



Non-conviction based confiscation



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Criminals exploit legal loopholes, borders and other avenues to conceal the proceeds of their illegal activities and evade prosecution. Meanwhile, they use their illicit proceeds to buy luxury villas or increase their power and influence. Victims of crime – including communities affected by corruption – suffer the losses.

One tool to address this problem is non-conviction based confiscation: legal mechanisms that allow states to recover illicit assets even in the absence of a criminal conviction. It is also known as non-conviction based forfeiture or, in some jurisdictions, civil confiscation or civil forfeiture.

This Quick Guide outlines in simple terms how non-conviction based confiscation is used, the concerns and challenges it faces and how it can be implemented in line with established legal safeguards.

What is non-conviction based confiscation?

Non-conviction based confiscation allows authorities to seize and confiscate assets linked to crime without requiring a prior criminal conviction.

Unlike traditional confiscation, which typically depends on a criminal conviction, non-conviction based confiscation proceedings focus on the assets rather than the individuals. Authorities can seek confiscation if they can demonstrate that assets are the proceeds of crime.

In many jurisdictions, assets that were used, or were intended to be used, in criminal activity can also be targeted for confiscation.

How widespread is it?

Today, non-conviction based confiscation is considered an essential part of a country's toolkit to combat corruption and organised crime.

Long utilised in the US and UK, this legal mechanism has proven effective at targeting criminal assets. Its success has driven extensive adoption and recognition in international frameworks:

- The United Nations Convention Against Corruption (UNCAC) references non-conviction based confiscation in the context of international cooperation.
- The Financial Action Task Force (FATF) has made non-conviction based confiscation part of its international standards on combating money laundering and terrorist financing.

Non-conviction based confiscation laws and their adoption vary between countries and regions. For example, in Latin America, extinción de dominio laws are common, based on a model first promoted by the UN Office on Drugs and Crime (UNODC). They also exist throughout the European Union (EU), which has taken numerous steps towards harmonising non-conviction based confiscation across its Member States.

Use and impact

Non-conviction based confiscation offers another legal avenue to recover illicit assets that would otherwise remain beyond the reach of authorities. This:

- prevents criminals from benefiting from illicit gains;
- disrupts future criminal activity; and
- allows confiscated assets to be used for the public good or returned to victims.

It is especially helpful in increasingly sophisticated cases involving shell companies and cryptocurrency where it is possible to prove that assets are illicit even if they can't be linked to a specific perpetrator.

Though data is limited, available evidence suggests that non-conviction based confiscation plays a substantial role in global asset recovery. UNODC estimates that around 30 percent of cross-border confiscation stems from non-conviction based confiscation proceedings. In the UK, GBP 650 million in proceeds of crime were recovered between 2019 and 2024 using its non-conviction based confiscation mechanism – a third of all recoveries during this time.

Variations of the law

There is no one-size-fits-all model for non-conviction based confiscation laws, but they can be broadly grouped into three categories:

- **Classic non-conviction based confiscation:** Applied when criminal proceedings have been initiated but cannot be completed, due to death, flight, illness of the suspect or other reasons. In Germany, more than EUR 10 million were confiscated from two companies, even though the criminal proceedings could not continue because the statute of limitations had expired.
- **Civil recovery mechanisms:** Separate civil proceedings that can be initiated even in the absence of criminal proceedings. The US and UK have implemented this mechanism. In Peru, authorities used the country's *extinción de dominio* law to recover a house and land linked to corruption by a former mayor.
- **Civil unexplained wealth laws:** Allow the state to target wealth that a person cannot justify with lawful income. Based on Kenya's civil illicit enrichment legislation, for example, authorities confiscated unexplained assets from a former Chief Accountant at the Treasury. He had acquired wealth far beyond what his salary would have allowed, yet he was never criminally charged.

With the exception of most civil unexplained wealth laws, non-conviction based confiscation mechanisms generally require the state to prove a link between the assets and a crime.

Standards of proof vary across jurisdictions. In most cases, particularly in civil recovery mechanisms, the state must demonstrate that it is *more likely than not* that assets are connected to criminal activity.

Legal procedures differ as well. Some countries handle these cases in criminal courts, while others use civil or administrative tribunals. In some jurisdictions, proceedings run alongside criminal trials; in others, they are conducted independently.

What concerns exist?

Although broadly recognised as a proportionate and effective tool, non-conviction based confiscation is controversial due to:

- **Political concerns:** In states with weaker rule of law, non-conviction based confiscation could be misused to target political opponents.
- **Human rights concerns:** Broadly drafted or poorly implemented non-conviction based confiscation laws may undermine fundamental rights such as the right to a fair trial, the presumption of innocence and property rights. For example, such laws may target minor offences or be used to confiscate assets from innocent third parties.

What do human rights courts say?

Various rulings by the European Court of Human Rights to uphold or overturn non-conviction based confiscation laws highlight a common set of arguments. These laws comply with fundamental rights standards when they:

- contain clear and foreseeable provisions;
- pursue a legitimate public interest, such as fighting corruption or organised crime;
- strike a fair balance between the public interest and individual rights, ensuring the burden on individuals is not disproportionate;
- do not impose criminal liability on individuals, preserving the presumption of innocence;
- allow individuals to participate in the proceedings, by being heard, submitting evidence and challenging decisions.

How do we balance effectiveness with fairness?

Where possible, non-conviction based confiscation laws should be as comprehensive as possible to maximise their application to a wide range of circumstances. At the same time, they should be careful not to infringe on established legal rights.

Legislators can navigate this fine line by:

- drafting laws that are clear and foreseeable in their application and limited to well defined circumstances;
- ensuring that cases are heard impartially by independent courts;
- allowing individuals and third parties to participate in and challenge proceedings; and
- protecting innocent third parties.

Incorporating these standards reinforces the legitimacy of non-conviction based confiscation and promotes its responsible use globally.

Non-conviction based confiscation: an effective and fair tool

Well designed and fair non-conviction based confiscation laws are essential for justice in the modern age. They are a powerful tool to recover illicit assets that would otherwise remain in the hands of criminals.

Controversy around non-conviction based confiscation should not undermine its role in the global fight against corruption and serious crime. Instead, it should be a driver of improvement.

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