acts of transnational corruption,<sup>95</sup> the Superintendent of Companies has investigative powers, including the possibility to conduct unannounced inspections, collect evidence, request information from natural or legal persons –as well as from other Colombian entities –and conduct interrogations.<sup>96</sup></li></ul>
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94 United Nations Office on Drugs and Crime (UNODC) (2004). *United Nations Convention...*, cit., p. 8.

95 Law no. 1778, which establishes rules on the liability of legal persons for acts of transnational corruption and other anti-corruption provisions, published on Feb. 2, 2016. Available at: <https://dapre.presidencia.gov.co/normativa/normativa/LEY%201778%20DEL%2002%20DE%20FEBRERO%20DE%202016.pdf>.

96 Law no. 1778, Article 20 and 22.

Colombian authorities are empowered to conduct investigations, and have the necessary competences for the rapid identification, tracing and freezing of criminal assets. In this regard, the FATF evaluation group determined that the relevant recommendations had been fulfilled.<sup>97</sup>

### 2.3.4 Field Mission

Despite the initial conclusions, it is important to note that some key competencies for implementing this principle could not be corroborated during the field visit.

In addition to the competencies identified in the classic prosecutorial bodies, the CGR stated that it has the power to carry out asset searches, seizures and forced collection as a consequence of the declaration of tax liability.<sup>98</sup> To this end, it has a National and International Cooperation Unit for the Prevention, Investigation and Seizure of Assets, which is in charge of searching for, identifying and locating assets abroad. This unit was created in compliance with the UNCAC. The CGR is also part of INTERPOL's Global Asset Recovery Network and focal point for the StAR Initiative and the ARN.

According to the UNCAC, the CGR is the central authority for international cooperation. In this capacity, the CGR plays a leading role in identifying assets held abroad.<sup>99</sup> It provides notifications<sup>100</sup> of positive results coming from Spain and Ecuador, but the Colombian authorities note that it does not get results from most of the other required States.

The capacity of the CGR in international cooperation to seize and execute forced collection is practically inoperative. The authorities indicated that they have no active cases abroad. The authorities also reported problems in international cooperation, as the CGR is an administrative and not a judicial authority. Requests are denied and in some cases it is not recognized as the central anti-corruption authority.

It is also important to point out that the CGR has constitutional powers to directly access any information database of any institution, regardless of its claims to confidentiality.

The CGR also reported challenges in inter-institutional coordination and cooperation with the PPO and PGN. There are many cases in which the competences of the three entities as the country's central authorities concur, with proceedings opened simultaneously in each of them. There is currently no inter-institutional cooperation agreement between the three entities.

The authorities reported a complex relationship with the UIAF, whose main task is to provide intelligence to the PPO. On the other hand, the UIAF has signed an inter-institutional cooperation agreement with the PGN for the investigation of disciplinary offenses of illicit enrichment. No further details are available on this point as field meetings did not take place.

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97 GAFILAT (2018). *Evaluation report...*, cit., p.177.

98 Fiscal responsibility is the compensation of damages caused to public assets as a consequence of the willful or negligent conduct of those who carry out the administration or management of public assets and funds through the payment of financial compensation for the damage suffered by the respective State entity.

99 According to quantitative information, 13 requests were sent to search for property due to fiscal responsibility and 6 requests were sent for forced collection between 2017 and 2021, with no response from the countries.

100 According to quantitative information, 6 notifications were sent for fiscal responsibility and 6 requests for forced collection, between 2017 and 2021, most of them with no response, with the exception of Argentina and Spain.

If the UIAF's collaboration with other non-judicial institutions is complex, the interrelationship between the NCBF Directorate and UIAF is close. UIAF dissemination reports - whether written or verbal - are important and critical to the initiation of proceedings. The UIAF's support in requesting asset information through the Egmont Group is important for management.

## 2.4 Principle 4: Seizure and Other Securing Measures

### 2.4.1 Standard

Article 31 (1) of the United Nations Convention against Corruption (UNCAC) requires State Parties to take measures “[...] to enable the tracing, freezing or seizing any property”.<sup>101</sup> The UNCAC Technical Guide<sup>102</sup> states that the authorities should have the power to take provisional measures from the start of the investigation, at the request of a party and without prior notice.

The methods of securing assets include: i) freezing or restricting assets by blocking access to them or restricting the means of transferring them through precautionary measures such as seizure, freezing, immobilization, etc. and ii) physical seizure of assets by transferring possession from the individual to the authorities.

Seizure and securing measures shall be subject to judicial authorization. However, in emergency situations, the authorities should be able to freeze bank accounts and seize assets without prior judicial authorization, subject to judicial confirmation or corroboration. Finally, international cooperation is imperative to secure assets in foreign jurisdictions (see *infra* 3.6).

### 2.4.2 Seizure Measures in Criminal Proceedings

Two codes coexist in Colombian procedural law: the Criminal Procedure Code<sup>103</sup> (CPCi of the inquisitorial system) and the Criminal Procedure Code<sup>104</sup> (CPCa of the adversarial system). The first of them regulates a mixed procedural system with a marked adversarial tendency,<sup>105</sup> while the second one regulates an adversarial procedural system.<sup>106</sup>

The analysis of principle 4 in this assessment has considered the following provisions in Colombian procedural law:

- The CPCi regulates embargo, seizure of property and prohibition of transfer<sup>107</sup> as measures that may be imposed on the defendant or the civilly liable third party. Such measures are intended to ensure the payment of the damage caused.<sup>108</sup> It also provides for criminal confiscation.

101 United Nations Office on Drugs and Crime (UNODC) (2004). *United Nations Convention...*, cit., p. 25.

102 United Nations Office on Drugs and Crime (UNODC) (2010). *Technical Guide...*, cit., p. 103.

103 Law no. 600 of 2000.

104 Law no. 906 of 2004.

105 Bernal, G. (2016). Criminal procedure reforms in Colombia. *IUSTA Magazine*, p. 54. Available at: <https://doi.org/10.15332/S1900-0448.2005.0022.02>.

106 Bernal, G. (2016). *Procedural reforms...*, cit., p. 55.

107 CPCi, Article 60.

108 CPCi, Article 62.

- At the request of the prosecutor, the victim or the Public Prosecutor's Office (PPO), the CPCa, for its part, stipulates that the supervisory judge may order the necessary precautionary measures to guarantee forfeiture and protect the compensation of damages caused by the same.<sup>109</sup>
- The CPCa distinguishes between measures of a material nature, occupation and seizure; and as a legal measure, the suspension of the power of disposal.<sup>110</sup> These measures are applicable when the authority has reasonable grounds to infer that such property or resources derive directly or indirectly from the commission of an intentional crime, or constitute the material object of such a crime. These measures are aimed at removing assets from commercial activity pending a final decision. Occupation is aimed at immovable property, while seizure is aimed at movable property.<sup>111</sup> Finally, the law stipulates that, in case of danger of delay, the PPO has a period of 36 hours in which to argue before a supervisory judge the legality of what has been done in order to validate it.<sup>112</sup>
- For its part, the suspension of the power of disposal must be ordered by the arraignment judge at the request of the prosecutor. In the event the judge determines the case to be inadmissible, the prosecutor will examine the possibility of grounds for NCBF.<sup>113</sup>
- With regard to the precautionary measures aimed at securing the reparation of the damage caused, the CPCa exclusively prescribes seizure and sequestration of the defendant's assets.<sup>114</sup>

### 2.4.3 Other Security Measures

The UNCAC urges countries to take the necessary measures to enable identification, tracing, freezing or seizure for the purpose of eventual confiscation.<sup>115</sup> The UNCAC Technical Guide recommends that State Parties consider an administrative system for preventive freezing and automatic freezing of assets.<sup>116</sup>

Under the first system, the body notified of the suspicion (usually the financial intelligence unit) is empowered to order freezing of assets. Its decision is subject to judicial confirmation granted within a short period of time.<sup>117</sup> Under the automatic freeze system, the guardian (the financial intermediary) is obligated to freeze the assets of the transaction without notifying its client, for a short period, during which a competent authority must decide whether or not to maintain said assets frozen.<sup>118</sup>

<sup>109</sup> CPCa, Article 92.

<sup>110</sup> CPCa, Article 83 and Article 84.

<sup>111</sup> Criminal Chamber of the Constitutional Court of Colombia (2014). Judgment of Aug. 20, 2014. Case file D-10099.

<sup>112</sup> CPCa, Article 84.

<sup>113</sup> CPCa, Article 85.

<sup>114</sup> CPCa, Article 92.

<sup>115</sup> United Nations Office on Drugs and Crime (UNODC) (2004). *United Nations Convention...*, cit., p. 25.

