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**Review of the implementation of the United
Nations Convention against Corruption**

**Implementation of chapter V (Asset recovery) of the United
Nations Convention against Corruption**

Thematic report prepared by the Secretariat

Summary

The present report compiles the most commonly found and most relevant information on successes, good practices, challenges and observations identified during the second cycle of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption, focusing on the implementation of chapter V (Asset recovery) of the Convention.

* CAC/COSP/2019/1.



I. Scope and structure

1. The present thematic report compiles the most commonly found and most relevant information on successes, good practices, challenges and observations contained in the executive summaries and country review reports, in accordance with paragraphs 35 and 44 of the terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption.

2. The report contains information on the implementation of chapter V (Asset recovery) of the Convention by States parties under review in the second cycle of the Review Mechanism. It is based on information included in 27 executive summaries and country review reports that had been completed, or were close to completion, as at 20 August 2019. The report focuses on the existing trends in and examples of implementation, and includes cumulative tables and figures showing the most common challenges and good practices. Owing to the limited amount of data added to the already existing sample, the information in the present thematic report is consistent with that provided in the previous report, presented to the Implementation Review Group at its tenth session (CAC/COSP/IRG/2019/4). However, regional differences have been reflected as appropriate.¹ As more data become available from the completed country reviews, more comprehensive trends and nuances will be identified in future iterations of the thematic reports and regional addenda.

3. Given the close links between the various articles of the four substantive chapters of the Convention, the present report builds upon the previous thematic reports on the implementation of chapter V, as well as relevant parts of the reports on chapters III and IV of the Convention, which were under review in the first cycle of the Review Mechanism. The structure of the present report follows the structure of the executive summaries and thus clusters certain articles and topics that are closely related.

II. General observations on challenges and good practices in the implementation of chapter V of the United Nations Convention against Corruption

4. Figures I and II and tables 1 and 2 provide an overview of the most prevalent challenges and good practices in the implementation of chapter V, organized by article of the Convention.

¹ The present report builds on 12 completed reviews for the Group of African States, 6 for the Group of Asia-Pacific States, 6 for the Group of Western European and other States, 2 for the Group of Latin American and Caribbean States and 1 for the Group of Eastern European States. The number of recommendations and good practices identified for some regional groups may thus not be as representative as it is for other Groups.

Figure I
Challenges identified in the implementation of chapter V of the Convention

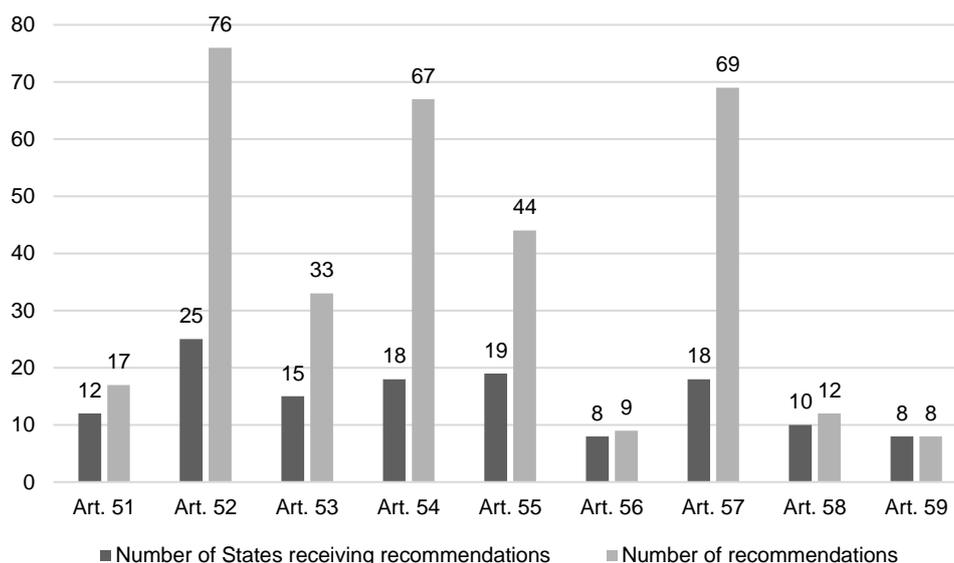


Table 1
Most prevalent challenges in the implementation of chapter V of the Convention

