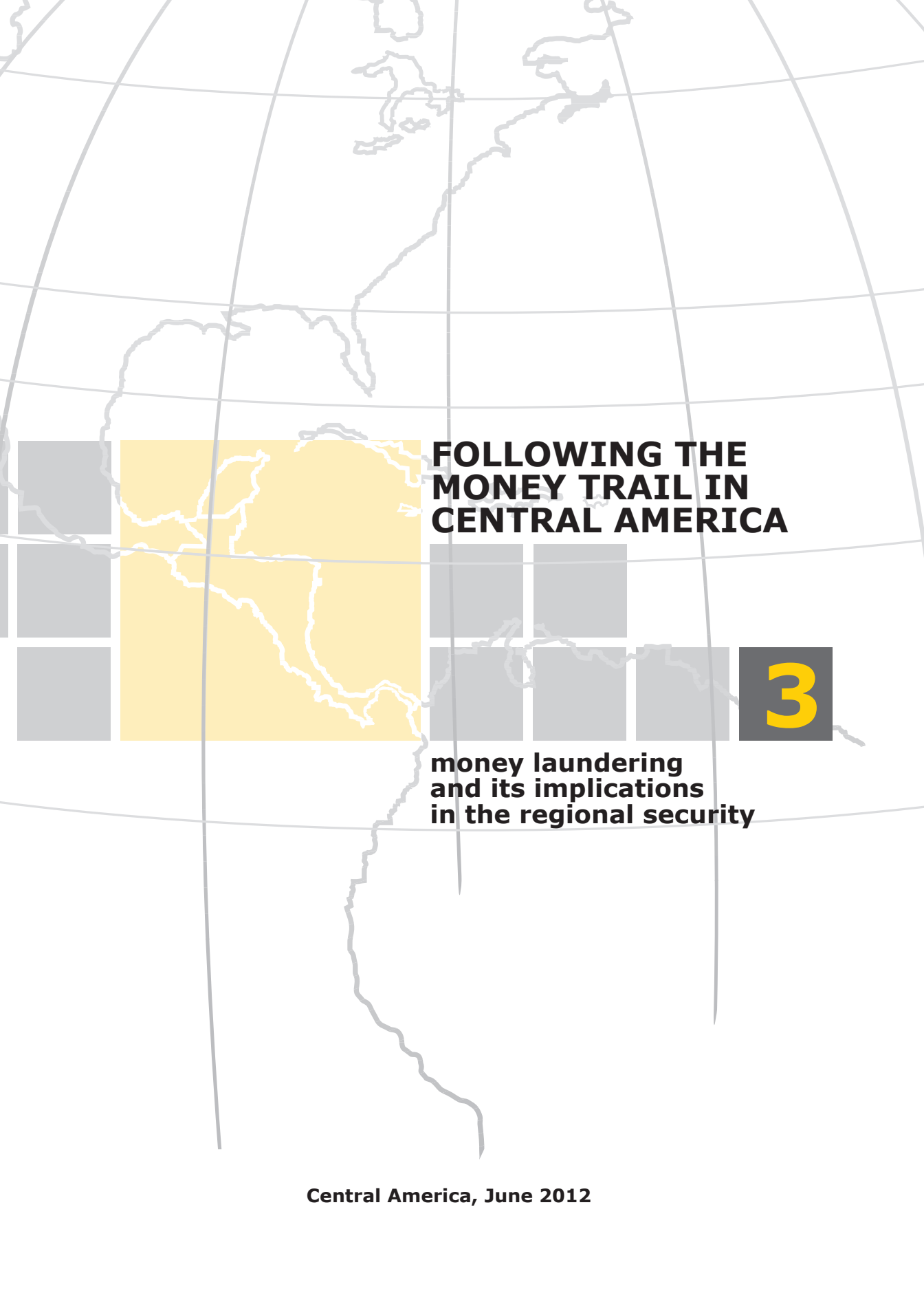


# FOLLOWING THE MONEY TRAIL IN CENTRAL AMERICA

3

Money laundering  
and its implications  
on the regional security





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MONEY TRAIL IN  
CENTRAL AMERICA**

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laRED



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# Presentation

**W**e present this paper on the so called “Money laundering” or the legitimization of assets coming from illegal activities in the Central American Isthmus, aware of the fact that the issue is very complex to investigate, and even more complex to document.

But it agrees with the recommendations we made for decision makers in the paper that on organized crime in Central America we published in 2011. In fact, the attention on Money laundering was the *first* of the recommendations in that document. Why?

First, because money laundering is a criminal activity that goes almost inadvertent but which bears a lethal impact in our societies and in our institutionalism: the legitimization of assets coming from illegal activities would seem to be invisible for the common citizen and it would seem to only be important for those authorities responsible for supervising Banks and overseeing monetary stability. Primary attention is always concentrated on violent deaths, but the issue of Money laundering or the legitimization of assets is very seldom dealt with in the region.

Laundering Money is an operation that **per se**, does not yield blood, corpses or strident violent deeds. But it is an activity that has a *tremendous corrupting power in our societies and institutions*. The preceding crimes that generate the need to launder their gains in our productive and financial systems, as well as the number of crimes that result from those actions, when they create networks and processes and laundering enterprises which corrupt a large diversity of activities and of public and private institutions, should be enough to have this activity in the sight of our national and regional efforts to strengthen the prevention and prosecution of crime.

Furthermore, we are small countries with fragile institutions and security systems, suffering from a constant drain of public resources to meet the fight against crime and citizen insecurity. Until recently, we did not produce any drugs. They were mainly generated in the Andean countries – it is not but until a short time ago that some signs were detected of the existence of small clandestine laboratories for the production of synthetic drugs in three of the Central American countries. And the major market is to the north. But our public budgets are “skewed” and augmented for the fight and control against drug trafficking, taking away important resources from other development issues, and even other citizen security issues that are important for us.

In addition to this, it would be a distortion of State resources, and there are other distortion dimensions in the public administration, both nationally and locally, putting at risk governance itself by growing inefficiencies in the efforts for public security. In the face of these distortions and the citizens’ perception of the inefficiencies in the fight to

secure the citizens' security, it is possible to succumb to the *temptations of practical realism*. These temptations are included in the fact that derived from describing the fight against organized crime and its sequels as inefficient, it might result politically "more reasonable" to implement public actions with a media impact, but which public opinion could interpret as a show to pretend doing what is possible, but in practice, the State would seem to resign and leave them to do as they want. This is added to the perception that neither some of the institutional structures called into this fight, precisely in those departments that are the ones that should guarantee public security and the Rule of Law: justice, security and the financial systems, are adding up to the necessary efforts.

Falling into these temptations of practical realism might make the State enter into a very delicate and very complex route of gestation and development of the "Mask-State" or the "Shell-State": a formal public institutionalism but one that covers-up for high levels of impunity.

But also: fixing eyes and developing dexterities in the field of Money laundering coming from illegal activities *concentrates efforts where it hits harder those transnational criminal organizations of any kind*: in the possibility of enjoying their gains, once they have been legitimized. And here, some efficient actions can be implemented to prevent illegality and the infection of our economies and our political systems, acting on numbers and operations that are TRACEABLE AND VERIFIABLE. And which can be later on connected with other operations to strengthen justice and security, both nationally and regionally.

This paper, however, had enormous difficulties to gather reliable and publicly verifiable information on concrete facts directly related to money laundering, therefore it is very difficult to size the dimension and scope of these activities as well as their real impact on the legitimate universe of our economies. The authorities consulted shares official documents (the current legislation and regulatory aspects), and shared, in private, their appreciations, assessments and suggestions about how to get better. But the banking institutions consulted in all the countries were reluctant to provide concrete information that could be cited. This is a problem reality generalized throughout the Isthmus and which had to be faced by all the member institutions of the RED in order to obtain support information for this paper. Nevertheless, we expect to contribute with it to the strategic processes of Central America, from the REGIONAL standpoint, contributing to the generation of public policies on the part of decision makers, thus supplementing and supporting the work of the SICA Secretariat and that of the specialized entities.