<sup>116</sup> United Nations Office on Drugs and Crime (UNODC) (2010). *Technical Guide...*, cit., p. 103.

<sup>117</sup> United Nations Office on Drugs and Crime (UNODC) (2010). *Technical Guide...*, cit., p. 103.

<sup>118</sup> United Nations Office on Drugs and Crime (UNODC) (2010). *Technical Guide...*, cit., p. 104.

In addition, the Technical Guide proposes an intermediate option, which is to allow normal account activity subject to monitoring and periodic reporting of transactions, should events arise that warrant freezing or seizure.<sup>119</sup>

### Administrative and Control Processes

- The CGR has the power to order and implement precautionary measures in the framework of fiscal responsibility proceedings.<sup>120</sup>
- For its part, the Superintendent of Companies may order precautionary measures to protect the object of the process and the effectiveness of an eventual sanctioning decision,<sup>121</sup> in the framework of a proceeding for determining the administrative responsibility of legal persons for acts of transnational corruption. However, its practical application is considered “complicated.”<sup>122</sup>
- Finally, to ensure compliance with its international obligations associated with freezing and prohibiting the handling funds or other assets for persons and entities designated by the United Nations Security Council as being associated with the financing of terrorism and the financing of the proliferation of weapons of mass destruction, Colombia has granted powers to the institutions subject to control and oversight by the Financial Superintendent,<sup>123</sup> or the entity competent to adopt minimum control measures.<sup>124</sup> These are aimed at preventing financial operations from being used as an instrument for money laundering.<sup>125</sup> These powers include establishing procedures to block channels or instruments from executing suspicious transactions.<sup>126</sup>
- In this regard, the authorities understand that financial institutions have full capacity to temporarily freeze bank accounts.<sup>127</sup>

### Precautionary measures in the context of the NCBF Process

In the framework of an NCBF process, the competent authorities may order precautionary measures of suspending the power of disposal, seizure, sequestration and taking possession of goods, assets and business of companies.<sup>128</sup> Likewise, and exceptionally, the law grants

119 United Nations Office on Drugs and Crime (UNODC) (2010). *Technical Guide...*, cit., p. 104.

120 Law no. 610 establishes the procedure for fiscal responsibility processes under the jurisdiction of the Comptroller General of the Republic. Published on August 18, 2000, in Article 12 it determines that the CGR can order precautionary measures. Available at: [http://www.secretariasenado.gov.co/senado/basedoc/lev\\_0610\\_2000.html](http://www.secretariasenado.gov.co/senado/basedoc/lev_0610_2000.html).

121 Law no. 1778, Article 13.

122 Organization for Economic Cooperation and Development (OECD) (2019). *Implementing the OECD Anti-Bribery Convention. Phase 3 Report Colombia*, pp.23. Available at: <https://www.oecd.org/corruption/Colombia-Phase-3-Report-ENG.pdf>.

123 The Financial Superintendent of Colombia (SFC) is a technical body attached to the Ministry of Finance and Public Credit with legal personality, administrative and financial autonomy and its own assets. Its objective is to supervise the Colombian financial system in order to preserve stability, security and confidence. See <https://www.superfinanciera.gov.co/inicio/nuestra-entidad/acerca-de-la-sfc-60607>. In relation to entities subject to inspection and surveillance by the SFC. See: [https://normograma.info/findeter/docs/pdf/circular\\_superfinanciera\\_0055\\_2016.pdf](https://normograma.info/findeter/docs/pdf/circular_superfinanciera_0055_2016.pdf).

124 Part 1, Title IV, Chapter IV stipulates on the officials responsible for control measures in the Basic Legal Bulletin (CE) no. 29, published in December 2016 by the Financial Superintendent of Colombia. Available at: <https://www.superfinanciera.gov.co/inicio/normativa/normativa-general/circular-basica-juridica-ce—10083443>.

125 The prevention of criminal activities is provided for in Article 102 of Decree No. 663, Decree on the Organic Statute of the Financial System. published on April 4, 1993. Available at: [https://www.funcionpublica.gov.co/eva/gestornormativo/norma\\_pdf.php?i=1348](https://www.funcionpublica.gov.co/eva/gestornormativo/norma_pdf.php?i=1348).

126 Part 1, Title 2, Chapter 1 sets out the procedures for blocking channels or instruments used to execute transactions when situations or facts warrant this in Basic Legal Bulletin (EC) No. 29. Available at: <https://www.superfinanciera.gov.co/inicio/normativa/normativa-general/circular-basica-juridica-ce—parte-i-instrucciones-generales-aplicables-a-las-entidades-vigiladas/capitulo-i-del-titulo-ii-de-la-parte-i-10102519>.

127 Case file no. 2018-032744. Delegation for Jurisdictional Functions of the Superintendent of Finance (2019). Decision of May 29, 2019.

128 Extinción de Dominio (NCBF) Code, Article 88 et seq.

the prosecutor power to apply precautionary measures prior to issuing the resolution of provisional determination of the NCBF claim.<sup>129</sup>

#### 2.4.4 Field Mission

The meetings and workshops with the Colombian authorities corroborated that the country has an adequate legal and institutional framework to impose measures aimed at securing illicit assets, both in the criminal cases and NCBF, as well as in the administrative processes.

The authorities reported, however, practical problems, which are summarized below:

- Misunderstandings in the application of legal concepts and weakness in the factual and legal argumentation of the precautionary measures raised. The Prosecutor argued that judges in some cases apply concepts designed for individuals in the context of autonomous asset actions.
- The authorities reported the need to adapt the deadlines (from the provisional measures) for filing complaints in complex organized crime cases. This is related to another problem pointed out by the authorities in the field mission: the exaggerated use of the power to accumulate NCBF proceedings. In practice, cases are built up with hundreds of assets, which exceeds the capacity of the PPO, and as a result, it is not uncommon to see a case become unmanageable.
- With regard to asset management, there is a strong tendency for judicial authorities to argue that the PPO pursues and applies for precautionary measures against assets without a representative asset value. As a consequence, the SAE's asset management capacity is affected. The authorities pointed out that NCBF should concentrate on high value assets linked to organized crime. The volume of assets coming into the SAE for administration is considerable. From its perspective, the PPO has improved in the rationalization of precautionary measures applying the criteria of reasonableness, necessity and proportionality. Nonetheless, problems remain.
- On this last point, the senior judges pointed out that there should be a PPO policy to improve the approach to precautionary measures and fiscal acts in general, including a thorough analysis of reasonableness, necessity and proportionality. For senior judges, the precautionary measures issued by the PPO that are revoked in a legality review court amount to 15%.

## 2.5 Principle 5: Confiscation of Assets

### 2.5.1 Standard

International conventions on corruption, organized crime and money laundering require that signatory States' authorities be able to confiscate the proceeds of crime. If it is not possible to confiscate the property in question, authorities must confiscate property of equivalent value or impose monetary sanctions of comparable effect.<sup>130</sup>

<sup>129</sup> Extinción de Dominio (NCBF) Code, Article 89 et seq.

<sup>130</sup> Greenberg, T.; Samuel, L.; Grant, W. and Gray, L. (2009). *Recovery of stolen assets Good practices guide for non-conviction asset forfeiture*, Colombia, p. 41. Available at: [https://www.unodc.org/documents/corruption/Publications/STAR/STAR\\_Publication\\_-\\_Non-conviction-based\\_Asset\\_Forfeiture\\_S.pdf](https://www.unodc.org/documents/corruption/Publications/STAR/STAR_Publication_-_Non-conviction-based_Asset_Forfeiture_S.pdf).

- Article 31 (1) UNCAC<sup>131</sup> provides for binding<sup>132</sup> forfeiture of the “product”,<sup>133</sup> –direct or indirect (substitution)– and of instrumentalities of crime. The standard refers to criminal confiscation.
- In accordance with FATF Recommendation 4 (Confiscation and provisional measures), national authorities should adopt mechanisms that enable their authorities:
  - Confiscate property that is the object of money laundering and the financing of terrorism, as well as proceeds and instruments used in these offenses or their predicate offenses.
  - Confiscate the relevant valuable goods.
  - Secure the rights of bona fide third parties.

The FATF invites States to consider adopting mechanisms that allow non-conviction based forfeiture and that introduce lightening in the scope of evidence regarding assets subject to confiscation. In the same vein, Article 54 (1) (c) UNCAC introduces the obligation to consider non-conviction based forfeiture in international asset recovery proceedings.

## 2.5.2 Forfeiture in Colombia

Colombia has two main mechanisms for the recovery of illicit assets: criminal confiscation and extinción del derecho de dominio (in this document referred to as NCBF).

