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09 October 2009

OP-ED ON ASSET FORFEITURE IN GUINEA-BISSAU

Asset forfeiture is one of the most important tools modern law enforcement has against criminal organizations. By depriving criminals of their illicit profits and taking the property that makes their crime possible, law enforcement can both remove the incentive for the crime and diminish the ability of criminals to continue or expand their illegal operations.

Over the years, the United States has found that incarcerating narcotics traffickers does not sufficiently dismantle their organizations. To ensure that the criminal organization does not return under new leadership, we also must forfeit both the proceeds of their crimes and the facilitating property that makes their crimes possible.

Countries the world over have adopted forfeiture laws. This has become especially prevalent since the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the "Vienna Convention"). Article Five of the Vienna Convention requires each party to adopt laws to enable the forfeiture of drug proceeds. Later Conventions such as 2000 United Nations Convention against Transnational Organized Crime and the Financial Action Task Force further strengthened asset forfeiture laws and cooperation amongst signatories. Guinea-Bissau is a member of the Groupe Intergouvernemental d'Action contre le Blanchiment d'Argent en Afrique de l'Ouest ("GIABA")

The United States encourages all countries to adopt legislation consistent with the requirements of the Vienna Convention, the UN Convention against Corruption, and the UNTOC. Specifically, the United States encourages countries to adopt both conviction based and non-conviction based forfeiture. Non-conviction based forfeiture allows confiscation of the proceeds and instrumentalities of crime even if the criminal suspect has fled, died, or has immunity.

Confiscation laws should not be limited to drug trafficking. The proceeds of all criminal activity should be subject to forfeiture. These proceeds can, in turn, be used to provide much-needed resources to the police and other crime fighting agencies in Guinea-Bissau.

There is, however, the potential for misuse of seized and forfeited assets if an adequate system of protection is not put into effect. The United States recommends that any forfeiture or confiscation regime include adequate protections for innocent owners and victims of the crimes underlying forfeiture. Assets that are being held pending the completion of forfeiture proceedings should be controlled by one agency, which must be responsible for preserving the value of the asset and ensuring that it is not misused or disposed of prior to the completion of forfeiture proceedings.

The United States Department of Justice has extensive experience with aiding other countries in the formation of their forfeiture laws and is willing to discuss with Guinea Bissau providing technical support on this very important issue. The United States also provides cooperation to seize, confiscate, and, where appropriate, return proceeds of corruption stashed abroad. By adopting strong forfeiture laws, Guinea Bissau will stand with other countries in the region and around the world which have decided that narco-trafficking organizations cannot be allowed to flourish.

- U.S. Ambassador to Senegal and Guinea Bissau Marcia S. Bernicat

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