	<i>Number of States receiving recommendations</i>	<i>Number of recommendations issued</i>	<i>Most prevalent challenges in implementation (in order of article of the Convention)</i>
Article 51	12	17	Complicated asset recovery procedures; inadequate legislation and/or procedures for mutual legal assistance; lack of capacity of competent authorities
Article 52	25	76	Identification of foreign and domestic politically exposed persons and beneficial owners; reporting of foreign interests; effectiveness of the financial disclosure system; prohibition of shell banks; lack of resources of competent authorities
Article 53	15	33	Lack of mechanisms for foreign States to establish title or ownership of property, be awarded compensation or damages or be recognized as legitimate owner of property in foreign confiscation proceedings
Article 54	18	67	No or limited non-conviction-based confiscation; no direct enforcement of foreign confiscation orders or exclusion of certain Convention offences; no or insufficient mechanisms for preservation of property for confiscation; no measures to freeze or seize in response to order or request by a foreign State
Article 55	19	44	Lack of mechanisms to give effect to foreign order or obtain domestic order for search, seizure or confiscation; no obligation to give, before lifting any provisional measure, the requesting State party an opportunity to present its reasons in favour of continuing the measure; Convention could not be used as treaty basis
Article 56	8	9	Lack of incorporation of regional standards into domestic law; insufficient measures and coverage for the spontaneous transmission of information
Article 57	18	69	Insufficient legislative or other measures for the return of proceeds to requesting States; no regulation of costs or means of deducting expenses in the course of mutual legal assistance proceedings

	<i>Number of States receiving recommendations</i>	<i>Number of recommendations issued</i>	<i>Most prevalent challenges in implementation (in order of article of the Convention)</i>
Article 58	10	12	Lack of emergency freezing powers for financial intelligence units; insufficient financial intelligence unit capacity, including in the area of international cooperation
Article 59	8	8	Insufficient ability to use the Convention as a treaty basis; absence or shortage of bilateral or multilateral agreements or arrangements

Figure II

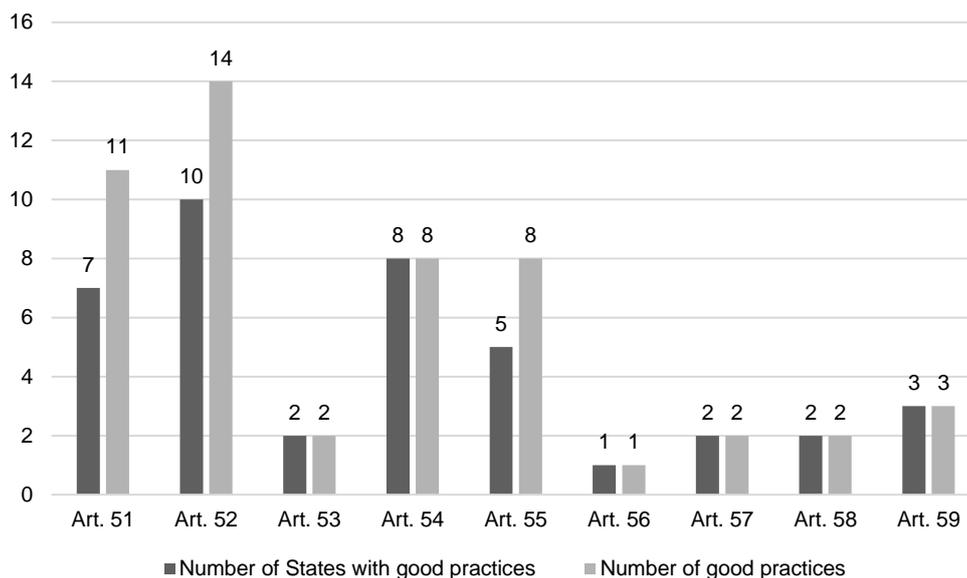
Good practices identified in the implementation of chapter V of the Convention

Table 2

Most prevalent good practices in the implementation of chapter V of the Convention

	<i>Number of States with good practices</i>	<i>Number of good practices</i>	<i>Most prevalent good practices (in order of article of the Convention)</i>
Article 51	7	11	Active engagement in the development and promotion of international cooperation; institutional arrangements for asset recovery
Article 52	10	14	Definition of politically exposed persons includes domestic politically exposed persons; establishment of registry of bank accounts or of beneficial owners; sharing of financial intelligence with other States
Article 53	2	2	Foreign States treated like any other legal person
Article 54	8	8	Capacity to provide international cooperation in asset recovery measures in both conviction-based and non-conviction-based proceedings; low evidentiary and formal requirements for the enforcement of a foreign or issuance of a domestic freezing, seizure or confiscation order; establishment of specialized asset recovery units
Article 55	5	8	Close cooperation and consultation between requesting and requested State; use of the Convention as legal basis for mutual legal assistance; placement of specialist advisers in priority countries to assist with mutual legal assistance
Article 56	1	1	Spontaneous sharing of information with a wide range of counterparts