### Criminal Forfeiture or Confiscation

Colombia has a criminal confiscation regime that largely meets international standards.<sup>134</sup> The Criminal Code<sup>135</sup> and the Codes of Criminal Procedure<sup>136</sup> in Colombia provide for criminal confiscation under the term “confiscation.” This legal institute has the following main characteristics:

- Confiscation applies to instruments and effects that are causally related to the crime.
- Confiscation depends on the determination of personal criminal liability (*in personam*).
- Criminal confiscation is without prejudice to the rights of the victim and bona fide third parties and is not a legitimate means of generating wealth for the State.
- Colombian jurisprudence has specified that confiscation is a legitimate limitation on ownership (without compensation).<sup>137</sup>
- It is applicable to property derived from a crime or administrative offense.

<sup>131</sup> United Nations Office on Drugs and Crime (UNODC) (2004). *United Nations Convention...*, cit., p. 25.

<sup>132</sup> United Nations Office on Drugs and Crime (UNODC) (2010). *Technical Guide...*, cit., p. 98.

<sup>133</sup> The UNCAC, in Article 2(e) states that proceeds of crime means property of any kind derived or obtained directly or indirectly from the commission of an offense.

<sup>134</sup> GAFILAT (2018). *Evaluation report...*, cit., p.57.

<sup>135</sup> Confiscation is regulated in Article 100 of Law no. 599, Colombian Penal Code, published on July 24, 2000. Available at: [https://www.oas.org/juridico/spanish/mesicic2\\_col\\_ley\\_599\\_2000.pdf](https://www.oas.org/juridico/spanish/mesicic2_col_ley_599_2000.pdf).

<sup>136</sup> CPCa, Article 82 et seq.

<sup>137</sup> Constitutional Court Rulings CC-459/2011 y CC C-364/2012.

- It has the effect of transferring ownership of the property to the State.

### Non-conviction Based Forfeiture

Non-conviction-based forfeiture in Colombia has been developed in accordance with the legal concept of extinción del derecho de dominio (in this document referred to as NCBF).<sup>138</sup> This legal tool has been deemed effective<sup>139</sup> in relevant evaluations and has been exported to other countries in the region in recent decades.<sup>140</sup>

The success of NCBF lies in its particular characteristics, which make it different from criminal confiscation. Among the most important are:

- It allows for NCBF of objects, effects, instruments and proceeds of crime.
- It does not require prior criminal conviction to be used.
- It takes place autonomously and independently of any proceedings (civil, criminal or administrative) and is of a real nature (*in rem*).
- It has its own, autonomous process, regulated by Law 1708. The Extinción de Dominio (NCBF) Law allows seizure of criminal proceeds, instrumentalities of crime, substituted assets, assets of equivalent value and assets mixed with legal assets.<sup>141</sup>
- Other.

Colombia has taken a step forward compared to other countries in the region in the area of non-conviction based forfeiture. Since 2014, Colombia has had an Extinción de Dominio (NCBF) Code that contains in its 218 articles the details of the action<sup>142</sup> (see appendix on Extinción de Dominio (NCBF)).

### 2.5.3 Field Mission

Fieldwork has shown that Colombia broadly complies with international standards through a range of regulations, both for criminal confiscation of the proceeds and instrumentalities of crime, and for non-conviction based forfeiture employing extinción del derecho de dominio. The latter provides for the loss of assets of illicit origin and destination, of equivalent value, of mixed assets (licit and illicit) and for unjustified gain in assets, among others.<sup>143</sup> In other words, Colombia has a regulatory framework that far exceeds standards in this area and is probably one of the most advanced in the region in terms of non-conviction based forfeiture.

As is often the case in a sophisticated and complex asset recovery system, there remain practical problems that have been pointed out by the authorities interviewed that are worth mentioning:

<sup>138</sup> Colombia has had a specific legal framework in place since 1996 (Law 333/1996) and is currently developing it through Law no. 1708, the Extinción de Dominio (NCBF) Code, published in 2014.

<sup>139</sup> The Prosecutor imposed precautionary measures for assets worth more than COP 12 trillion (equivalent to USD 3 billion) for the purpose of NCBF in 2020. See <https://www.fiscalia.gov.co/colombia/noticias/bienes-por-mas-de-12-billones-de-pesos-fueron-afectados-con-fines-de-extincion-de-dominio-en-2020/>.

<sup>140</sup> GAFILAT (2018). *Evaluation report...*, cit., p. 58.

<sup>141</sup> Extinción de Dominio (NCBF) Code, Article 16 et seq.

<sup>142</sup> According to official figures provided by Colombian authorities, the amount of assets in these processes was around USD 1,620,377,460.00. GAFILAT (2018). *Evaluation report...*, cit., p. 63.

<sup>143</sup> GAFILAT (2018). *Evaluation report...*, cit., p. 66.

- Regarding the speed of proceedings, the authorities pointed out that the change to Law 1708 was a major step forward, mainly due to the abolition of the curator ad litem and the lack of an appeal process for the decisions of the Prosecutor's Office, which accelerated the proceedings. However, at present, 60 percent of the legal proceedings for NCBF were carried out under the previous legislation (Law 793). In the opinion of the senior judges, it is necessary to modify the legislation so that all proceedings are transferred to Law 1708, which has a more reasonable time frame - on average 5 years - and additionally to introduce orality in the system, or the electronic or digital file to make it more efficient.
- Judges recognize that there is a “bottleneck” in the judicial stage of the process, particularly in the cities of Bogotá, Cali and Barranquilla. Judges in Bogotá receive an average of 200 cases per month. In addition, there is only one Superior Court for NCBF in Bogotá for the whole country, with 3 magistrates who have to hear appeals. As a result, they take an average of 2 years to resolve, stalling the process during that time.
- According to their own authorities, cases of NCBF take an average of 14 years under Law 793 and 5 years under Law 1708. The authorities reported complex cases more than 20 years old. In this regard, there have been successful actions for protection before the Superior Court for NCBF.
- The authorities pointed to the limited use of the reward-based justice system in NCBF cases. In practice, they are limited to rare cases of corruption. There is controversy in Colombia over the legality of acknowledging a percentage of assets for the criminal. Some justice operators pointed out that these practices go against the very nature of NCBF and the Constitution.

## 2.6 Principle 6: Mutual Legal Assistance

### 2.6.1 Standard

This principle assesses whether a country has the capacity to conduct asset recovery proceedings in an international context through Mutual Legal Assistance (MLA), and to conduct its own MLA proceedings to recover assets abroad (active MLA), as well as the capacity to conduct foreign asset recovery proceedings (passive MLA).

- Article 46 (3) UNCAC stipulates that MLA may be requested to effect seizures and freezing, as well as to identify or trace proceeds of crime, property, instrumentalities or other evidence.
- Article 55 (2) of the UNCAC, in turn, provides that pursuant to a request by a State with jurisdiction over an offense, the petitioned State may take measures for the identification, tracing and freezing or seizure of proceeds of crime, property, equipment or other instruments in accordance with Article 31 of the UNCAC.
- Article 54 (1) (c) of the UNCAC, relating to mechanisms for the recovery of assets through cooperation for the purpose of confiscation, states that in order to provide MLA with respect to assets acquired through the commission of a crime, you must adopt the necessary measures that allow forfeiture without conviction.
- FATF Recommendation 36, on international instruments, urges countries to take immediate measures to be a party to and fully implement the United Nations Vienna

Conventions, 1988;<sup>144</sup> Palermo, 2000;<sup>145</sup> Against Corruption, 2003;<sup>146</sup> and the International Convention for the Suppression of the Financing of Terrorism, 1999.<sup>147</sup> Where appropriate, countries are also encouraged to ratify and implement other relevant international conventions.<sup>148</sup>

- FATF Recommendation 37 on MLA calls on countries to provide the widest possible range of mutual legal assistance in a prompt, constructive and effective manner. To this end, countries should:
  - Have an adequate legal basis.
  - Ensure clear and efficient processes for the handling of MLA, as well as a case management system.
  - Have a central authority for the efficient transmission and execution of requests.
  - Do not refuse to execute MLA, because the offense is considered to involve fiscal matters.
  - Provide assistance despite the absence of dual criminality, if the MLA does not involve coercive action. And if required, consider it fulfilled irrespective of its designation or category.
- FATF Recommendation 38 calls on countries to ensure that they have the competent authority to respond to requests issued on the basis of non-conviction based forfeiture proceedings and provisional measures addressing cooperation in non-conviction based forfeiture proceedings.