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# Introduction

**I**n the following pages you will find the systemization of results of investigations undertaken in Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, which have been the input for the analysis and formulation of recommendations to abate the money laundering from a regional approach.

The first chapter sketches a conceptual frame in which the definition is revised, as well as the stages it entails, the forms utilized for the legitimization of capitals, the crimes preceding money laundering, as well as international conventions and statements that have developed tools for its combat.

A second chapter makes a recognition of the efforts made by the Central American countries to update their internal legislation, responding to the commitments made when they ratified international conventions on the Prevention of Money Laundering and against the Financing of Terrorism (PLD/CFT), although some examples are also shown which evidence the disparity with respect to the juridical scope of its criminal prosecution. This chapter also shows the difficulties found by public institutionalism due to its inexistence or weakness, it being necessary to investigate and prosecute crimes in the national level, and carry out the investigation and exchange of financial information, in the regional level. Specially, this chapter emphasizes on the effects that money laundering produces in the region, in terms of poverty, slow development, corruption, ungovernability and distortion of the market.

Towards the implementation of actions to abate money laundering is the title of the third chapter, which makes proposals for action that include the design of a regional strategy against the bleaching of capitals, and other punctual actions to contribute to the abatement of money laundering in Central America, grouped in three strategic areas: a) prevention and detection; b) investigation, and c) judgment. In addition, it suggests to act in terms of strengthening the electoral systems and those of political parties as well as policies of transparency and probity in public management.

The fourth chapter points out at conclusions and recommendations leading to reaffirm the association of money laundering with corruption and impunity problems in the Central American States, affecting the democratic coexistence in a State of Law, as well as its governance.

Finally you will find in the section of Annexes, a list of standards and provisions by country, which have been enacted to combat the laundering of money and other assets.

The institutions that make up laRed wish to thank all those who collaborated to generate the inputs for analysis of this study, although it has not been possible to mention them as sources of information in all the cases.





# 1 Money Laundering or Legitimization of Assets

The history of money laundering just as the national or global economic crimes is as ancient as the history of society itself. It goes back as far as the moment when money began to be minted and in fact, the crimes “*with money (both forfeiting and laundering) have existed even before money existed as we know it today*”, the custom or usage to employ practices to disguise income from illegal activities when usury was declared to be a crime. (Uribe Roberto, 2003).

Nevertheless, the concept of laundering begins to be used more frequently, in the 20’s in the United States, a time when the Mafia that trafficked with alcoholic beverages, created a series of laundries to hide the illegal origin of the money they earned with their criminal activities. The mechanism they used was the presentation of the earnings coming from illegal activities in the business of cleaning clothes, most payments were made in cash, a situation reported to the *Internal Revenue Service* of the United States of America<sup>1</sup>.

The income coming from extortions, prostitution and trafficking of weapons and alcoholic beverages was mixed with those of washing clothes, and unable to distinguish which dollar or cent came from a legal activity or not, they managed to circumvent the authorities for a long time.

In the 70s, money laundering became associated to drug trafficking, when large amounts of money were deposited in Banks (in the United States), without control, as a product of the marketing of drugs. “*In 1982 it was the first time that the expression was used judicially with the seizure of bleached money, allegedly originating from the smuggling of cocaine.*” (Tondini Bruno, s.f.)

With the upsurge of drug trafficking, money laundering rose to a higher level. The amounts of money originating from the sale of drugs, since it takes place with low denomination banknotes, are so large that they exceed, for instance, the weight of the trafficked drug.

It is important to point out, that the logic of deregulating the global financial system, as well as interconnection and the facility to carry out financial transactions in the global level over the past 20 years, mainly originated in the developed countries, have resulted in increasing facilities to launder money: banking secrecy, the difficulties to carry out

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1 Federal Agency of the United States Government, in charge of tax collection and the enforcement of the tax laws of the Treasury of the United States of America.

information exchanges in real time, the practice of establishing fiscal paradises (or shadowy jurisdictions), worsen the magnitude of the problem.

Presently, the growing activity of organized crime, poses the urgent need to undertake state actions to control and repress efficiently the multiple and complex illegal activities that are generated around this criminal activity.<sup>2</sup>

## 1.1 Definition and stages of money laundering

The process for legitimization of capitals and their perverse effects in the economic and political structures of the countries is a concern not only of the affected States, but it transcends to the international community due to the continuity and multiplicity of illegal conducts that take place in different States and even in Continents.

As a consequence, the recycling of money has been defined according to the characteristics of each country and their respective legislations; however, in most concepts, it is considered a crime in itself, distinguished from the crimes that originated it, and therefore it has been assigned an independent treatment by the system of criminal justice.

Dr. Guillermo Ritcher, (President of the Commission of Government, National Police and anti-Drugs Action of the Congress of Bolivia), defines money laundering as: *the selfish, clandestine procedure, by which the funds or earnings coming from illegal activities, such as: weapons, prostitution, trafficking of women, common crime, economic, political and related crimes, contraband, tax evasion and drug trafficking, are recycled to the normal circuit of capitals or goods and then used by means of heterogeneous and tactically skilled cunning* (Luengas, Vianeth.2010).

The "Reference Guide against laundering of assets and the fight against the financing of terrorism" refers to the laundering of assets as a basically simple concept: "It is a process through which the earnings obtained through a criminal activity are covert in order to hide their illegal origin. Basically, the laundering of assets covers the earnings obtained from goods of a criminal origin rather than from the goods per se."

In order to understand the complexity of the legitimization process it is necessary to know the different phases or stages through which the laundering or bleaching of capitals and on which there is an agreement among those who study the issue, pointing out that the most usual ones and those used by the Group of International Financial Action against money laundering (GAFI)<sup>3</sup> are:

- **Placement.** It refers to placing the funds of illegal origin in the financial system, in various ways: opening bank accounts, transactions in currency, purchase of financial instruments, among others.

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2 The crimes that produce considerable gains which are later legitimized are: trafficking of persons for sexual exploitation, prostitution, marriage or forced labor, illegal adoptions, trafficking of migrants, marketing of boys, girls and human organs, trade and trafficking of weapons, drug trafficking, their wholesale or retail distribution, the manufacturing of precursors, smuggling and corruption.

3 For its French initials (GAFI) –Groupe d'action financière sur le blanchiment de capitaux (GAFI) is an inter-governmental institution created in 1989 by the G7, the purpose of which is to develop policies that help to combat money laundering and financing terrorism.

- **Hiding.** Called stratification, collation or diversification by some theoreticians. The objective of this stage is to zoom out the illegal gains from their criminal source. The methods used in this stage are:
  - ✓ Money converted into instruments of payment through the purchase of securities, transfers between jurisdictions or “payments” are made for acquired goods or services.
  - ✓ Electronic transfer of funds (currently it is the most used and efficient method).  
At the end of this stage, “the legitimizer” has separated the money from its illegal origin and has erased the accounting traces of the illegal origin, covering it by means of complicated and diverse financial transactions.
- **Integration or investment.** In this stage, the money becomes integrated into the legitimate economy, the “clean money” is injected into the national and international financial systems; at this moment, the objective is to invest the clean money in various forms of the chosen economy (ies) and once it has been integrated into a particular financial system, these gains appear to be legal, melting and blending with the rest of the legal activities of the infiltrated economy.

Due to the characteristics of the laundering of assets, no accurate statistics can be made that give an exact account of the magnitude of the problem in the world level, because the persons and organizations dedicated to illegal activities avoid being detected and do not leave public records of their transactions. As stated by Calvin Wilson, Director of GAFIC, to a TV program in Venezuela, on occasion of holding the XXXIV Plenary Meeting and the XXXIV Meeting of the Council of Ministers of GAFIC in the Cayman Islands, money laundering in the world amounts to US\$500 thousand million per year<sup>4</sup>. In this sense, it should be stressed that “in the world and particularly in Latin America, the three major crimes that precede the laundering of assets are: the sale of drugs, corruption of public authorities and tax evasion”, so it was pointed out by Gabriel Gomez, Magistrate of the Supreme Court of Justice of Guatemala in the frame of the Seminar of “Public Finance and Tax evasion in Latin America” as recorded in the report of the Rapporteur.

