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Central American Judges and Prosecutors Close Ranks Against Organized Crime
by George Rodríguez
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Central American nations need one another in tackling a major security threat posed by organized crime to the region: money laundering. As the multi-faceted crime it is, laundering presents a particularly complex challenge to the region’s justice authorities and requires law enforcers who are trained in investigation techniques and guided by unwavering principles (NotiCen, July 16, 2015, Aug. 6, 2015, and Dec. 3, 2015).

Regional leader
Costa Rica is a leading regional partner in this field, with two of its high officials at the Ministerio Público (Public Prosecutor’s Office, MP) holding top positions in two key anti-crime organizations, the Asociación Ibero Americana de Ministerios Públicos (Ibero-American Association of Public Prosecutor Offices, AIAMP) and the Consejo Centroamericano y del Caribe de Ministerios Públicos (Council of Central American and Caribbean Public Prosecutor Offices).

Costa Rica’s attorney general and head of the MP, Jorge Chavarría, is president of the council and secretary of AIAMP, while Laura Monge, in charge of the MP’s Oficina de Asesoría Técnica y Relaciones Internacionales (Technical Assistance and International Relations Bureau, OATRI) is the council’s secretary. The country was chosen for a recent gathering of Central American judges and prosecutors hosted by the Organization of American States (OAS) and the Canadian government to debate issues related to the presence of organized crime in the region and to find ways to improve cooperation in a fight that shows criminals taking a lead over policemen.

The meeting, called “Taller Regional Anti-Lavado de Activos para Jueces y Fiscales” (Anti-Money Laundering Workshop for Judges and Attorneys), took place on April 26-28, in San José, the country’s capital.

Asset forfeiture
Attention was focused not only on laundering but on asset forfeiture, a tool that authorities are prioritizing in efforts to neutralize criminal organizations, such as drug-trafficking networks, since it affects their financial power.

Participants in the three-day event agreed on the need to continue to cooperate and to promote training of bank personnel in detecting suspicious financial activities, among other points.

Regarding money laundering, Monge told LADB that fighting this crime is particularly difficult because it is connected to other illicit activities.

“Since the money-laundering crime is linked to any preceding crime described by the Palermo Convention as a serious crime—up to four years, or more, in prison—the range of possible preceding crimes is very wide,” she said. By “preceding crime,” Monge meant the illegal activity that first generates the assets to be laundered. The Palermo Convention is the UN Convention
against Transnational Organized Crime (UNTOC), opened for signature during an international
conference held in 2000 in the Italian city of Palermo, the capital of the Mediterranean island of
Sicily and home to the Sicilian Mafia, one Italy’s main structures for organized crime.

The convention is the main instrument against transnational organized crime, and is supplemented
by three protocols dealing with the prevention, suppression, and punishment of trafficking in
persons, especially women and children; against smuggling of migrants by land, sea, and air;
and against the illicit manufacturing and trafficking in firearms, their parts and components, and
ammunition.

A crime that covers many crimes

Monge noted that in the fight against money laundering, training is most necessary because it’s a
crime that covers many crimes.

“They’re not local crimes, but crimes for which often—most of the time, actually—we find evidence
in another country … Usually, the money isn’t deposited in the same country where the activity is
carried out,” Monge said. “So, we all need one another.”

The training of judges is crucial, Monge said. “We won’t do anything if we don’t have judges
capable of understanding what this is all about,” she said. “In organized crimes, evidence is not
easy to come by … there’s major complexity, there’s a lot of circumstantial evidence, there’s a lot
of technical evidence … and there’s a need for training, awareness, knowledge by all the actors in
order to be successful in investigating, in indicting, and … later, in sentencing.”

Monge said the issue of money laundering is challenging. “It’s one of the most complicated crimes
to investigate—and to prove—in order to reach sentencing,” she said. “It comes with a preceding
crime which is often difficult to prove.”

The issue of money laundering goes hand in hand with proposals for asset forfeiture, Monge
said, something that other countries that sent representatives to the workshop have already
implemented.

Such is the case of El Salvador, Guatemala, and Honduras, which make up the Northern Triangle
of Central America, one of the most violent regions in the world, mostly as a result of the presence
of organized crime structures, mainly drug trafficking networks and local gangs known as maras

The single-chamber parliaments in the three countries have passed forfeiture laws, Honduras and
Guatemala in 2010, and El Salvador in 2013.

The law passed by the Salvadoran legislature establishes its reach over “any of the assets … coming
from or destined to activities related or connected to” a variety of criminal operations or groups,
including “money and asset laundering, organized crime, maras or gangs, groups, associations and
organizations of a criminal nature, and acts of terrorism,” among others.

The 106-article Ley Especial de Extinción de Dominio y de la Administración de los Bienes de
Origen o Destinación Ilícita (Asset Forfeiture and Administration of Assets with an Illicit Origin
or Destination Law) states that forfeiture applies to “assets that are a direct or an indirect product,
instrument or material object of illicit activities carried out on national territory or abroad.”
With a closely similar focus, Guatemala’s Ley de Extinción de Dominio (Asset Forfeiture Law) states that the measure applies to “an asset or assets ... coming directly or indirectly from an illegal or criminal activity carried out on national territory or abroad.”

Under the Guatemalan law, anyone “who in an effective manner supplies or helps obtain evidence for implementing asset forfeiture” will be rewarded with up to 5% of the forfeited assets.

Meanwhile, the Honduran Ley Sobre Privación Definitiva del Dominio de Bienes de Origen Ilícito (Law on Definitive Forfeiture of Assets of an Illicit Origin) states that its goal is to “fight against organized crime according to the UN Convention against Organized Crime and other International Instruments ratified by Honduras.”

Also, “to attain the legitimate protection of public interest, in society’s benefit, common good ... through the divestiture of assets, products, instruments or profits originated, obtained, or derived from contravention of the law.”

In Monge’s opinion, “a workshop such as this is the way we really try to be efficient and effective,” as a means to “endeavor to dismantle organizations. Regarding money laundering, she said, “It’s about sharing experiences, listening to suggestions, feeling the need to reform laws, and also how to reform them,” as well as pinpointing where law enforcement is strong, and where it needs more support.

Monge said that an alarming by-product of organized crime in general, and money laundering in particular, is the corruption seen throughout Central America (NotiCen, Nov. 30, 2006, Feb. 18, 2016, and April 28, 2016).

“The problem is very serious, and that’s why you’ll see that, every day, the struggle by Public Prosecutor’s Offices to investigate crimes of corruption—regardless of who must be investigated ... is regarded as a challenge to authorities,” she said. “We know that if corruption levels reach high spheres [of power], preventing organized crime infiltration is even more difficult.”

Monge mentioned Costa Rica’s creation of a Fiscalía Adjunta de Probidad, Transparencia y Anticorrupción (Public Prosecutor’s Office for Probity, Transparency, and Against Corruption), as an internal effort to strengthen the country’s MP through what she described as “a campaign of values.”

“Competition between a public official’s salary and what corruption may offer you is impossible, unless it becomes an issue of values, of principles,” she said. “We’ve begun in our house ... not only politicians are accused, when there’s need to accuse them as a result of an investigation, but also there have been criminal procedures against MP officials—attorneys, legal aides, judges ... and this is part of the ongoing commitment to strengthen the Ministerio Público.”

Having the right values, Monge said, is the only thing that can strengthen an institution. “Nothing else can be controlled, because organized crime has more money, has more means ... It’s an uneven fight.”

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