## 2.6.2 Mutual Legal Assistance in Colombia

### International Instruments (Recommendation 36)

Colombia has incorporated into its legislation most of the predicate crimes listed in the Vienna and Palermo Conventions, as well as the standards of the UN Conventions related to the crime of financing of terrorism. On corruption, Colombia is a signatory to the UNCAC, the OECD Convention against Transnational Bribery in International Business Transactions and the Inter-American Convention against Corruption of the Organization of American States (OAS).<sup>149</sup>

144 United Nations (1969). Vienna Convention on the Law of Treaties, Vienna. Available at: [https://www.oas.org/xxxivga/spanish/reference\\_docs/convencion\\_viena.pdf](https://www.oas.org/xxxivga/spanish/reference_docs/convencion_viena.pdf).

145 United Nations Office on Drugs and Crime (UNODC) (2004). *United Nations Convention Against Transnational Organized Crime and its Protocols*, p. 21. Available at: <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-s.pdf>.

146 United Nations (2000). *International Convention for the Suppression of the Financing of Terrorism*, New York. Available at: [https://www.oas.org/juridico/spanish/tratados/sp\\_conve\\_inter\\_repre\\_finan\\_terro.pdf](https://www.oas.org/juridico/spanish/tratados/sp_conve_inter_repre_finan_terro.pdf).

147 OECD (2010). *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. Available at: [https://www.oecd.org/daf/anti-bribery/ConvCombatBribery\\_Spanish.pdf](https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_Spanish.pdf); [https://www.oas.org/juridico/english/cyb\\_pry\\_convenio.pdf](https://www.oas.org/juridico/english/cyb_pry_convenio.pdf).

148 Like the one signed by the Council of Europe (2001), *Convention on Cybercrime*, Budapest. Available at: Organization of American States (OAS) (2002). *Inter-American Convention against Terrorism*. Available at: <http://www.oas.org/juridico/spanish/tratados/a-66.html>; and the Council of Europe (2005). *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and Financing of Terrorism*.

149 OAS (1996). *Inter-American Convention Against Corruption* Available at: [http://www.oas.org/es/sla/ddi/docs/tratados\\_multilaterales\\_interamericanos\\_B-58\\_contra\\_Corrupcion.pdf](http://www.oas.org/es/sla/ddi/docs/tratados_multilaterales_interamericanos_B-58_contra_Corrupcion.pdf).

At the invitation of the Council, Colombia signed up to the Council of Europe Convention on Cybercrime,<sup>150</sup> (Budapest Convention) in March 2020.<sup>151</sup>

Colombia is also a signatory to the Inter-American Convention on Mutual Assistance in Criminal Matters. To this end, it designated the PPO and the Ministry of Justice and Law as the central authorities.<sup>152</sup> Colombia has signed 39 bilateral MLA treaties with other States.<sup>153</sup>

### **Mutual Legal Assistance (Recommendation 37) and capacity to enforce asset recovery measures ordered by foreign courts**

Colombian authorities have the tools for effective and timely international judicial cooperation. First, Colombia has a solid legal framework particularly with regard to extradition mechanisms.<sup>154</sup> It practices formal and informal cooperation mechanisms, and the country is an active member of various international cooperation networks.

Colombia has extensive measures on MLA in the Criminal Procedure Code,<sup>155</sup> which determines the normative parameters governing international cooperation in criminal matters. The CPC expressly refers to the possibility of executing orders from foreign authorities in matters of NCBF, or any other measure that implies the loss or suspension of the power of disposal over property.<sup>156</sup>

The foregoing is complimented by provisions of the Extinción de Dominio (NCBF) Code,<sup>157</sup> given that they will be applicable in the attention, offering or obtaining of international judicial cooperation in the areas of investigation, tracing, identification, allocation and processing of actions for the purposes of confiscation, seizure, asset recovery, NCBF or any other similar legal practice. In addition, the law states that the PPO must make use judicial assistance or international cooperation mechanisms provided for in the conventions, treaties and agreements signed and ratified by Colombia to guarantee the successful prosecution of illicit assets abroad, for NCBF purposes.

For its part, Decree Law 016 of 2014, as amended by Decree Law 898 of 2017, stipulates that the PPO has to direct international technical cooperation to identify or locate criminal assets inside or outside the country.<sup>158</sup> This work is carried out by the DOffice of Foreign Affairs (OFA), which is responsible for receiving and processing MLA requests. The DIA facilitates coordination between requested and requesting entities, provides guidance to

150 Law No. 1928, approving the Council of Europe (2001). *Convention on Cybercrime...*, published July 24, 2018. Available at: <http://www.suin-juriscal.gov.co/viewDocument.asp?ruta=Leyes/30035501>.

151 <https://www.cancilleria.gov.co/newsroom/news/colombia-adhiere-convenio-budapest-ciberdelincuencia>.

152 To learn more about the designation of a Central Authority for the Inter-American Convention on Mutual Assistance in Criminal Matters, see: [http://www.oas.org/dil/esp/tratados\\_autoridades\\_centrales\\_Convencion\\_Interamericana\\_sobre\\_Asistencia\\_Mutua\\_en\\_Materia\\_Penal.htm](http://www.oas.org/dil/esp/tratados_autoridades_centrales_Convencion_Interamericana_sobre_Asistencia_Mutua_en_Materia_Penal.htm).

153 GAFILAT (2018). *Evaluation report...*, cit., p.184.

154 GAFILAT (2018). *Evaluation report...*, cit., p.187.

155 CPCa, book V.

156 CPCa, Article 489.

157 Extinción de Dominio (NCBF) Code, Article 203 et seq.

158 For more information on the functions of the Attorney General's Office, see Article 4.11 of Document No. 8. Available at: <https://www.fiscalia.gov.co/colombia/wp-content/uploads/Estructura-Org%C3%A1nica-de-la-FGN-1.pdf>.

prosecutors wishing to make an MLA request and manages international cooperation to identify or locate criminal assets.<sup>159</sup>

For Colombia, dual criminality is not a condition for providing MLA.<sup>160</sup> The State provides MLA even if the conduct is not criminalized under domestic law, as long as it is not contrary to constitutional values and principles.<sup>161</sup>

Recommendation 37 urges States to implement clear effective processes and use a central authority for the transmission of MLA requests. In Colombia's international judicial cooperation structure, more than one central MLA authority has been identified. The Criminal Procedure Code determines that through the Ministry of Foreign Affairs both the investigative and judicial authorities have the power to make appropriate arrangements in order to comply with requests for international cooperation.<sup>162</sup> In this sense, both the PPO and the judiciary could be considered central authorities.

In the Inter-American Convention against Corruption, Colombia<sup>163</sup> has designated as its central authorities the Special Public Prosecutor's Office, the Ministry of the Interior and Justice, the Public Prosecutor's Office and the Office of the Comptroller General of the Republic.<sup>164</sup>

Finally, it should be noted that according to FATF's MER, Colombia has a solid legal and institutional framework, which allows competent authorities to provide, when requested by other countries, MLA and extraditions in a constructive, high quality and timely manner. Colombia's approach to international cooperation is generally proactive and collaborative.<sup>165</sup>

### **Participation in asset recovery networks and working groups**

Colombia, through the PPO and other institutions, it is an integral part of the GAFILAT Asset Recovery Network (ARN) and according to the 2018 Mutual Evaluation report,<sup>166</sup> as of 2016, it had made seventeen (17) active requests to eight countries,<sup>167</sup> and received forty-one (41) orders<sup>168</sup> of information from eight countries through this platform, with a response time of 30 to 45 days. Likewise, in accordance with the comments received from some FATF delegations, communication with the competent authorities of Colombia within the framework of the ARN is fluid and constant.

159 Regarding the functions of the agencies attached to the Public Prosecutor's Office, Article 5.7 of the Decree states that Law No. 16, which modifies and defines the organizational and functional structure of the Attorney General's Office, published on January 9, 2014. Available at: [http://www.secretariassenado.gov.co/senado/basedoc/decreto\\_0016\\_2014.html](http://www.secretariassenado.gov.co/senado/basedoc/decreto_0016_2014.html).

160 FATF (2018) *Evaluation report...*, cit., p.184.

161 CPCa, Article 485- 489.

162 CPCa, Article 484.

163 On the designation of Colombia's central authorities, see: [http://www.oas.org/es/sla/ddi/tratados\\_multilaterales\\_interamericanos\\_B-58\\_contra\\_Corrupcion\\_firmas.asp](http://www.oas.org/es/sla/ddi/tratados_multilaterales_interamericanos_B-58_contra_Corrupcion_firmas.asp).

164 The Asset Recovery Network of GAFILAT (RR@G) and the Stolen Asset Recovery Initiative (StAR) (2015), Guide to International Illicit Asset Recovery. Available at: [https://www.unodc.org/documents/colombia/2017/Enero/UNODC\\_Guia\\_C.I.R.A.\\_RRAG\\_2015.pdf](https://www.unodc.org/documents/colombia/2017/Enero/UNODC_Guia_C.I.R.A._RRAG_2015.pdf).