## 1.2 Typologies

The forms that the delinquents use to legitimize the assets generated through illegal activities are several and depend upon the characteristics of each country and of the means utilized. In addition, they change with time according to the measures that the states implement to tackle the problem. Such forms are called, methods or typologies.

In this sense, both GAFI and the regional groups are constantly drafting technical tabs on the typologies of money laundering, which they systematically update. The Egmont<sup>5</sup> Group has also made a broad compilation of cases to share them with its members.

4 See the Paper Correo Del Orinoco, Caracas, Jul. 12, 2012.

5 The Egmont Group is an international organization that gathers governmental organizations, made up by Units of Financial Intelligence (UIFs) creating an international network to Exchange information, knowledge and technology in order to fight against the laundering of assets and the financing of terrorism.

These designed typologies contribute to implement control instruments and warning signs for the prevention of conducts associated with money laundering and the financing of criminal organizations.

Regarding the Group of Financial Action of South America (GAFISUD)<sup>6</sup>, in 2010 it made a support tool to contribute to the implementation, adjustment and improvement of controls in tackling the money laundering, which contains the typologies used more frequently in Latin American countries (GAFISUD, 2010), among which are:

- Laundering of funds coming from defrauding public funds,
- Laundering of funds through casinos,
- Exploitation and marketing of gold to finance terrorism,
- Utilization of financial products of cooperative societies and mutual associations<sup>7</sup>.
- Declared income of foreign currency for exchange operations,
- Transport of currency across borders,
- Creation of investment societies,
- Clandestine transportation of precious metals through borders.
- Utilization of front companies to support the activities of laundering assets (fiscal paradises),
- Use of Call-Centers and online businesses for the mobilization and hiding of funds,
- Irregular utilization of pension funds,
- Importation of raw materials and machinery
- Utilization of non-profit entities that provide education services.

### 1.3 International Organizations that certify standards

The existence of more flexible transfer mechanisms in an interconnected world, together with the recognition that drug trafficking is a worldwide problem, elicits multilateral efforts of collaboration. That is how international organizations that certify standards arose, from the United Nations, to the Egmont Group that certifies the standards under which the financial intelligence units of the countries must be created, to improve on the policies of prevention and Exchange of information in an international level.

6 Inter-governmental organization with a regional basis that groups nine Latin American countries: Argentina, Bolivia, Brasil, Chile, Colombia, Ecuador, Paraguay, Perú, Uruguay, México, Costa Rica and Panama; with the purpose of fighting money laundering and the financing of terrorism.

7 This typology refers to the use of financial products that can be issued by Cooperative Associations and Mutual entities, benefitting from the lack of sufficient supervision controls on the part of the Financial System.

a) *Organization of the United Nations*

It was the first one to establish a universal basis of actions to combat the laundering of assets and the juridical instruments through which it has initiated actions:

- The Vienna Convention. Through its program for drug control, it began with the international agreement "United Nations convention against illegal trafficking of narcotic drugs and psychotropic substances". It was passed in 1988, entered into force in 1990 and had the participation and subscription of 169 countries.
- The Palermo Convention. It refers to the "International Convention against transnational organized crime" of the United Nations. It broadens the range of crimes underlying the laundering of assets, it entered into force in 2003, subscribed by 147 countries and ratified by 83. This international covenant focuses on the provisions on issues of laundering of assets in the same terms as the GAFI.<sup>8</sup>

b) *Group of Financial Actions on the Laundering of Assets (GAFI)*

This is a sui generis organization which accepts members by invitation only, and not by compliance with requirements, as is the case in other international organizations. At the present time, it is formed by 32 countries of which three belong in Latin America (México, Brazil and Argentina).

This group certifies the international standards by which the rest of the countries in the world are rated; this way, "black lists" are drafted and sanctions are imposed to the nations that do not comply with the established standard.

The three main functions of the GAFI with respect to the laundering of assets are:

1. Oversee the progress of the members in the application of measures against the laundering of assets.
2. Analyze and issue reports on the trends, techniques and countermeasures of the laundering of assets; and
3. Promote the approval and application of the GAFI standards against the laundering of assets throughout the world.

The instruments through which GAFI makes its functions effective are mainly:

- The 40 recommendations on the laundering of assets. These refer to a series of principles for the countries to act in their fight against the laundering of assets. They were established in 1990 and were revised in 1996 and 2003, in order to renew the recommendations and update them to new international practices before the emergence of different typologies.<sup>9</sup>
- Supervision of the progress of members, which takes place in two stages: self-evaluation and mutual evaluation.
- Reports on the trends and techniques of the laundering of assets.

8 All of the Central American countries have ratified the International Convention against transnational organized crime.

9 For more information on the 40 recommendations on laundering of assets, visit the web page <http://www.cnc.gob.ve/info/40%20Recomendaciones%20GAFI-2012.pdf>

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- The lists of Non-Cooperating Countries and Territories (PTNC). Since GAFI can only give sanctions to its members and since its objective is to certify standards for international compliance, it uses this instrument so that through their reputation, the countries implement the 40 recommendations on money laundering and the 9 recommendation on financing terrorism.

Other regional organizations, similar to GAFI, were created to give participation to the other countries of the world, where they participate with a voice but without vote. These agencies have been organized geographically so that in Latin America we can mention the following:

- Group of Financial Action of South America (GAFISUD)<sup>10</sup> ,
- Group of Financial Action of the Caribbean (GAFIC)<sup>11</sup>

### c) *Basel Committee of Banking supervision*

It was created in 1974 by the presidents of the central banks of 13 countries<sup>12</sup> and is the entity in charge of certifying international standards for bank supervision. Among the instruments issued that relate to the laundering of assets are:

Statement of principles on the laundering of assets: this statement summarizes the basic policies and procedures that it would be convenient for the management bodies of the Banks to ensure their existence in the institutions in order to collaborate in the elimination of the laundering of assets through the banking system, both nationally and internationally.

- Basic principles of banking operations.
- Due diligence with the client.

### d) *Egmont Group of Financial Intelligence Units*

In 1995, several units of financial intelligence formed the so-called Egmont group. The objective of the group is to improve support to the national programs against laundering and coordinate the initiatives along this line: the support includes a systemization of the exchange of financial intelligence information, improve technical knowledge and promote a better communication among financial information units (UIF), and support its creation throughout the world.

The Egmont group agreed to the definition of Financial Intelligence Unit as "National Central Unit in charge of receiving (and if allowed, socializing), analyzing and transferring to the competent authorities, communications on financial information: i) related to funds that are suspected of a criminal origin and a possible funding of terrorism, or ii)

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<sup>10</sup> Ibid

<sup>11</sup> The Caribbean Financial Action Group (GAFIC) is an organization formed by twenty-nine states of the Caribbean basin, who have agreed to implement common countermeasures to respond to the problem of money laundering. With the exception of Costa Rica and Panama, all of the Central American countries are members of this organization.

<sup>12</sup> The representatives of the supervision authorities of the central Banks that form the Basel committee for Banking Supervision are of the following countries: Belgium, Canada, France, Germany, Italy Japan, The Netherlands, Sweden, Switzerland, United Kingdom and the United States, and two more countries that are not members of the G-10, Luxembourg and Spain.

required by the national standards, in order to combat the bleaching of capitals and the funding of terrorism” (Egmont Group, 2001). In addition, it agreed to a procedure to verify that an UIF complies with the above definition with a view to become a member of this Egmont Group; among whose criteria, it stresses having the legal capacity and the desire to cooperate in order to combat the bleaching of capitals and the funding of terrorism. With the exception of Nicaragua, all of the Central American countries are members of the Group through their respective UIFs.