	<i>Number of States with good practices</i>	<i>Number of good practices</i>	<i>Most prevalent good practices (in order of article of the Convention)</i>
Article 57	2	2	Return of property to bona fide third parties; establishment of confiscated assets fund for victim compensation
Article 58	2	2	Close cooperation with other financial intelligence units
Article 59	3	3	Use of various networks and agreements to facilitate international cooperation; use of the Convention as a legal basis

III. Implementation of chapter V of the Convention

A. General provision; special cooperation; bilateral and multilateral agreements and arrangements (articles 51, 56 and 59)

5. All States parties reported on their frameworks or arrangements for asset recovery (art. 51). At the regulatory level, States tended to use two divergent approaches in establishing their legislative framework for the recovery of assets. Several States had enacted a dedicated legislative instrument, whereas others could apply various procedures prescribed in different sources of domestic legislation, such as the criminal procedure code or laws on mutual legal assistance or money-laundering, for the confiscation and return of assets. However, issues arose in respect of mutual legal assistance, as, in relation to asset recovery, some States could provide such assistance only to prescribed foreign States.

6. In addition to legislation, States relied on guidance material made available by requesting States when seeking assistance. Four States had already formulated or were about to develop an asset recovery guide, while four States had issued or were in the process of finalizing guidelines for the provision of mutual legal assistance. In addition, one State reported that it routinely drew up case-specific agreements in respect of asset return, since there was no explicit provision in its domestic legislation. A few States reported that their asset recovery regime was still in the early stages of development.

7. At the institutional level, States parties differed by using a centralized or decentralized approach. In that regard, a small number of States had designated or were in the process of establishing a separate entity for the recovery of assets, while others engaged multiple agencies as the institutional arrangement for asset recovery. In the latter circumstance, inter-agency coordination posed practical challenges. One country had created a specialized asset recovery task force to provide a coordinated and integrated approach to asset confiscation, and that was identified as a good practice.

8. Similar trends were identified in the institutional arrangements for asset management. Several States had established a specialized entity for this purpose, whereas a few States involved various institutions, such as prosecution, tax and finance authorities and police, to trace, preserve and manage assets prior to confiscation. One State reported that asset management guidelines were used to assist each law enforcement agency in handling the management and preservation of seized assets.

9. At the operational level, States varied in their experiences of dealing with mutual legal assistance in relation to asset recovery. On the one hand, a number of States had accumulated experience through a considerable number of successful cases, in particular through mutual legal assistance, and four States indicated that they had never formally refused an asset recovery-related request. On the other hand, some States indicated that they had never received a request in relation to asset recovery, although possible legal avenues were available in their jurisdictions.

10. In terms of regional trends, States of the Group of African States and of the Group of Asia-Pacific States received recommendations, including on enhancing measures in relation to international cooperation and asset recovery and strengthening institutional arrangements and capacities of practitioners in this area.

11. Consistent with the information presented in the previous report, all except one of the States reviewed so far allowed for the spontaneous transmission of information that might lead to a request under chapter V of the Convention (art. 56). A number of States stipulated the respective legal basis in their anti-money-laundering, mutual legal assistance or anti-corruption legislation, while several others provided for such transmission in bilateral mutual legal assistance treaties or could forward information spontaneously on the basis of the Convention. One State also reported that guidance for proactive information-sharing was provided in its mutual legal assistance guidelines. In other cases, States without specific legislation on the spontaneous transmission of information nonetheless had an existing practice of providing assistance without prior request. In addition to domestic legislation or practice, spontaneous information transmission through practitioners' networks or platforms was another trend identified. Most States empowered their financial intelligence units to exchange information without prior request by virtue of their membership in the Egmont Group of Financial Intelligence Units, used as a platform for the secure exchange of expertise and financial intelligence to combat money-laundering and financing of terrorism. Furthermore, almost one third of States could use law enforcement channels or asset recovery networks to proactively share information. Channels provided by the International Criminal Police Organization (INTERPOL), the Camden Asset Recovery Inter-Agency Network and regional inter-agency networks for asset recovery had played a significant role in facilitating such transmissions, and were relied on for asset recovery in general. Nevertheless, one State indicated that spontaneous information-sharing was not possible owing to the lack of legal basis.