165 FATF (2018) *Evaluation report...*, cit., p.14.

166 GAFILAT (2018). *Evaluation report...*, cit., p.120 and p. 122.

167 The 17 active applications are from the countries of Panama (4), United States (3), Spain (3), Argentina (2), Chile (2), Switzerland (1) France (1) and Italy (1).

168 The 41 requests for information were made by Spain (20), Argentina (6), Ecuador (6), Chile (5), Guatemala (1), France (1), Costa Rica (1) and Paraguay (1).

In addition, the PPO is also a member of the Ibero-American Association of Public Prosecutors (AIAMP), where it leads the working group on NCBF and confiscation.<sup>169</sup>

On the other hand, the UIAF is an active member of the Egmont Group since 2000<sup>170</sup> and uses the aforementioned network for the exchange of information through international cooperation. In addition, among its powers, the UIAF has the power to sign cooperation agreements with its counterparts, which, in 2018, amounted to 45 agreements, with international cooperation as a priority issue.

Finally, the National Police maintains an active exchange with INTERPOL and EUROPOL, as well as using other cooperation channels such as ARN and AMERIPOL; and maintaining a global network of contacts with its counterparts in Latin America.<sup>171</sup> In addition, it has provided cooperation to foreign organizations in the framework of more than 120 international agreements signed.<sup>172</sup>

### 2.6.3 Field Mission

The field research showed that, from a regulatory point of view, Colombia is largely compliant with international standards on MLA, and in practice it collaborates efficiently with its foreign peers.

As far as international cooperation for the purpose of recovering assets located abroad is concerned, however, the GAFILAT MER report indicated that there was only one case of asset repatriation and none involving the exchange of confiscated proceeds of crime with foreign counterparts.<sup>173</sup> The same obstacle has been acknowledged by the authorities when they point out that “limitations persist in the area of NCBF and asset recovery abroad.”<sup>174</sup>

During the interviews, the authorities of the relevant institutions discussed issues that seem relevant to the functioning of the system and which are reproduced in this assessment:

- The existence of multiple central authorities with similar powers of different nature (criminal and administrative) does not encourage MLA. The casuistry demonstrates that MLA requests can generate hesitation in requesting countries, which is potentially a challenge in terms of efficiency and effectiveness in international asset recovery processes.<sup>175</sup> This phenomenon is common in several countries in the region and originates when the State Party follows up on the obligation to designate a central authority for the purposes of the UN international conventions (Palermo, Vienna, Merida, etc.). This has been pointed out as a limitation in the UNCAC Chapter IV assessments, which recommend an analysis of the different existing mechanisms for harmonization purposes.
- A particular case in point is that of the CGR, the central authority and focal point for several asset recovery initiatives and the institution in charge of asset tracing abroad.

169 Ibero-American Association of Public Prosecutors, Working Group on NCBF and Confiscation. See at: <https://www.aiamp.info/index.php/grupos-de-trabajo-aiamp/extincion-de-dominio-y-comiso>.

170 GAFILAT (2018). *Evaluation report...*, cit., p. 177.

171 GAFILAT (2018). *Evaluation report...*, cit., p. 120.

172 GAFILAT (2018). *Evaluation report...*, cit., p. 122.

173 GAFILAT (2018). *Evaluation report...*, cit., p. 61.

174 National Council of Economic and Social Policy, National Planning Department (CONPES) (2021), *National Anti Money Laundering Policy ...*, cit., p 15.

175 OECD (2019). *Implementing the OECD Anti-Bribery Convention...*, cit., p. 51 et seq.

The CGR authorities pointed out that the MLA does not work effectively when the requesting authority is administrative in nature. The CGR has not received MLA requests through the international conventions and has two cases processed through the ARN. It has also requested information from other countries without receiving a reply.

- On the other hand, for the Specialized NCBF Directorate, the difficulty in pursuing assets abroad is twofold. On the one hand, not all countries understand what Extinción de Dominio (NCBF) is, which leads to a semantic problem, as the institution is called by different names depending on the country. On the other hand, the countries where the assets are located initiate their own criminal proceedings for money laundering and/or NCBF, which constitutes a limitation in the recovery of assets for Colombia.
- Finally, as far as the SAE is concerned, its representatives pointed out that in terms of international cooperation, it has only one case with the USA.

It is important to note that there was no access to quantitative information on the MLA requests processed by the DIA of the PPO. Interviews with their authorities were also not conducted during the Field Mission.

## 2.7 Principle 7: Asset Recovery Office

### 2.7.1 Evaluation Criteria

This principle assesses whether a country has implemented an Asset Recovery Office (ARO) or similar, to deal with complex, international asset recovery cases for coordination purposes at the local and international level.

The principle has 3 main criteria:

- Establishment of a National Asset Recovery Office.
- Adoption of an Asset Recovery Office implementation plan.
- Existence of resources for the implementation of the policy and plan.

Successful asset recovery at the international level requires a comprehensive action plan, including a number of measures and considerations, including the need for multidisciplinary teams or units to ensure adequate case management. These multidisciplinary teams should include investigators and experts in financial analysis, forensic accountants, prosecutors and police. In other words, highly qualified professionals to analyze large flows of financial information.<sup>176</sup> This would allow all information to be exchanged rapidly and allow them to be traced for the purpose of confiscation.

Where possible good practice suggests the creation of specialized confiscation units. These enable investigators and prosecutors to develop specialized expertise, which generally tends to deepen investigations in asset identification and tracing compared to criminal investigators.<sup>177</sup>

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176 The recommendation to set up Asset Recovery Offices is contained in Article 1 of Decision 2007/845 JHA, Council of the European Union, dated December 6, 2007. Available at: <https://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:32007D0845&from=EN>.

177 Brun, J.; Gray, L.; Scott, C. and Stephenson, K. (2011). *Asset Recovery Manual. A guide for professionals*, Washington, pp. 29 et seq. Available at: [https://star.worldbank.org/sites/star/files/manual\\_para\\_la\\_recuperacion\\_de\\_activos\\_0.pdf](https://star.worldbank.org/sites/star/files/manual_para_la_recuperacion_de_activos_0.pdf).

## 2.7.2 Situation in Colombia

Colombia does not have an asset recovery office as initially described in this section. However, the PPO has opted for the creation of specialized investigation units or specialized investigation directorates.<sup>178</sup> These include: the Specialized Anti-Corruption Directorate, the Specialized Anti-Money Laundering Directorate, the Specialized NCBF Directorate and the Specialized Financial Investigations Directorate.<sup>179</sup>

During the GAFILAT evaluation, the evaluation team reported that in addition to the Specialized Directorate, in 2015 the National Police established a special section for NCBF. In addition, within the National Police Intelligence Directorate (DIPOL), the Inter-Institutional Group to Combat Terrorism (GILFOT) was created to recover assets from terrorist organizations and armed groups. Finally, the evaluation team verified that prosecutors and law enforcement officials have the expertise to conduct financial investigations. At the date of the evaluation, the Directorate was composed of seventy-six (76) prosecutors and was supported by the Judicial Economic and Financial Police (PEF).<sup>180</sup>

## 2.7.3 Field Mission

During the interviews, the PPO's Specialized NCBF Directorate indicated that it coordinates with the different investigative authorities, both in the CTI and in the DIJIN, where each unit has teams for the investigation of NCBF to carry out the investigations.

In addition, the Directorate is promoting simultaneous investigations with criminal prosecutors, through internal evaluation mechanisms and with the support of its senior authorities, in order to promote a stronger policy on asset recovery and the fight against criminal finances. That said, there is no clear political will to implement an ARO to centralize coordination in complex and emblematic international asset recovery cases.

## 2.8 Principle 8: Data Collection Systems

### 2.8.1 Evaluation Criteria

This principle assesses whether a country responds positively to information systems on seized and confiscated assets in the different processes. Compliance with this principle is based on open source information, including websites of government agencies, regional and multilateral organizations interested in asset recovery, publications containing case studies by government representatives, databases of asset recovery cases, etc. The statistical information to be collected should include, for example, amounts of confiscated and recovered assets.<sup>181</sup>

178 The PPO modified its structure through Decree Law No. 898, published in 2017, in order to intensify the prosecution investigations into the finances of criminal organizations.

179 On specialized units, see Article 17 et seq. of Decree Law No. 16, which modifies and defines the organizational and functional structure of the Public Prosecutor's Office, published in 2014.