## 2 Money laundering in the Central American region

The geopolitical location of Central America and the Regional Agreement on Procedures CA-4 for the extension of the single Central American visa enables free transit without an immigration control for persons and goods, which encourages, as a negative effect, the vulnerability at the borders, facilitating transnational marketing of illegal products, persons, psychotropic substances and contraband of goods.

Covered by this agreement and the weakness of controls, crime easily passes through the borders of the Central American nations, and it has a domino effect in the Isthmus, since what happens in one State affects the neighboring nations, which explains the intra-regional displacement of the inter-related networks of organized crime when the prosecution increases in any country of the region.

The hardening of the financial regulations in Mexico and the strengthening of actions for a direct combat against drug trafficking have caused the laundering activities to move into Central America. This calls for legal reforms, but also needs the strengthening of institutional prevention mechanisms for money laundering and of the judicial system to prosecute and sanction those responsible.

It also calls for a strong pressure and fight against criminal and drug trafficking organizations carried out by the States located in the geographic ends of Central America, to the North in Mexico and to the south in Colombia; as is the case of Guatemala, whose weakness might be evidence of the increase in the presence of these groups in the region.

Thus, "the activities of organized crime have evolved in such a way that they go beyond the idea that the region is a bridge or a warehouse" (laRed, 2011), turning Central America into the service station that drug traffickers and organized crime use to stock up and guarantee the shipment of their merchandise to the United States of America, and have adequate conditions for the return of the earnings that illegal activities generate.

Criminal enterprises and their operations are successful to a good extent, since they achieve to bleach and cover their earnings by transferring them through the national and international financial systems into the region. To that, we must add, "the absence of an efficient system against money laundering or the existence of a lax or corrupt one in a specific country that allows criminals to operate using their financial gains to broaden their criminal purposes and promote illegal activities" (Montoya, s.f.).

In the face of the criminal phenomena and the conditions of violence, the Central American countries with the support of international organizations have undertaken actions of a legislative, judicial, police and migratory nature to prosecute and sanction these crimes and in some cases have resorted to extraordinary security measures and plans, without to this date, making a significant progress that can be noticed.

Paradoxically, together with the efforts aimed at combating crime, the Central American region is facing an alarming increase in violence and organized crime, where the criminal groups flaunt an enormous capacity for action and control of the transnational criminal Enterprise, which yields large amounts of money that enable them to have sufficient resources to penetrate the economic, political and social structures of the countries of the region. Part of those funds coming from criminal activities and they are allegedly laundered in various ways in the Central American economic and financial system, which increase their corrupting power and complicates their detection, control and abatement.

## 2.1 The legislation

Concerned about the multiplicity and expansion of the mechanisms for legitimization of capitals and their consequences, the Central American countries have adopted a series of commitments after the ratification of international conventions that regulate the issue.<sup>13</sup> In conformity with these conventions, the States must update their internal legislation according to the provisions contained in them (See Annex).

In this sense, an important progress has taken place in the enactment of internal legislation especially of a criminal nature, since the crime of legitimization of capitals has been typified and in addition, other criminal conducts such as corruption, abuse of authority, illicit enrichment, and influence peddling, among others have been added.

In the criminal processing legislation some advances can also be identified; in some countries there are special investigation techniques that are adequate for the investigation and prosecution of this type of crimes; also in the tax regulations to prevent contraband, tax evasion and elusion, a well as money laundering. But the fact that a certain type of legislation exists only in some countries and not in others, is perhaps the greatest difficulty in the efforts to efficiently tackling this problem..

Despite the legislative progress taking place in the countries of the region, they show a disparity, which makes evident the lack of legislative uniformity in the regional level and explains why their scope is uneven. Thus, for example, in El Salvador the related crimes are placed among those that attempt against the economic order, while in Costa Rica they are in the category of crimes against the administration of justice, which makes it difficult to have a harmonized regional judicial interpretation.

In the case of Guatemala, according to its current regulations, the banking sector, financial associations, the Stock Exchange, the sector of insurance, the "Off Shore", Banks, cooperatives and the entities making transfers of funds in cash or securities, under the supervision of the Banks Superintendent, must report suspicious operations and the making of the respective files for later investigations by the Attorney General's office to prevent the laundering of assets.

In Nicaragua, the cooperatives, associations and non-profit organizations who manage an important volume of financial services, are out of any regulations and supervision and they do not comply with the minimum obligations established in the legislation against money laundering.

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<sup>13</sup> Among the international conventions ratified by the Central American countries are: the United Nations Convention against the Illegal trafficking of Drugs and Psychotropic Substances and the United Nations Convention against Transnational Organized Crime..

Costa Rica stumbles with the difficulty that bank secrecy is a constitutional right, confidentiality or reserve is constitutionally protected, which is an obstacle in criminal prevention and prosecution of the money laundering crime; on its part, in Guatemala there is resistance to approve the law Project that modifies the regulation protecting this subject issue, despite the law Project already having a favorable opinion the corresponding commission at the Congress of the Republic and pressures from the Organization for Cooperation and Economic Development (OCDE) to get out of a list of non-cooperating countries on issues of tax information which includes several countries, among them Guatemala.

On another hand, both in Guatemala and in Nicaragua, the businesses or activities and professions that are not financial, are not even considered to be obligors, the same goes for the case of casinos for which there is practically no regulation on the procedures for capitalization, the origin of their capital, or in the systemized registry of prizes granted, although they do not generate such a high risk as the non-regulated financial institutions (micro financial entities), since they have increased their volume of resources and their operations through giving micro-loans.

According to the GAFIC in its Mutual Evaluation Report on money laundering and against the funding of terrorism in Nicaragua (October, 2009), in spite of the country having since 2008 an adequate criminal legislation to combat these crimes, it still shows some important limitations.

The following are identified as limitations: the scarcity of financial and human resources in the criminal system, limited coverage of the non-regulated financial sector (particularly the cooperative sector that has no regulations or supervision). Also there is a lack of a UIF and of an institutional infrastructure against money laundering, the lack of a strategy against integral money laundering, and the little or no coordination among institutions to define the policies on this subject matter. The training of judges and attorneys is precarious, and the judicial system does not have the necessary Independence.

Meanwhile in Costa Rica, the casinos, betting and other operations related to gaming, must report their activities to the UIF. Some non-financial professions and commercial activities have legal regulations that cover aspects related to the identification of clients whenever a commercial relation is initiated, such as the case of lawyers, Notaries Public, accountant and real estate agents.

The mentioned dispositions have generated a discussion regarding the limits of the professional secrecy, due to the fact that the verifying authorities pretend to establish responsibilities for the professionals, regarding informing on actions that in their opinion they deem as suspicious. This contradicts what has been the traditional historical practice in professional services, especially the legal ones and those of audit.

Another example is the confiscation of goods that are the product of money laundering. In Costa Rica, since the inclusion of the money laundering crime this criminal figure was approved, while in Guatemala it was not until December 2010 that it was regulated, through enactment of the Law of Extinction of Domain; El Salvador still lacks a specific legislation on the subject matter, and the same thing happens in Nicaragua.

In Honduras, to this date, there are 24 applications submitted by the Special Attorney's Office for the Confiscation of Domain in the Attorney General's Office to the corresponding judges during the last quarter of 2011. In November 2011, two sentences were resolved in favor of the Honduran State, the sum of both cases amounting to

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US\$17, 340.00, a figure that is insignificant with respect to the volume of illegal transactions estimated to take place.