12. Eight States received recommendations on spontaneous sharing of information, in particular on strengthening measures for the proactive disclosure of information to a wider range of foreign States.

13. As identified in the previous thematic report, all States parties reported that they had ratified multilateral or bilateral agreements or had made relevant arrangements to enhance international cooperation undertaken pursuant to chapter V (art. 59). In this context, bilateral or multilateral treaties on mutual legal assistance were referred to. Additionally, one State highlighted the data-sharing agreements or memorandums of understanding used by its law enforcement agencies in international cooperation, while another cited a number of memorandums of understanding concluded between its financial intelligence unit and foreign counterparts. Moreover, many States parties were able to use the Convention as a legal basis for international cooperation, in particular in relation to non-treaty partners, and allow the direct application of its self-executing provisions. Roughly a third of States from the Group of African States and from the Group of Western European and other States, as well as half of the members of the Group of Asia-Pacific States, had received recommendations in relation to the implementation of this provision.

B. Prevention and detection of transfers of proceeds of crime; financial intelligence unit (articles 52 and 58)

14. Consistent with information provided in the previous thematic report, all reporting States parties had taken a variety of measures for the prevention and detection of transfers of proceeds of crime (art. 52). Risk-based approaches were reported to be widely used by States in their anti-money-laundering regimes. Almost all States parties had, to varying degrees, requirements in their anti-money-laundering laws or other financial legislation to conduct customer due diligence (art. 52, para. 1). One State also reported that administrative sanctions would be applied for violations of customer due-diligence requirements, and criminal sanctions in appropriate cases.

Furthermore, all but two States had measures in place for the determination of the identity of beneficial owners, including in relation to funds deposited into high-value accounts, where enhanced due diligence was always applied. Some States that had not defined “high-value accounts” could apply enhanced customer due diligence when a higher money-laundering risk was identified. In the completed reviews, the establishment of a beneficial ownership register in many European Union countries was considered a good practice.

15. Almost all States had measures for conducting enhanced scrutiny of accounts sought or maintained by or on behalf of politically exposed persons and their family members and close associates. However, States parties differed in defining the scope of politically exposed persons. Some countries had distinguished domestic politically exposed persons from foreign ones, while others applied the same standards for domestic and foreign politically exposed persons. In the former case, some States provided a definition of domestic politically exposed persons but faced challenges in the determination of foreign ones, whereas other States simply excluded domestic politically exposed persons from their definition. This may be attributed to the differing opinions of States on the risks posed by domestic politically exposed persons vis-à-vis foreign ones. For example, one State considered that foreign politically exposed persons always posed higher risks, while risks relating to domestic politically exposed persons could be decided only on a case-by-case basis. It was identified as a good practice in three States of the Group of African States and the one State of the Group of Eastern European States that the definition of politically exposed persons included domestic ones.

16. The majority of States had issued advisories or guidelines for reporting entities, including financial institutions, to apply enhanced scrutiny (art. 52, para. 2). These guidelines were generally issued by the financial supervisory authorities, financial intelligence units or law enforcement bodies. However, almost a quarter of States received recommendations regarding the notification of financial institutions of the identity of particular natural or legal persons to whose accounts such institutions would be expected to apply enhanced scrutiny.

17. All States had legislation that provided for the maintenance of adequate records of accounts and transactions by financial institutions (art. 52, para. 3). The maintenance period varied among States, ranging from 5 to 15 years. No clear regional difference was identified regarding the implementation of these two provisions.

18. All but two States had measures in place intended to prevent the establishment of banks that had no physical presence and that were not affiliated with a regulated financial group (art. 52, para. 4). A country that did not explicitly prohibit the establishment of shell banks had therefore received a recommendation on that matter. In almost all countries, financial institutions were obliged to refuse to enter into relationships with shell banks. About two thirds of States also reported their measures on prohibiting the continuation of a correspondent banking relationship with such institutions, or other foreign financial institutions that permitted their accounts to be used by banks that had no physical presence and that were not affiliated with a regulated financial group. Recommendations were issued evenly across States in different regional groups.