180 GAFILAT (2018). *Evaluation report...*, cit., p. 58.

181 An example of benchmarking is detailed in the document produced by the G20 Anti-corruption Working Group. (2013), *Nine key principles of Asset Recovery Benchmarking Survey*. Available at: [https://star.worldbank.org/sites/star/files/asset\\_recovery\\_country\\_profiles.pdf](https://star.worldbank.org/sites/star/files/asset_recovery_country_profiles.pdf).

## 2.8.2 Situation in Colombia

In terms of confiscation, it has not been possible to obtain information related to statistics on seizures or confiscation of assets on the websites of Colombian institutions. Informal inquiries indicated that such information is not accessible to the public. The GAFILAT evaluation group highlighted the limitations of statistical information on confiscation.<sup>182</sup> It was also reported that at the time of GAFILAT's visit, the PPO was in the process of developing a statistical information system.<sup>183</sup>

Regarding NCBF, the statistics of asset data are not publicly accessible by the SAE,<sup>184</sup> so the official data as of 2018, provided to the evaluation team for the MER, are the only statistical data available.

PPO management reports<sup>185</sup> provide useful statistical information. In order to improve the registration and control of the processes in charge, the Directorate is working on the creation and implementation of the SICNEXT system.<sup>186</sup> Such a system aims to manage the processes in their different stages, in addition to centralizing information on all cases. In addition, the project includes the creation of a consultation site to provide input on the status of the proceedings. Said site will be accessible to the parties.

For its part, the CONPES document (4042-2021) states that, with regard to NCBF, the country does not have an integrated centralized information system for this process. In this sense, the information provided by the PPO, the SAE, the Ministry of Justice and Law and the High Council of the Judiciary, the main actors in the prosecution of criminal assets through confiscation and NCBF, presents quality problems; it is fragmented and it is not inter-operable. This prevents entities from knowing about: (i) the start of NCBF proceedings; (ii) the attachment of assets to NCBF proceedings; (iii) the valuation of the attached asset and its location; (iv) the judicial decisions that are taken; and (v) the administration systems that are applied.

## 2.8.3 Field Mission

The field research found that Colombia has considerable shortcomings in this principle. Nevertheless, the current efforts of the Colombian authorities to improve the deficiencies in this key aspect of the asset recovery system, and to improve its feedback and measurement as public policy, should be noted.

Within the Intersectoral Extinción de Dominio (NCBF) Commission, the creation of an information and management system for NCBF proceedings has been put on the table. On this important project, the authorities pointed out that difficulties remain and that the system is not operational. The authorities expressed that having a system that involves all

182 GAFILAT (2018). *Evaluation report...*, cit., p. 40.

183 GAFILAT (2018). *Evaluation report...*, cit., p. 61.

184 The Sociedad de Activos Especiales (SAS) is the body in charge of the administration of the assets originating in NCBF proceedings. See <https://www.saesas.gov.co/>.

185 For the PPO's management reports, see: <https://www.fiscalia.gov.co/colombia/gestion/informes-de-gestion/>.

186 The implementation of the SICNEXT system was outlined in the document prepared by the PPO (2020), *Connection Report of the Public Prosecutor's Office*, p. 52. Available at: <https://www.fiscalia.gov.co/colombia/wp-content/uploads/Informe-de-empalme-de-la-PPO-2020.pdf>.

actors in the NCBF process would help in making management decisions, as they would be able to know exactly the information on the judicial status of the asset-related process. During the Field Mission, the PPO stated that they have an internally developed prototype system, called the Information System for Extinción de Dominio (NCBF) Proceedings (SIDED), and that they are going to start implementing pilot programs.

SIDED should support the process of implementation, nurturing and ownership of the system. This system will replace the Excel spreadsheet called “SAGITARIO,” which currently contains the information on NCBF proceedings.

## 2.9 Principle 9: Asset Management or Administration Agencies

### 2.9.1 Standard

International standards on asset management can be found in the UNCAC,<sup>187</sup> by noting that each State will adopt the legislative and other measures that are necessary to regulate the administration, by the competent authorities, of frozen, seized or forfeited assets. On the other hand, FATF Recommendation 38 urges countries to have effective mechanisms in place for the management of assets, instrumentalities or property of corresponding value, as well as arrangements for sharing confiscated assets.

In addition, in the 2021-2025 CICAD/OAS Hemispheric Plan of Action on Drugs,<sup>188</sup> as a priority action it contemplates creating and/or strengthening organizations to manage and appropriately dispose of assets seized and/or forfeited in cases of drug trafficking, money laundering and other related crimes, in accordance with applicable international laws and the FATF Recommendations.

Finally, the G-8,<sup>189</sup> the UNODC<sup>190</sup> and the OAS BIDAL Project<sup>191</sup> promote the creation and development of agencies specialized in the proper and efficient management of seized and forfeited assets.

### 2.9.2 Situation in Colombia

Colombia has two asset management agencies depending on the subject matter, one for criminal confiscation purposes and the other for NCBF:

187 United Nations Office on Drugs and Crime (UNODC) (2004). *United Nations Convention...*, cit., p. 26.

188 OAS and the Inter-American Drug Abuse Control Commission (CICAD) (2020). *CICAD/OAS Hemispheric Plan of Action on Drugs 2021-2025*, Colombia, p. 17. Available at: [http://www.cicad.oas.org/Main/AboutCICAD/BasicDocuments/Plan\\_de\\_Accion\\_Hemisferico\\_sobre\\_Drogas\\_2021-2025\\_ESP.pdf](http://www.cicad.oas.org/Main/AboutCICAD/BasicDocuments/Plan_de_Accion_Hemisferico_sobre_Drogas_2021-2025_ESP.pdf).

189 G8 Lyon/Roma Group, Criminal Legal Affairs Subgroup (2005). *Best practices for the administration of seized assets*. Available at: <https://docplayer.net/16960901-G8-best-practices-for-the-administration-of-seized-assets.html>.

190 UNODC (2017). Study prepared by the Secretariat on effective management and disposal of seized and confiscated assets, pp. 48-67. Available at: <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2017-August-24-25/V1705952e.pdf>.

191 OAS (2011). *Latin American Asset Management Systems and Guide for the Management of Seized Assets and Confiscated Products of Organized Crime*, p. 20. Available at: [http://www.cicad.oas.org/lavado\\_activos/grupoexpertos/Decomiso%20y%20ED/Manual%20Bienes%20Decomisados%20-%20BIDAL.pdf](http://www.cicad.oas.org/lavado_activos/grupoexpertos/Decomiso%20y%20ED/Manual%20Bienes%20Decomisados%20-%20BIDAL.pdf).

- The Special Fund for Asset Management (FEAB)<sup>192</sup> is part of the PPO. According to the CPCa,<sup>193</sup> it administers and manages the assets once a precautionary measure or criminal confiscation has been decreed. This fund only administers property from criminal confiscation proceedings. The FEAB has broad powers for the administration and disposal of assets,<sup>194</sup> but its statistical information is limited.
- La Sociedad de Activos Especiales (SAE) is a mixed economy company and is linked to the Ministry of Finance and Public Credit. Its purpose is to administer special assets in NCBF processes. It is also in charge of managing the Fund for Rehabilitation, Social Investment and Fight against Organized Crime (FRISCO), which is responsible for administering and deciding on the destination of the assets that have been declared forfeited. Properties managed by FRISCO include assets in general, assets owned by companies, vehicles, works of art, companies,<sup>195</sup> etc. The SAE is subject to the private law regime and may enter into any act or contract within the framework of its powers.

The extinción del derecho de dominio (NCBF) law itself regulates the mechanisms to facilitate the administration of assets.<sup>196</sup> Among them is the prior alienation of assets with precautionary measures, understood as the monetisation of the asset,<sup>197</sup> i.e. movable or immovable assets that are in danger of ruin, loss, environmental deterioration or those that, according to a cost-benefit analysis, it is concluded that their administration or custody would cause disproportionate losses or expenses.<sup>198</sup> The law also provides for the possibility of sharing assets with other countries in the context of NCBF proceedings. GAFILAT's MER highlighted the effectiveness of both funds and the high value of the assets they manage.<sup>199</sup>

Despite the aforementioned, it should be noted that Colombia manages more assets seized than almost any country worldwide, reaching the historical figure of 64,000 assets in 2019, between real estate, furniture, companies, livestock, and others. However, only 5,700 assets have been declared forfeited, leaving approximately 59,109 assets, or 91%. As their legal status is yet to be defined, they remain under the administration of SAE.<sup>200</sup>

Colombia has an adequate regulatory and institutional system for the administration of seized and forfeited assets, both in the framework of criminal proceedings NCBF.