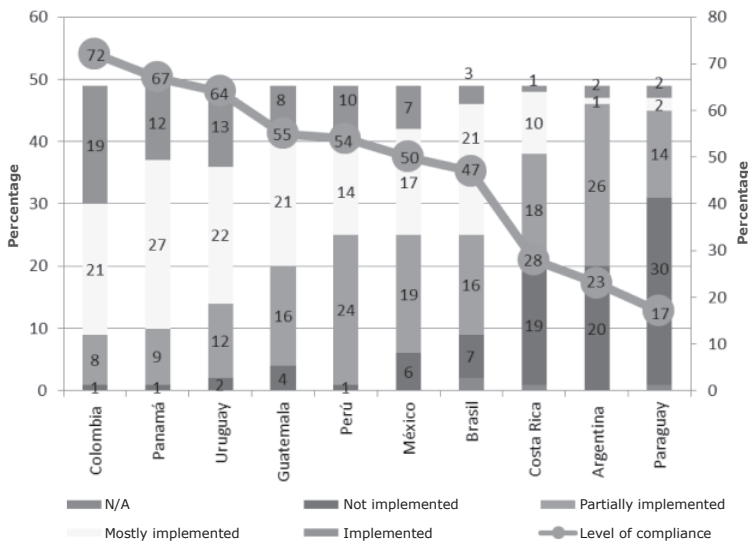
The absence of a specific legislation causes the extinction of domain or confiscation of goods to be ruled by the ordinary normal proceedings of a criminal and civil nature, and substantive ones of a civil nature. Only by virtue of a judgment of guilty conviction is the extinction of domain applied on all types of goods confiscated and involved directly or indirectly in the commission of a criminal act of this nature, therefore it is indispensable to have the enactment of specific regulations on the criminal figure of confiscation for an efficient combat of money laundering.

Another point to be considered is the importance of distinguishing between the crime of legitimization of capitals and tax evasion. The difference is in the origin of the operations, as well as in their end purpose: tax evasion originates from legally acquired income that one tries to hide in order to be exempt from paying taxes, while in the legitimization of capitals the opposite occurs, it departs from income acquired through illegal means which are intended to appear as legal.

These difficulties become worse if we take into account that in some countries of the region, other conducts that are intimately related with the legitimization of capitals, such as illicit enrichment or criminal responsibility of employees and directors of banking, financial and controlling institutions that facilitate or hide information regarding these activities, have not yet been regulated.

The same situation is observed in complying with the 40 recommendations of the Group of Financial Action (GAFI), in which at the Latin American level, Guatemala ranks among the countries with the higher level of compliance in 55%, while Costa Rica has complied only with 28%.

**Graphic No. 1**  
**Compliance with the GAFI recommendations by country**



Source: Superintendencia of Banks of Guatemala. 2011.

## 2.2 Institutional Difficulties

The Central American Isthmus, during the past five years, faced serious difficulties in the process of regional integration due to the pressures caused by political crises within and between countries, which restricted their development. Also, the Central American countries experienced economic, political, social and environmental drawbacks as well as resulting unequal growth. In addition, the social and economic as well as the political gaps have widened between Costa Rica and Panama for one part, and the countries of the center north on the other.

These factors expose Central America to global threats that add up to the vulnerabilities it has hauled historically, such as the historical social deficits of high levels of social exclusion and inequalities, in addition to the Isthmus having become the most violent territory of Latin America and in one of the most insecure zones of the world (The State of the Nation Program in Sustainable Human Development, 2011).

In the local level, a common denominator is the scarce and frequently nonexistent presence of the State in the national geography, especially in the borderline rural areas. This particularity makes it easier to commit unpunished actions by trans-border criminal organizations and neutralizes the efficient application of the juridical instruments.

**Chart No. 1**  
**Budget of the senior comptrolling entities**  
**(thousands of dollars)**

<b>Budget of the senior comptrolling entities</b> <b>(thousands of dollars)</b>				
<b>Country</b>	<b>Entity</b>	<b>Annual budget</b>		
		<b>2007</b>	<b>2008</b>	<b>2009</b>
Costa Rica	General Comptroller of the Republic	22.793,8	22.294,7	24.828,3
El Salvador	Accounts Court of the Republic	25.181,0	27.543,0	31.570,0
Guatemala	General Comptroller of Accounts	26.086,1	35.070,7	35.584,5
Honduras	Higher Court of Accounts	10.241,9	10.341,2	12.825,5
Nicaragua	General Comptroller of the Republic	8.560,5	7.225,6	8.010,2

Figures estimated with the currency Exchange rate to the 31<sup>st</sup> of December of each year.

Source: Fourth Report on the State of the Central American Region in Sustainable Human Development.

Another no less important aspect is the institutional quality that a country or groups of countries have. For example, Rivera, Nunez, and Villavicencio (2003), find for the Chilean case that the efficiency of the judicial body is an important deterrent frame in crime. And this agrees with a full juridical frame to fight the different types of crimes, but also by enforcing the laws, where the governmental sphere is determinant. In the Central American case, the inequalities in the application of the legislation adds up to the internal and regional legislative disparities

Together with the regulatory difficulties there are others of an operational nature, such as the difficulty to have independent and specialized control and investigation bodies, or the lack of resources to adequately use the special methods of investigation, such as the controlled delivery, or the figure of the efficient collaborator.

It must be added that the regulatory frame related to the control of public resources and money laundering has not been accompanied by strengthening the capacity in those institutions responsible for these issues, which have assigned very limited budgets.

In the judicial system of the countries in the region, with the exception of Costa Rica, the training of judges and attorneys is precarious, however the efforts that the authorities make to hold training courses for this type of officials is recognized. The economic constraints inherent to the poorest countries of America and the Caribbean carry additional complications.

The effects of these omissions are furthermore evident with the existing inequalities between the institutions in charge of the investigation and those of prosecution of crimes and the units of financial investigation, both in financial, human and technological resources, inequalities that go beyond the regional sphere.

In Guatemala, the UIF called Special Verification Unit (IVE) has 84 persons while the office of the attorney in charge of prosecuting the crime of money laundering has only 24 persons. In the case of Honduras the UIF has 26 persons, against the 6 persons in charge of the investigation and prosecution of money laundering.

The situation gets worse in Nicaragua due to the inexistence of the UIF. The Nicaraguan private financial institutions have assumed that task by reporting to the financial comptrolling entity those suspicious operations, thus the system does not react effectively, promptly and timely.

Even though the information may be transmitted on time from the UIF, there are delays in processing and in the action due to the scarcity or even absence of the accusing entities for the typologies of money laundering. In this respect, for example, the Guatemalan attorney's office stands out, for not having any forensic auditor or accountant in its service.

The mentioned institutional inequality affects especially the performance in the investigation and prosecution of crime, that reflects upon the difference between the number of accusations and the issuance of sentences; a clear example of this is that during 2009 in Guatemala there were 13 accusations filed and 11 sentences were issued.

To the institutional problem, corruption and impunity must be added, with a dual effect in the source of illegal resources and weakening the rule of law. The combination of both problems neutralizes or makes inoperative the actions that might come from the application of the law, and from the effective functioning of the institutions.

The above evaluation, keeping distance from the Costa Rican case, is an indicator that there is still a lot of work to be done to improve the public institutionalism in all the Central American countries in order to get them closet o the establishment of the best international practices against the bleaching of capitals. In this respect, progress must be made in investigations and punishment of the corruption acts with a non-partisan and strengthened comptroller and judicial system.

It must be stressed that most of the countries (El Salvador, Nicaragua and Guatemala) do not have an integral strategy to combat money laundering, or a coordination structure that would facilitate to articulate the efforts of the different entities that are competent on the subject issue.

### 2.3 Operational Difficulties

Central American trade is characterized by the practice of paying for transactions in cash, especially in urban areas, which facilitates the omission of records for them and which have the risk of involving the utilization of capitals obtained illegally. On another hand, much of this trade of direct sale in the food markets, ambulatory sales or artisan professions, is in accordance with the historical development of our societies.

The systemic work of the institutions involved in money laundering and related crimes must be comprehensive and useful for its prevention, investigation and accusation. The lack of expert forensic auditors or accountants, in the entities in charge of criminal accusations, causes ignorance of what and how to ask for the information that is indispensable to analyze and collect the necessary evidence for the accusation and prosecution of the money laundering crime.

Through the policy of “get to know your client” implemented in the banking systems, personal and commercial information is captured in the case of natural persons, and in the case of juridical persons, the legal information is added; nevertheless, the data obtained are not verified, or updated periodically. This situation might facilitate the passing or movements of the resources coming from illegal operations into the financial and banking systems, or make possible the continued recidivism of persons dedicated to operations of legitimization of assets.