19. The majority of countries reported having financial disclosure systems for certain levels of public officials (art. 52, para. 5). However, the categories of officials subject to such obligations and the scope of assets under declaration varied among States. For example, some States extended the disclosure obligation to all public officials, while several others confined it to public leaders, ministers or other senior officials. A number of States also included close family members of selected public officials in the declaration list. The term “close family members”, always applied to spouses and children (under 18 years), while partners were also included by a few States. Moreover, several States provided a wide range of assets subject to declaration, including financial interests, directorships, shareholdings, investment property, public appointments, income and liabilities. Asset disclosure requirements

in some countries applied equally to foreign properties and interests, whereas in other countries they did not apply to foreign assets.

20. There was some variation among States regarding the effectiveness of the financial disclosure systems, in particular with a view to the verification of asset declarations. Challenges reported in this regard included the absence of a comprehensive verification regime, lack of electronic filing systems, inadequate resources and capacity constraints. In practice, only a few States reported that electronic tools could be used or developed for submission and verification. In addition, fewer than half of the States provided sanctions for non-compliance with financial declaration requirements, including in the form of false declarations.

21. Another variation in States' implementation of this provision was the public accessibility of asset declarations, since the declarations were not always made available to the public for scrutiny. A small number of States provided asset declarations to the public in summary form or through a public register, while some others granted only law enforcement authorities access to the declarations, or made them accessible only upon request or subject to approval. For instance, two States parties reported that declarations were not available online but could be consulted in the Constitutional Court or upon request, through access-to-information applications. Another State provided for the public to inspect the information upon lodging a good-faith complaint with the Ethics Commissioner and the payment of a fee. Only a few States reported that they were able to share such information with the competent authorities in other States parties when it was needed for the investigation of corruption offences, the establishment of claims over the proceeds thereof and their recovery. In this connection, one State reported that the public official concerned should be informed of whom the information would be shared with and be given an opportunity to object within 14 days, while another State indicated that information contained in the declarations could be shared with foreign authorities only in criminal proceedings.

22. One of the countries receiving recommendations on this provision reported that financial disclosure would be imposed on certain public officials only upon the request of the State's audit institution, thus limiting the State's ability to detect corruption through financial disclosure. Another country was in the process of adopting a bill that envisaged financial declaration obligations. However, such obligations would not cover spouses and did not specify a compliance mechanism or penalties. One country that did not have a financial declaration system for its public officials reported that such a system for transparency of personal financial situations was considered interference with the right to privacy. However, its public officials were subject to tax declarations regarding their income and assets worldwide.

23. With respect to regional differences, challenges were identified in almost half of the States of the African and Asia-Pacific Groups and in one third of the States of the Western European and others Group. Only one good practice was identified in a State of the African Group.

24. A limited number of States had measures in place to require appropriate public officials having an interest in, or signature or other authority over, a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts (art. 52, para. 6). As an alternative to fulfilling this provision, one State required its public officials to declare their worldwide income and assets in their tax declaration, while another State prohibited public officers from opening, operating or controlling a foreign bank account without the approval of the Anti-Corruption Commission. Most States received recommendations to consider taking measures requiring appropriate public officials to report such banking relationships and to maintain records, including measures for appropriate sanctions for non-compliance.

25. Challenges in implementation were identified in half of the States of the African Group and the Western European and others Group, one third of the States of the Asia-Pacific Group and both States of the Latin American and Caribbean Group.

26. Consistent with the information presented in the previous thematic report, all States had financial intelligence units responsible for receiving, analysing and disseminating to competent authorities reports of suspicious financial transactions (art. 58). However, one State reported that its financial intelligence unit was newly established and faced operational challenges. Over three quarters of the States parties reported that their financial intelligence units were members of the Egmont Group, whereas some of the remaining States highlighted that their financial intelligence units were in the process of applying for Egmont Group membership. In general, it was determined that five out of the six States without Egmont Group membership for their financial intelligence units were from the Group of African States. A range of other challenges was also reported, in particular by States of the African Group, including inadequate allocation of resources to financial intelligence units, lack of internal coordination and insufficient submission of reports on suspicious transactions.

27. Some variation existed regarding the functions of the financial intelligence units. Some units had both administrative and investigative mandates, while others performed mainly administrative functions. In this regard, one State indicated that its financial intelligence unit was housed within the national crime-control agency and accredited staff within law enforcement agencies had direct access to the database maintaining suspicious transaction reports. Moreover, the financial intelligence units in some States had the power to take interim emergency measures, such as freezing assets or suspending transactions for up to 48 hours in urgent situations. Financial intelligence units without such powers would have to turn to law enforcement or the judiciary in such cases, and a number of recommendations were issued in this respect.

C. Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (articles 53, 54 and 55)

28. Foreign States could initiate civil action to establish title to or ownership of property in almost all States under review (art. 53, para. (a)). Compensation or damages for harm caused by a Convention offence (art. 53, para. (b)) could in most States be obtained through civil litigation, whereas in some States compensation could also be ordered through criminal proceedings. Several States allowed for the filing of civil claims in criminal court or for the joining of civil suits with pending criminal proceedings. One third of the States of the African Group and two thirds of the States of the Western European and others Group reported that foreign States had initiated civil action in their courts, and two States of the African Group had established explicit jurisdiction over civil actions brought by States parties to the Convention regarding compensation for or the recognition of property rights over property acquired through acts of corruption. In many States, legislation granted locus standi to legal persons, the definition of which included States. Where no regulation existed, primarily in common law countries in all regions, foreign States were usually entitled to pursue contract or tort claims under the general principles of civil litigation. Several States referred to the need for domestic civil procedure to be observed, including the hiring of local counsel, the demonstration of a legitimate interest or the payment of a deposit prior to a lawsuit being heard. Only two States reported that there was no way for foreign States to sue for compensation or damages; in one of those two, there was thus no way to recognize another State's claim of legitimate ownership.

29. Consistent with the trend of no differentiation between States and other legal persons, many States referred to the general regulations on protection of victims or bona fide third parties in criminal proceedings as sufficient measures to permit courts or competent authorities to recognize another State party's claim as a legitimate owner of property when having to decide on confiscation (art. 53, para. (c)). Owing to the absence of cases and practical experience, it usually remained unclear what was

required domestically to establish a State's good faith and/or legitimate prior ownership. Of the States that described specific mechanisms for the recognition of foreign States' claims, one State, when no doubt about the ownership existed, allowed for restitution to victims at any stage of the recovery proceedings, even when no claim of ownership had been made, during the investigation phase or when confiscation was non-conviction-based. In another State, pending or intended civil litigation could be taken into account when deciding on a confiscation order, and an application procedure had been introduced, aimed at the transfer of property to another State upon its showing that the property was not proceeds of crime. One State asserted that not only victims but also their representatives and heirs could initiate criminal proceedings with the aim of their legitimate ownership being recognized. In turn, a number of States parties indicated that there was no domestic means for foreign States to have their legitimate ownership recognized in confiscation proceedings, with one State stating that a legislative reform in this regard was under way.

30. Only a few States parties described specific ways of giving notice to prospective victims or legitimate owners of property to allow them to demonstrate their ownership during asset recovery proceedings. In another State, when the owner of property was unknown or could not be found, a notice needed to be published in two daily newspapers of wide circulation in an effort to locate possible bona fide third parties. Four States required publication in the gazette of notices of confiscation and restraint orders in the gazette to notify any party with a prospective interest in the property involved.

31. While only one State of the Western European and others Group and one third of the States of the Asia-Pacific Group received recommendations on article 53, the majority of States of the African Group and both States of the Latin American and Caribbean Group were recommended to specify in the law recovery mechanisms for injured parties to establish title or ownership of property, and to be awarded compensation or damages for injuries through domestic proceedings, or to adopt measures to allow for another State's claim of legitimate ownership to be recognized during confiscation proceedings.

32. The majority of States parties had taken measures to allow for confiscation without a criminal conviction (art. 54, para. 1 (c)), either through confiscation in rem as part of the criminal proceedings, or through civil forfeiture proceedings, with civil forfeiture having the advantage of usually imposing a lesser burden of proof. The scenarios allowing for non-conviction-based confiscation ranged from the death or flight of the defendant, and sometimes the mere absence or unknown identity of the offender, to the very broad description of "other appropriate cases", "any other reason whatsoever" or "adequate grounds" for confiscation or forfeiture. One State had established mandatory confiscation for persons considered "generally dangerous", including persons suspected of obtaining public funds through fraud, persons considered to be "habitual bribers" or persons "used to living with the proceeds of illegal activities". Confiscation proceedings could be initiated in that State even after the death of a suspect, with the heirs to the property not being awarded third-party protection rights. Another State party allowed for forfeiture of unexplained assets determined by a court to have been acquired through acts of corruption or economic crime.

33. A number of States had not established non-conviction-based confiscation or forfeiture, and two States limited civil forfeiture to proceeds or instrumentalities of a "serious crime-related activity" or illicit enrichment. Half of the States of the African Group and the Asia-Pacific Group, both States of the Latin American and Caribbean Group and the State of the Eastern European Group received recommendations to consider the introduction or expansion of a non-conviction-based confiscation regime.