It is worth noting Colombia's undeniable experience in asset management dating back to 1990, when the former National Narcotics Directorate (DNE) was created, and which since 2014 has been taken over by the SAE.<sup>201</sup>

192 The FEAB was created through Law No. 1615, published on January 15, 2013. Available at And it is modified by art. 55 of Law No. 1849, published on July 19, 2017. Available at: <https://www.suin-juriscol.gov.co/viewDocument.asp?id=30032535>.

193 CPCa, Article 82.

194 GAFILAT (2018). *Evaluation report...*, cit., p. 62.

195 GAFILAT (2018). *Evaluation report...*, cit., p. 63.

196 Extinción de Dominio (NCBF) Code, art. 92.

197 Extinción de Dominio (NCBF) Code, art. 93 and following.

198 Extinción de Dominio (NCBF) Code, art. 214.

199 GAFILAT (2018). *Evaluation Report...*, cit., pp. 62-63.

200 The director of the SAE assures that 59 thousand assets belonging to drug traffickers are in the process of NCBF. See <https://www.eltiempo.com/justicia/conflicto-y-narcotrafico/mas-de-la-mitad-de-los-inmuebles-incautados-al-narcotrafico-estan-invadidos-revela-la-sae-441408#:~:text=Sociedad%20de%20Activos%20Especiales,-Contenido%20cierto&text=Colombia%20posee%20el%20m%C3%A1s%20grande,%2C%20sociedades%2C%20semovientes%2C%20etc>.

201 In November 2011, the liquidation of the DNE was announced due to the numerous corruption scandals involving officials with respect to seized assets. See <https://www.elespectador.com/politica/acabo-liquidacion-de-la-dne-articulo-520952/>.

That said, the complexity and the significant amount of assets administered by the SAE still constitutes a challenge for its authorities to try to maintain and preserve the assets during lengthy NCBF processes. In response, the SAE has decided to move towards the prior alienation of assets, precisely to alleviate and facilitate the administration of the assets under its charge. Therefore, by June 2021, the early sale of 5,204 properties located throughout Colombia was planned, making the initiative the largest commercial strategy implemented by this agency for the sale of assets under its administration.<sup>202</sup>

### 2.9.3 Field Mission

According to its officials, the SAE is the largest real estate company in terms of assets affected by NCBF proceedings, given that its real estate inventory amounts to 22,924 properties. In addition, they manage 1,733 companies and 5,405 vehicles, among other assets. The value of the affected assets comes to COP 1,345,363,373,845 (approximately USD 356,942,393)).

Currently, 86% of these assets are seized, and 14% are subject to NCBF judgments. The SAE identifies among the “bottlenecks” the limited number of judges, which is reflected in the prolongation of NCBF proceedings.

The SAE said it has an prior alienation committee for the sale of seized assets under certain criteria. The SAE annually informs the institutions of the amounts transferred to them, in accordance with the percentages established by law. By 2021, approximately USD 172,453,450 had been delivered to all entities as proceeds from the disposal of assets that were subject to declaring NCBF. SAE authorities pointed out that the main problems of the prior alienation include encumbrances on the assets and the judicial process foreseen to resolve these legal issues.

Among the recommendations suggested by the SAE to improve the NCBF system are: i) create a centralized information system for NCBF proceedings between the PPO, the judiciary and the SAE; ii) establish a standard methodology for the PPO and the SAE to coordinate on asset appraisals, given that the figures of each institution are not consistent and do not use the same valuation methodology; and iii) establish asset sharing agreements with other states. These recommendations are mandated by CONPES 4042.

202 The SAE opened the process of massive sale of 5,000 properties resulting from NCBF. See <https://www.asuntoslegales.com.co/actualidad/sociedad-de-activos-especiales-vendera-bloque-de-5204-inmuebles-en-todo-colombia-3135637>.

# 3 Extinción de Dominio (NCBF) Law (Non-Conviction Based Forfeiture)

## 3.1 Background

The Colombian legislature first introduced NCBF in the 1990s, in an attempt to curb organized crime, mainly targeting the immense fortunes from drug trafficking. This law has been updated on different occasions, in order to make it more agile and efficient, up to the current Law 1708 of 2014: Extinción de Dominio (NCBF) Code.

## 3.2 Concept and Nature

NCBF is a consequence affecting property acquired from illicit activities or those that seriously deteriorate morality in society. By court order property is declared to be owned by the State, and no consideration or compensation of any nature is paid to the affected party.<sup>203</sup>

It is of a constitutional, public, jurisdictional, direct, real and patrimonial nature, and targets any property, regardless of who holds or acquired it. In addition, it is distinct and autonomous from criminal action, as well as from any other action, and independent of any declaration of liability.<sup>204</sup>

The action for NCBF is real and therefore its judgment is of a declaratory nature, which orders the transfer of the ownership of the property to the State without any consideration or compensation whatsoever. Therefore, the investigation centers on assets that are framed within the so-called causal grounds or assumptions, understood as the circumstances or facts that fall on the asset and not on the person.

## 3.3 Constitutionality

The right to property is a constitutional right that admits limitations, according to the Colombian Constitutional Court. Likewise, the constitutionality of the practice of NCBF is based on Articles 34 and 58 of its Magna Carta.<sup>205</sup> For the Court, the right to property can only be recognized when it has been acquired with respect to the laws and without causing harm to the State or private parties. Nor can the State provide protection for the arbitrary exercise of rights, when these are limited or qualified by consistent social practices and general interests.<sup>206</sup>

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203 Extinción de Dominio (NCBF) Code, Article 15 et seq.

204 Extinción de Dominio (NCBF) Code, Article 17 and 18.

205 Ruling C-958/14, Constitutional Court of Colombia, dated December 10, 2014; Ruling C-740/03, Constitutional Court of Colombia, dated Aug. 28, 2003; and Decision C-374/97, Constitutional Court of Colombia, dated Aug. 10, 1997.

206 Decision C-740/03, Constitutional Court of Colombia, dated August 28, 2003.

### 3.4 Characteristics

#### Autonomy

The NCBF process is exercised following its own principles and rules of procedure, different from those of any other procedure, since it is of a real nature, as opposed to the criminal action which is of a personal nature.

#### Independence

Inasmuch as it does not require a prior legal finding or judgment from another authority, consequently, it does not depend on a prior finding of criminal liability against the subject that alleges to have a real right over the property affected in the process.

#### Jurisdiction

It is a jurisdictional action because the decision on whether or not NCBF is appropriate is made by the judges, who make use of the principles of autonomy, independence and impartiality of the jurisdiction, and follow procedural and constitutional guarantees.

#### Timelessness

One of its main characteristics is its timeless nature, in light of Article 34 of the Constitution. The position of the Constitutional Court is that NCBF is of a timeless nature (retrospective<sup>207</sup> and imprescriptible).

### 3.5 Assets Subject to NCBF

NCBF is applicable to two types of assets: i) those acquired unlawfully, which is related to the origin of the assets, according to Article 34 of the Constitution; and ii) those related to their purpose, which is based on Article 58 of the Political Constitution, that is, those acquired lawfully, but which have been used in a manner contrary to their social function.<sup>208</sup>

In addition, Article 16 of the Extinción de Dominio (NCBF) Code incorporates other forms of forfeiture without conviction such as assets of equivalent value, mixed assets (licit and illicit), unjustified gain in assets, etc.

### 3.6 Limit: Good Faith

Article 83 of the Constitution recognizes good faith as a limit to the NCBF process, as long as it is a qualified good faith or creator of the right.<sup>209</sup>

In turn, case law has explained that this qualified good faith has two fundamental elements: a subjective element (being aware of having acted in accordance with the law) and an objective element (having performed acts that demonstrate due diligence).<sup>210</sup>

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207 Retrospectivity of the law is a phenomenon that occurs when the rule applies, from the time it enters into force, to situations or facts prior to its enactment, because the legal effects have not been consolidated at the time the new provision comes into force.

208 UNODC (2015). Extinción del Derecho de Dominio in Colombia. Special reference to the new Code, Bogotá, p. 10. Available in: [https://www.unodc.org/documents/colombia/2017/Marzo/La\\_extincion\\_del\\_derecho\\_de\\_dominio\\_en\\_Colombia.pdf](https://www.unodc.org/documents/colombia/2017/Marzo/La_extincion_del_derecho_de_dominio_en_Colombia.pdf).