The economic integration of Central America calls for a flow in the financial systems an in the transit of merchandise but also, this agility promotes the movement of illegal flows, which implies reconciling the interests of the Central American integration with the need to reduce and stop these illegal activities, in order to encourage the legitimate national and foreign investment in the activities that contribute to the economic and social development of the region.

### 2.4 Effects of money laundering in the region

Since the past decade, the penetration of illegal capitals in formal and informal economies was denounced, as well as in the institutionalism of the countries, together with the progressive social consent for its presence and utilization, particularly when these flows respond to the basic needs of communities, which the State has not accomplished to meet, are all growing problems in the region. So, the illegal trafficking of resources generates considerable financial yields and large fortunes that enable the transnational criminal organizations to invade, contaminate and corrupt the structures of the public administration, legal commercial and financial activities and society in all of its levels (Saavedra, 1991).

The effects for the Central American region are of a multi-cause nature, they impact on the micro and macro economy, on governance and democracy.

#### a) *Poverty, slow development and corruption*

For the Economy Nobel Prize, Gary S. Becker, criminality contributes to poverty and a slow development when it imposes greater overhead costs to the enterprises and the homes by causing a negative impact on their economy. At the same time, he states that the high rates of criminality –which does not only involve crimes against



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life, but a broader conception crime– are related with the low income of the population and corruption in the compliance with contracts and regulations. These causal relations become vicious circles that are difficult to break up.

The Central American countries show the relation mentioned by Becker; in conformity with the *Index of Perception of Transparency International (TI)* of 2010, Guatemala, Nicaragua and Honduras are among the Latin American countries with the higher indexes of corruption and with the largest number of homicides with the exception of Nicaragua that up to now, has been far from the regional statistics on criminality.

In this respect, Nicaraguan security experts doubt the figures recorded by the authorities, because they do not include murders, parricides and femicides occurred, thereby estimating that these data are below the real figures.

**Chart No. 2**  
**Ranking of the perception index of corruption and number of homicides in central america during 2010**

Country	Nicaragua	Honduras	Guatemala	El Salvador	Costa Rica
Rank on 178 countries	134	127	91	73	41
Number of homicides	766	6236	5960	4004	486
Homicides per 100,000 inhabitants	13	78	41	65	11

Source: 2010 Report of Transparency International and Police Corps of Central America

b) *Ungovernance*

In conformity with information from the financial and banking systems of Central America, the largest source of illegal assets is corruption, an illegal act that attempts against governance and causes decomposition and demolition of its democratic systems; situations that give way to ungovernance and weak democracies, and at the same time, benefit the market conditions and the economy of crime.

Therefore, the impact of money laundering in the region is different from what it means for other countries, a problem of governance and democracy, not one of tax evasion. The power of illegal money is capable of buying judicial decisions, advocate in the course of legislative agendas, acquire protection for their goods and services, divert the direction of public resources for their own benefit and acquire political power with the financing of political parties.

c) *Market Distortion*

Organized crime and drug trafficking hamper the normal development of the daily economic and traditional activities, especially in rural areas and urban areas of the province, because they usually carry out their operations in a frame of violence that generates insecurity and anxiety in the populations. At the same time, it induces the abandonment of activities that are usually less profitable.

When illegal capitals are invested in activities that are allegedly legal, such as livestock, they are economically and rapidly strengthened in a short time, they are perceived, by public opinion, as illicit; without prejudice that when legal investigations are made, it can in fact be confirmed that it has been the product of an injection of illegal funds. In any case, these activities may affect the market prices because they are in the hands of the interest of crime, being able to manipulate them at their convenience. They can even sell their products and services at costs lower than those of the market, because their objective is not to generate profit, but to preserve and hide the illicit origin of the funds.

In these conditions, the legitimate enterprises cannot compete in the market. Even the societies or enterprises utilized to launder money can be used to control the industries and economic activities of some sectors, artificially distorting the prices of goods and services.

### d) *Discouragement in the entrepreneurship of legal productive activities*

Organized crime and drug trafficking take advantage of the situation of poverty and the lack of employment opportunities inherent to the communities of the province, to incorporate them into their activities in exchange for which they earn amounts of money that go beyond what a person could earn if employed in legal tasks.

Before the real or apparent evidence, that activities supported with the investment of resources from a dubious origin yield greater profits or dividends fast, could discourage undertaking legal productive activities that would possibly require a longer time to yield.

### e) *Imprecision in the balance of payments*

The difficulties in the level of added value for economic transactions are in the almost impossibility to measure the impact they generate, both in the flow of production volumes and in the measurements of their value, due to the underground nature of the operations they carry out.

However, through various methodologies, among them entrepreneurial surveys, the contribution of each one of the sectors that integrate the GNP is determined; around some of these sectors there has been the presumption that livestock and construction activities, might be receiving and covering up for investments of resources from dubious origin. Unfortunately, it remains being a presumption due to the difficulty to know with certainty the proportion of these activities in which drug trafficking resources participate.

In the balance of payments<sup>14</sup>, when reconciling it at the closing of the corresponding annual period, there appear statistical discrepancies, that are recorded in the account "Errors and Omissions", to account for those operations that for several reasons are not annotated in the official statistics. This account includes operations such as, differences caused by the disparity between the criterion utilized to value the transactions, as is the case of Guatemalan exports to the United States of America that are written at an FOB

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14 The balance of payments is fed with information collected by the central banks with the assistance of other institutions of the public sector (such as the customs offices), of the banking system and of the entrepreneurial sector, on the operations that the countries undertake with the rest of the world.

value<sup>15</sup>, while in the country of destination they are valued at CIF (which includes insurance and transportation at their full value), which generates an uncontrolled difference; also there are differences regarding the date in which a good is exported and the date when it arrives at its final destination, which results in the values being registered at different times and cause differences in the collection of data. Also this could be the case of family remittances that are delivered personally by a relative traveling to his community and are not registered in the banking transactions. Likewise, it is general knowledge that at the borders of the countries in the region and other neighboring countries, merchandise goes in and out that not only do not pay duties (contraband), but no statistical record remains about its volume and value.

In the case of Guatemala, information was obtained from the Bank of Guatemala (BANGUAT) that the value recorded in this account of "Errors and Omissions" in 2008, a year when the effects of the economic world crisis appeared, was of US \$547.6 million while in 2009, it reached US \$ 259.6 million and in 2010 (last data available) it was US \$ 283.4 million.

Nevertheless, in the measurements made by the central Banks of the region, it is not possible to assign an added value in the national accounts to determine the magnitude and the growth rate of the Gross National Product (GNP), as well as to detect how much of the "Errors and Omissions" account in the balance of payments, correspond to the activities of drug trafficking.

While these difficulties exist, a study made by the World Bank, estimated that *90 per cent of the cocaine that arrives in the United States of America comes through the Central American corridor, also pointing out that the related financial flows are enormous and the added value of the flow of cocaine from the Central American corridor might reach 5% of the regional GNP*" (World Bank, 2011:ii). This percentage might be higher if it included the traffic originated by other illegal operations that use the corridor of the Central American countries. For example, unofficially, it is estimated that for Guatemala, this percentage might be around 7.7% of the national GNP.

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15 FOB acronym of the English term Free on Board, refers to an incoterm, for purchase and sale operations where the transportation of the merchandise is done by ships.

### 3 Towards the implementation of actions to abate the money laundering

The institutional and operational normative state of the situation, in which the Central American Countries are and the effects caused by money laundering, as described earlier, as well as the economic conditions through which each of the countries is going, justifies and motivates the institutions that form laRed to consider these adverse situations as a window of opportunity to continue with the process of regional integration.