34. Under article 54, paragraph 2 (c), some States, mainly from the African and Asia-Pacific Groups, reported on measures they had in place regarding the management of seized assets. Approaches varied. In some cases each law enforcement

agency handled the management, preservation and sale or usage by the authority of seized and confiscated assets; in other cases, there were dedicated asset management agencies or units, with one State explicitly including property seized or confiscated in the course of international cooperation under the authority of its agency. In one State, asset management explicitly included an assessment of the quality of the assets and a determination of steps needed for their preservation, such as making sales and investments and paying the proceeds into a trust fund. While two States parties highlighted practical and budgetary challenges, the specialized asset management department of the prosecutor's office set up in one State was hindered by the fact that its jurisdiction covered only money-laundering and financing of terrorism cases. Three States of the African Group had the option of appointing a trustee, asset manager or *curator bonis* in charge of preserving or protecting the property and its value, including by becoming a party to any civil proceedings affecting the property, providing for proper insurance or taking care of a seized or confiscated trade or business, including its employees. Two States had regulations in place for the sale or disposal of perishable property, with one State also allowing for the sale of the assets if maintenance costs exceeded the assets' value.

35. Roughly half of the States of the African, Asia-Pacific and Latin American and Caribbean Groups were recommended to introduce or strengthen existing mechanisms for the preservation of property pending confiscation. At the time of the review, consideration was being given to the establishment of a central asset management office by one State of the African Group and two States of the Asia-Pacific Group.

36. While several States indicated that no requests for execution of a foreign confiscation order had been received yet, confiscation orders issued by a court of another State party could be given effect in most States (art. 54, para. 1 (a)), with the vast majority of States across all regions requiring exequatur proceedings in the form of registration, review and validation of enforceability by domestic authorities, usually the court, or sometimes the central authority or attorney general. Within the European Union, member States were required to mutually recognize and execute without further formality both freezing and confiscation orders, in accordance with a European Union framework decision. Three States parties from the Group of African States and three from the Group of Western European and other States also permitted the direct enforcement of foreign non-conviction-based confiscation orders. One State party applied a mixed approach, allowing for direct enforcement of confiscation orders from States with which a treaty existed, while requiring an exequatur procedure for orders from other States, which in turn had to be designated under domestic legislation. Three States could enforce foreign confiscation orders, including non-conviction-based orders, only when they related to cases of money-laundering, and, in the case of one State, related predicate offences. Two States limited enforceable confiscation orders to those issued on the basis of an underlying offence that was "serious" according to the receiving State's domestic legislation. One of those two States accepted a certificate issued by an appropriate foreign authority stating that a foreign forfeiture order was in force and was not subject to appeal as sufficient proof for the registration of the foreign confiscation order, whereas the other State had announced amendments to ensure the possibility of enforcing foreign orders for other offences. Three States parties could not enforce foreign confiscation orders either directly or through domestic authorities giving effect to it. In those States, a domestic confiscation order had to be obtained on the basis of the foreign order. In two States where foreign orders were directly enforceable, domestic confiscation proceedings would often be opened in parallel in order to accelerate the process. The foreign request would be used as evidence in the proceedings and attached to an affidavit. In one of those States, search, seizure or even confiscation was then possible within 24 hours. Recommendations were issued to 10 States relating to the ability to give effect to foreign orders, to not limit this ability to certain predicate offences or to consider extending it to non-conviction-based orders.

37. Most States could execute foreign freezing or seizure orders, or requests from another State to freeze or seize assets. Execution was possible either directly, sometimes after a domestic exequatur decision on enforceability based on domestic evidentiary standards, or indirectly, through the issuance of a corresponding domestic order (art. 54, para. (2)(a)–(b)). As with confiscation orders, four States limited the ability to give effect to search and seizure orders to only those involving certain underlying offences, such as money-laundering and bribery, or those considered “serious” under the requested State’s domestic legislation; one of those States could in addition give effect to search and seizure orders only from specified States. Another State limited cooperation to requests under its anti-money-laundering act, and one State restricted assistance to the issuance of a search warrant. In a few States, the taking of measures regarding the execution of requests for search, seizure or confiscation was at the discretion of the domestic authorities. Two States, while being able to obtain and execute a domestic search or seizure order based on a foreign order, had no mechanism in place to freeze or seize property upon a request from another State. Four States parties could issue domestic freezing orders proactively, without a request or foreign court order, and in one State the order could be issued even on the sole basis of media reports. Several States parties indicated that diplomatic channels were not required for mutual legal assistance requests regarding freezing or seizure of assets, but that informal cooperation, such as between police forces, financial intelligence units or asset recovery offices, would suffice. In one State, administrative freezing orders for up to seven days could be issued by the financial intelligence unit.