209 UNODC (2015). Extinción del Derecho de Dominio..., cit., p. 14.

210 Decision C-1007/02, Constitutional Court of Colombia, dated Sept. 3, 2002.

### 3.7 Stages of the Process

Extinción de Dominio (NCBF) Law adopts the procedural scheme set forth in the UNODC Model Law on In Rem Forfeiture, consisting of two stages: a pre-procedural or administrative stage and a procedural or trial stage.<sup>211</sup>

The purpose of the first phase is to collect evidence, which must be carried out with respect for fundamental rights. PPO is in charge and begins with the act through which said authority takes cognizance of the case, until the presentation of its decision to file or request the case.<sup>212</sup> The purpose of this initial or administrative stage is to identify the object of the process and to demonstrate the cause of NCBF. The process ends with the issuance of the respective duly substantiated resolution.<sup>213</sup> There is no appeal against the decision on the provisional determination of the claim,<sup>214</sup> because it is considered a procedural decision.

The procedural or trial phase, on the other hand, takes place before the specialized judge, who admits the request when the formal requirements established in Extinción de Dominio (NCBF) law are met.

After having established the contradictory through the due summons of the procedural parties, the intervening parties are notified so that they may exercise their rights to oppose, contradict and defend their interests.

### 3.8 Parties to the Proceedings and Intervening Parties

Extinción de Dominio (NCBF) Law calls the PPO and the affected parties as procedural parties to the case. While the former is responsible for investigating and determining whether the property being processed is subject to any cause of NCBF, the latter refers to any natural or legal person claiming to have a real right over the property subject to the action.

The role of the affected parties is fundamental and their participation in the process is essential for the determination of the NCBF claim.<sup>215</sup> The subject's right to contradict is activated from the date of notification with the resolution of provisional determination of the claim. From this point on, those affected will have to assume a dynamic burden of proof.

On the other hand, the law grants both the Public Prosecutor's Office and the Ministry of Justice and Law the quality of intervening parties. However, with regard to the latter, its role is not always fundamental.<sup>216</sup> In the case of the Public Prosecutor's Office, Extinción de Dominio (NCBF) Law imposes on it the specific duty to watch over the rights of those affected who do not appear at the proceeding.

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211 On the stages of the process, see Art. 20 of the document published by UNODC (2011), Model Law on In Rem Forfeiture, pp.8. Available at: [https://www.unodc.org/documents/legal-tools/Ley\\_Modelo\\_Sobre\\_Extincion\\_de\\_Dominio.pdf](https://www.unodc.org/documents/legal-tools/Ley_Modelo_Sobre_Extincion_de_Dominio.pdf).

212 On the termination of the initial or pre-procedural phase, see Art. 23 of the UNODC (2011), Model Law on In Rem Forfeiture..., cit., p. 8.

213 Extinción de Dominio (NCBF) Code, Article 116 et seq.

214 Extinción de Dominio (NCBF) Code, Article 126 et seq.

215 UNODC (2015). Model Law on In Rem Forfeiture..., cit., p. 39.

216 UNODC (2015). Model Law on In Rem Forfeiture..., cit., p. 40.

In turn, the Ministry of Justice and Law has the role of defending the legal interests of the Nation, representing the entity responsible for the administration of the assets affected in the course of the proceedings.<sup>217</sup>

### 3.9 Burden of Proof

In the NCBF process, the dynamic burden of proof prevails.<sup>218</sup> In other words, each of the parties must prove the facts that support the origin or inadmissibility of the reason for NCBF. In this sense, the PPO has the burden of identifying, locating, collecting and providing the means of proof that demonstrate the concurrence of any of the grounds provided by law for the declaration of NCBF, and that the affected party is not a third party in good faith exempt from guilt. On the other hand, the affected party has the burden of providing the means of proof demonstrating facts that sustain its defense to the declaration of NCBF.

### 3.10 Precautionary Measures

Precautionary measures may be executed by the PPO even before the provisional determination of the claim, as long as it is verified that the object of investigation is at risk of imminent loss.<sup>219</sup> Such measures may not be extended for more than six (6) months.<sup>220</sup>

On the other hand, precautionary measures are subject to the fulfillment of specific purposes and to compliance with the requirements of necessity and reasonableness. Only the measure to suspend the power of disposal will be taken without further requirement.<sup>221</sup> In addition, there is no need to make physical contact with all the goods that are the object of the process<sup>222</sup>, unless there are serious reasons to foresee the need to take measures of a material nature. In this sense, the adoption of a measure to suspend the power of disposal in the respective registry will suffice.

It is worth noting that the investigative actions carried out by the Public Prosecutor's Office may be subject to legality control by NCBF judges, only when they imply or as a consequence limit or affect fundamental rights.

This control of legality may be requested by the holder of the fundamental right that has been affected or limited, by the Public Prosecutor's Office or by the Ministry of Justice and Law. To this end, the applicant must state clearly in writing the facts on which his case is built and clearly state the reasons why he considers that the fundamental right has been unlawfully affected or limited. The presentation of the request and its processing neither suspend fulfillment of the order to investigate nor the course of the legal proceedings.

As mentioned above, the SAE will be the competent authority to administer the assets subject to a precautionary measure in the NCBF process.

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217 Extinción de Dominio (NCBF) Code, art. 32.

218 About the burden of proof, see Article 35 de la UNODC (2011), Model Law on In Rem Forfeiture..., cit., p. 11.

219 UNODC (2015). Model Law on In Rem Forfeiture..., cit., p. 75.

220 Extinción de Dominio (NCBF) Code, art. 89.

221 Extinción de Dominio (NCBF) Code, art. 88.

222 UNODC (2015). Model Law on In Rem Forfeiture..., cit., p. 81.

## Abbreviations

Abbreviations	Key terms
AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
AML	Anti-Money Laundering
ARN	Asset Recovery Network
ARO	Asset Recovery Office
CCICLA	Inter-Agency Coordination Committee for the Control of Money Laundering
CGR	Comptroller General of the Republic
CC	Criminal Code
CPC	Criminal Procedure Code
CTI	Technical Investigation Corps
DGI	Directorate of International Management
DIAN	National Tax and Customs Office
DIJIN	Directorate of Criminal Investigation and Interpol
DNFBP	Designated Non-Financial Businesses and Professions
FATF	Financial Action Task Force
FEAB	Special Fund for Asset Management
FIU	Financial Intelligence Unit
FPWMD	Financing of the Proliferation of Weapons of Mass Destruction
FRISCO	Fund for Rehabilitation, Social Investment and the Fight against Organized Crime
FT	Financing of Terrorism
GAFILAT	Financial Action Task Force of Latin America
ICAR	International Centre for Asset Recovery (ICAR)
INL	Bureau of International Narcotics and Law Enforcement Affairs
MESICIC	Mechanism for Follow-up on Implementation of the Inter-American Convention against Corruption
MIREX	Ministry of Foreign Affairs
MLA	Mutual Legal Assistance
ML/FT	Money Laundering and Financing of Terrorism
NCBF	Non-Conviction Based Forfeiture
NRA	National Risk Assessment
OECD	Organisation for Economic Co-operation and Development
OAS	Organisation of American States
PEP	Politically Exposed Person

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<b>PGN</b>	Special Public Prosecutor's Office
<b>PONAL</b>	National Police of Colombia
<b>PND</b>	National Development Plan
<b>PPO</b>	Public Prosecutors Office
<b>SAE</b>	Sociedad de Activos Especiales
<b>STR</b>	Suspicious Transaction Report
<b>UIAF</b>	Financial Analysis and Information Unit
<b>UNCAC</b>	United Nations Convention against Corruption
<b>UNICOPI</b>	National and International Cooperation Unit for Prevention, Investigation and Seizure of Assets
<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>UNTOC</b>	UN Convention Against Transnational Organized Crime

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## About the Basel Institute on Governance

The Basel Institute on Governance is an interdisciplinary center that provides technical assistance in the area of good governance and anti-corruption to both the public and corporate sectors. It was founded in 2003 in Switzerland as an independent, non-profit institution and is an associated institute of the University of Basel, Switzerland.

### International Centre for Asset Recovery (ICAR)

In 2006, the Basel Institute on Governance founded the International Centre for Asset Recovery (ICAR), as an operational unit specialized in strengthening the capacities of countries in the field of illicit asset recovery, generating competencies in justice operators in terms of financial investigations, asset tracing techniques and international judicial cooperation, with respect to cases of corruption, money laundering and other financial crimes. To this end, ICAR organizes and implements State-specific technical assistance and training programs, conceptualized and custom-designed with the objective of generating competencies in the aforementioned areas.

### ICAR Latin America

ICAR's Latin America team works out of the Basel Institute on Governance's regional office in Lima, Peru. Since 2014, in the countries where it works, ICAR has maintained cooperation agreements with institutions in charge of preventing and repressing economic crimes. These include institutions such as the public ministries, judiciaries, ministries of justice, financial intelligence units and comptrollers general. The purpose of these agreements is to strengthen the capacities of these institutions in the prosecution of highly complex corruption offenses, international judicial cooperation in criminal matters and the recovery of embezzled assets.

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