Each one of the countries of the region on their own can hardly face the phenomenon of organized crime and drug trafficking. The experiences of other countries who have confronted these phenomena as an armed struggle even when economic, technological and specialized human resources, have only been able to dim the phenomenon but not eradicate it or prevent the bloodshed of innocent persons, or prevent the insecurity in the affected areas. In any case, criminal violence against the citizens cannot necessarily be connected as a consequence of the involvement of the Armed Forces in the fight against drug trafficking (case of Mexico). In fact, in Central America criminal violence is pre-existent to the phenomenon and to the Mexican response of war against drug trafficking. However, at the present time the regional sum of resources is no longer capable to confront this problem with a greater intensity, enhancing the efforts made today by each one of the countries

It is estimated that the right and viable thing for the region would be to confront this phenomenon through the protection of legitimate financial markets and protect them against the assets of illegal origin; reducing the margin of probabilities to resort to the armed confrontation and bloodshed, a strategy that has only accomplished to temporarily dim this scourge but at a high cost in human lives.

The prevention of crime must be made under the inverted logic used for the illegal businesses and trade, that is, it is necessary to generate adverse conditions for the investment of capitals coming from illegal activities (money laundering, drugs, weapons and crime), in order to yield less profits and greater risks, with the intention of pushing out these capitals

In view of the above, laRed identifies minimum conditions in the local and regional levels, for the design of a regional strategy against the bleaching of capitals, and to raise specific actions that could contribute to draft a strategy to abate money laundering in Central America, in various stages: prevention, detection, investigation and judging.

It must be indicated that these suggestions must be part of the construction of a Regional Policy to combat money laundering, a responsibility of the authorities of the Central American countries that in order to obtain successful results, they require a

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systemic approach to address the local and national causes, and the regional multi-causes, with the different sectors of each country.

## **Graphic No. 2** **Strategic areas for the abatement of money laundering**



### **3.1 Prevention and detection**

It is inescapable that the countries of the region need to broaden and strengthen their legislation and the existing regulations, to typify criminal conducts that currently are not regulated, ticking to their needs and realities without prejudice of the joint efforts that must be made regionally, which is possible with the legislative harmonization<sup>16</sup> and an institutional Alliance to conduct coordinated efforts, taking as the basis, the development of the commitments made in accordance with the International Covenants and Treaties on the subject issue, that have been ratified.

Another aspect to be considered in the legislative harmonization is the different legal definitions of organized crime in each of the countries, the adoption of uniform criteria for an adequate characterization and the respective legal sanction, as well as the need to adapt the processes and instances to the specialty and complexity of the issue. Otro aspecto a considerar en la armonización legislativa son las diferentes definiciones legales del crimen organizado en cada uno de los países, la adopción de criterios uniformes para su adecuada tipificación y la respectiva sanción penal, así como la necesidad de adecuar los procesos e instancias a la especialidad y complejidad de la materia.

The intervention of the existing regional entities and spaces is fundamental, for the drafting, promotion, launching, debate, discussion and approval of the absent regulations or those that are in process on the subject issue. The spaces are for example: the Forum of Presidents of the Legislative Powers of Central America and the Caribbean Basin; the

<sup>16</sup> LaRed refers in its study on "Security and Transnational Organized Crime", the concept differences between the legislative type-approval and harmonization; the former requires a process of uniformity that results in one legislation for all of the Isthmus while legislative harmonization recognizes the need for their own national provisions, but proposes to delete contradictions and regulatory obstacles.

Conference of Ministers of Justice of Ibero-America (COMJIB) and the Central American Integration System, among others.

The strengthening of institutions, transparency and Access to the information and combat for corruption through efficient disciplinary systems in the public administration, seem to be prerequisites for the juridical structure related to the fight against organized crime to be a mechanism that will enable to confront, both nationally and as a member of the international community, the crimes of money laundering and the funding of terrorism.

Promoting the banking of operations that are currently made in cash could contribute to detect suspicious operations, thus it being necessary to promote the benefits offered by the Banks and the financial systems, so that the public who do not yet use them, can channel their operations through those institutions and the activities of intermediation of resources should be legislated such as those made by the micro-lending institutions that are not regulated (as in the case of Guatemala), in order for their operations to be also within the group of institutions under the supervision of the Special Verification Unit. However, the implementation of this recommendation must be in a just balance, so that the weight of the requisites does not become suffocating for the micro-entrepreneur.

The policy "get to know your client" must include the periodical verification and updating of the data provided by him. The verification measure can be implemented in a selective and progressive manner, depending on the amount and the costs entailed by such operations, while the data updating must be an obligation for the client, under the penalty of additional charges for omission or inaccuracy. These actions will enable to have a greater efficiency and agility in the identification of front companies, the "pitufeo"<sup>17</sup> and others collaborating with money laundering.

## 3.2 Investigation

In the national juridical frame, the jurisdictional function plays a determinant role, irreplaceable and unassignable. In all the processes whose objective refers to international organized crime and the funding of terrorism, as well as all the derived criminal actions, the judiciary is in the hottest point of the conflict. The "interests" at stake are of various kinds and in most cases are of an extrajudicial origin.

Therefore, it is convenient for the Judicial Organizations, to have specialized personnel so that their authorities can deal with these issues with capability and expertise. Therefore, the pensum of the judicial schools must contain the subjects related to these issues and thus form a solid judicial corps with competence on the subject matter.

It cannot be overlooked that transparency in the justice administration on drug trafficking and money laundering is under the scrutiny of the international community.

The strengthening and creation of regional **technical** spaces (attorneys, judges, auxiliary justice personnel forensic auditors and accountants) for an Exchange of

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17 Definition of the Latin American Federation of Banks (FELABAN): Pitufeo, structuring or ant work that consists in making small deposits in the banking system in order to bypass recording and the respective reporting of cash transactions that go over a certain amount. Thus, one or several individuals ("pitufos") are in charge of making multiple transactions that in an isolated manner do not represent considerable amount but all together make up an important amount.

experiences, lessons learned and good practices in the investigation and prosecution of the money laundering crime, will contribute to the design of guidelines for regional investigation in money laundering in order to implement them and update them periodically; such as the Network of Attorneys against Organized Crime, promoted by the United Nations Office Against Drugs and Crimes (known in English as UNODC).

These spaces that have a dual function, must be strengthened; the mentioned Exchange and the promotion of personal relations based on trust, that facilitate the formal and informal Exchange of information to provide data for the investigation of persons and suspicious activities, and alert the countries on them.

Also, carry out actions to combat tax evasion and fiscal paradises, since in an environment where tax evasion is frequent, it is usually accompanied by the highest levels of organized crime, related to the nature and scale of money laundering (Buscaglia y Dijk 2003).

### 3.3 Judging

In the national juridical frame, the jurisdictional function plays a determinant role, irreplaceable and unassignable. In all processes, the object of which refers to international organized crime and the financing of terrorism, as well as all illegal acts derived from them, the judiciary is in the hottest point of the conflict. The "interests" at stake are of diverse kinds and in most cases are of an extrajudicial origin.

It is convenient for the Judicial Organizations, to have specialized personnel so that the judicial authorities can address this problem with capacity and expertise. Thus, the judicial school must contemplate the continuous and focalized formation for justice operators assigned to the courts of the subject matter, in order to form a solid and competent judicial corps. *Conviene a los Organismos Judiciales, contar con personal especializado para que las autoridades judiciales puedan abordar esta problemática con capacidad y experticia. De ahí que, el pensum de la escuela judicial debe contemplar formación continua y focalizada para los operadores de justicia asignados a los tribunales de la materia, con el objeto de ir formando un cuerpo judicial sólido y competente.*

In view of the financial conditions of the entities member of the justice administration systems, inter-institutional agreements should be subscribed on the joint formation of the human resources in charge of the subject matter in each one of the institutions, in order to increase the potential of their economic capacity and enable to alleviate the shortages in their existing capacity and abilities.

The actions described may be implemented without prejudice or omission to strengthen the institutions in charge of the investigation and prosecution of the money laundering crimes or their creation with economic resources, multidisciplinary teams (forensic auditors, public accountants, informatics experts, lawyers specialized in banking and finance) who are specialized on this issue and updated in technology

As some additional considerations in terms of other actions to abate money laundering, it is necessary to recognize that it has diminished through the banking system, in view of the recent implementation of more rigorous controls through the institutions created for that purpose, however, it is necessary to emphasize that the diversity of the criminal activities made to launder money are characterized by versatility and flexibility in their execution, which enables them to elude the national regulations, in addition to their

### 3. Towards the implementation of actions to abate the money laundering

dexterity to implement changes in their operations and typology. One example of this is the war tax collected by the “maras” in Guatemala, which is deposited in Honduras and goes back to Guatemala through the banking system. The interconnection is their way of operating, both internally and in relation to other organizations. The strategic alliances among illegal networks are created through a strict entrepreneurial logic (UNDP, 2009). In view of the above, we must recall the recommendation to consider strategies that do not only combat the phenomena, but discourage the entrepreneurial logic of the crimes that precede the money laundering, and consider mechanisms to permanently revise operational strategies in the fight against organized crime in the face of the versatility and flexibility of its execution.

Furthermore, it is indispensable to consider actions in the frame of the Electoral System and of Political Parties, since the incidence of the members of these criminal groups is sensitive in local and national partisan politics. In spite of existing a regional trend to combat irregularities in the financing of political parties by strengthening the function to control the electoral entities by means of legal reforms that are under discussion in the legislature, in fact, to date only Costa Rica enacted in 2009 profound reforms on this subject. So, it is essential to prioritize actions to reform the regulatory frame of the remaining Central American countries to discourage and prosecute the infiltration of illegal funds in the political parties not only for the purpose of money laundering, but for the risks entailed by the payment of “political favors” that stimulates corruption.

Corruption as a preceding crime to money laundering, also deserves attention with measures such as those indicated above in the frame of strategies for institutional strengthening, but also to strengthen public policies on probity and transparency, conceived from an integral approach that contemplates actions to make efficient the exercise of the right to access information and ensure the citizen participation around the drafting and execution of the public budgets, also addressing issues of tax transparency and indebtedness.





# 4 Some conclusions and recommendations

1. Money laundering and its preceding crimes, are not only a technical problem of the specialized entities in banking supervision: they are associated directly to transnational criminal schemes as well as problems of corruption and impunity in the Central American States, and therefore affect democratic coexistence in a State of Law, as well as the governance of our countries

Money laundering and associated crimes, both by those who need to legitimize the profits of their illegal operations, as well as those public and private structures that accept them, have a corrupting power that demolishes our societies and our institutions. It being an activity that *per se*, is not deemed to be directly associated with blood crimes and violence, it must not be ignored that it is a key link in the criminal chain, both for the preceding crimes that require laundering, as for the multiplication of later activities that are against the law. Corruptors and corrupted become agents of infection and denaturation of our political systems, and of our citizen coexistence. The combat to money laundering, therefore, is one of the key pieces –although not the only one– in the confrontation with transnational criminal activities, as well as in the efforts to strengthen transparency, the rule of law and democratic participation.

2. Money laundering and its preceding crimes are a global problem, therefore they require a regional integrated and integral vision

Money laundering and its more serious preceding crimes such as drug trafficking, organized crime, corruption and terrorism are no longer local phenomena that compromise citizen's peace and security of a certain country, and have become a global problem that puts at risk the stability of nations and of entire regions. In view of this, the region must work with an integrated and internal vision to confront not only the combat but also articulate in an integrated manner the prevention of these signs of the transnational organized crime. To the national efforts, to which each State and society are compelled, a regional effort must be made, increasingly more coordinated.

### 3. Central America needs to strengthen its intra-regional cooperation and that with the International Community

Central America has ratified the main international instruments adopted by the International Community in the frame of the United Nations (UN), the Organization of American States (OAS), and in the regional area (CA), on the issue of drug trafficking, organized crime, terrorism, funding for terrorism, corruption, money laundering and mutual juridical assistance on criminal issues. Its countries are members of the GAFIC. Nevertheless it is necessary to deepen into the cooperation and collaboration of the entities in the fight against these crimes, and in particular, it is necessary to coordinate the actions related to the prevention, prosecution and punishment for money laundering throughout its territory, as well as in the enterprises and financial and non-financial entities. For this type of tasks, the geographical border of Central America, of Darien –with Colombia– to Peten –with Mexico–, must be transnationally reconfigured as has occurred with trade, finances or digital information.

### 4. Central America needs to harmonize the information that will enable it to follow up on suspicious transactions

Central America needs to coordinate and harmonize the adequate implementation of efficient measures of diligence on the clients, as well as maintaining a record of requisite of the regulated financial entities, and of other non-regulated entities, but above all, coordinate the implementation of an adequate program of supervision and prevention of money laundering throughout the regional financial sector, ensuring that its Units of Financial Intelligence can work in a coordinated fashion to follow-up on operations suspicious of money laundering in the region.

### 5. Likewise, Central America needs to harmonize the current legislation to increase its capacity both, to protect legitimate trans-border economic activities, and to be more efficient in the prevention and prosecution of transnational criminal activities

One of the major verifications of this study is the enormous disparity in legislations of each one of the countries, from the characterization of what is considered to be a crime in each of the Central American countries, its level of seriousness and the disparity of the penalties, as well as the disparity in the attributions and competence of the various institutions, and their capacity and extent of intervention to prevent, process and punish these illegal activities. Central America needs to coordinate and harmonize its corresponding legislation as well as the inter-institutional coordination both *within* each country and *regionally*.

### 6. The risks of money laundering in the non-regulated financial sector and in other economic sectors of the region

Central America must realize that it is not enough that the Banks are safe from money laundering, it is necessary to prevent the risks of money laundering activities in the rest of the national economy, and to the extent that important individuals, enterprises and sectors in high risk (both financial and non financial), continue to work

without adopting any program for prevention of money laundering or blanching of assets, they will generate greater risks of infection for the regional economy and its financial system. Of special importance are the financial or related companies that do not have a supervised prevention program such as: the savings and loan cooperatives, micro financing associations or societies, money remittances companies, currency exchange places, pawn shops, casinos and gaming salons. Advancing in the issue of prevention at these enterprises will make it easier in the future, to establish some control or information mechanism on professions that are especially sensitive to the activity of money laundering, such as lawyers, notaries, real estate agents, jewelers or precious stones merchants, accountants, auditors and trust entities.

#### 7. The guardianship of fundamental rights: presumption of innocence, due process, privacy, honor and habeas data

Central America must comply with international standards on the issue of prevention of money laundering and against the financing of terrorism (PLD/CFT), but its procedures for drafting and analysis of the Reports of Suspicious Operations (ROS) must avoid putting at risk the right to privacy, honor and reputation of the persons subject of a ROS, for whom at all times, the principle of presumption of innocence, the right to an effective judicial guardianship, the right to a due process, the right to privacy, honor or reputation and the right of habeas data must be respected at all times.

#### 8. Adequate coordination to give way to a financial intelligence unit in the region

The region must realize that coordination of the functioning of the financial intelligence units that respond to the GAFI and Egmont Group international standards is just a first institutional element in the fight against money laundering to give way to a harmonized action. In accordance with the international covenants subscribed (Palermo and Merida Conventions) such units must become "a dependency of financial intelligence that may serve as a national center of collection, analysis and dissemination of information on possible money bleaching activities." But the actions of the region cannot be integral if there is not a supra-state entity with the capacity to adequately harmonize the national anti-money laundering programs, that can also receive, analyze and conclude the analyses of the financial information after the alerts and suspicions submitted by the financial entities and the companies or obligated individuals in each State as a supra-national instance.

#### 9. Be Prepared for the implementation of a harmonized regional program PLD/CFT

Central America should begin to create the conditions in order to achieve, in a few years, the implementation of a regional program for the prevention and combat of LD/FT, that involves secure and expeditious procedures in managing the ROS, improve the follow-up results and a better control of the financial intelligence investigations, to ensure the confidentiality of the information given by the obligated individuals, so that such information may be useful for judicial actions, but at the same time be duly sheltered and never misused or manipulated for alien interests.