38. Eleven States received recommendations under articles 54, paragraph 2, and 55, paragraphs 1 and 2, to bring their systems into line with the Convention regarding the execution of foreign requests or orders for seizure or freezing.

39. While most States had regulations in place to facilitate the execution of mutual legal assistance requests for search, seizure or confiscation (art. 54 and art. 55, paras. 1–2), many States indicated that no requests had been received to date regarding the enforcement of foreign orders or that there was little experience in general with respect to mutual legal assistance requests, including for the recovery of assets. Thus, the implementation of article 55, paragraphs 1 and 2, could not be assessed in some States. Of the States that had received requests, one State recounted that during an initial investigation based merely on an informal request, possible property of the offender was discovered in two other States, and the information was forwarded to the requesting State party. Another State described successful cooperation with another State party through informal modes of communication, such as email and telephone, which had led to the successful forfeiture of assets in the requested State.

40. All but one State party had domestically regulated the content required for requests for mutual legal assistance (art. 55 para. 3), and the rendering of assistance was subject to the provisions of domestic law and procedural rules, or any bilateral or multilateral agreement or arrangement (art. 55, para. 4). The content required for requests included information to satisfy the dual-criminality requirement, details of specific procedures or requirements to be complied with, and information about the non-appealability of an order or the time limit for carrying out the request. Two States required a statement specifying the measures taken by the requesting State to give appropriate notice to bona fide third parties and to ensure due process. One State indicated that translation into one of its official languages was needed and that the translation had to be verified by a certified court interpreter, while another State allowed for the request and accompanying documents to be expressed either in the language of the requesting party or the requested party. Several States provided online guidance or a model form for mutual legal assistance requests. In some of those States, however, failure to provide sufficient information was not considered grounds for refusing assistance.

41. Most States did not make cooperation for the purposes of confiscation conditional on the existence of a treaty (art. 55, para. 6). In the absence of a bilateral or multilateral treaty, mutual legal assistance could be provided on the basis of

reciprocity, domestic legislation or both. In many States, the Convention was applicable directly, and some reported experience with the direct application of the Convention. In three States, while the Convention could be used as a legal basis for cooperation, States also had to be designated under domestic legislation. Another State limited the provision of legal assistance to States parties (a) with which an arrangement existed; (b) that were parties to the same multilateral convention as itself, with that convention having been transposed into domestic law; or (c) that were designated through domestic legislation. Commonwealth countries frequently referred to the possibility of providing assistance on the basis of the Scheme Relating to Mutual Legal Assistance in Criminal Matters within the Commonwealth (Harare Scheme). Five States received recommendations regarding the direct application of the Convention or the inclusion of all States parties under their domestic mutual legal assistance regimes.

42. All but two States parties listed grounds for the refusal of incoming mutual legal assistance requests (art. 55, paras. 4 and 7). Many States could provide assistance regardless of the value of the property, while some States listed a *de minimis* value of the property or the imposition of an excessive burden on the requested State's resources as possible reasons for refusal. Sufficient evidence was needed by most States in order to execute a mutual legal assistance request, but generally States would ask the requesting State to present such evidence prior to lifting provisional measures or refusing assistance. Two States of the African Group and two States of the Asia-Pacific Group indicated that no request for cooperation regarding the recovery of assets had ever been denied. One State, when not receiving requested additional information within a reasonable period of time, would provisionally close the case and reopen it upon receipt of the information. Another reason for refusal cited by States was that the underlying offence could not be prosecuted in the requested State, for example, because of lack of dual criminality, a conflict with a domestic investigation, prosecution or judicial proceeding, or the expiration of the statute of limitations in the requesting or requested State. Possible prejudice to the requested State's public order, sovereignty, security or fundamental principles of law; excessive burden on the resources of the requested State; possible risk to the safety of any person; and the prosecution of offences of a political character or prosecution that was believed to be based on a person's race, gender, religion, nationality or political views, and was thus considered discriminatory, were also listed as possible grounds for refusing requests. Violation of the *ne bis in idem* principle was grounds for refusal where asset recovery proceedings were considered punitive in nature. One State could refuse requests if the foreign decision had been issued under conditions that did not offer sufficient guarantees with regard to the rights of the defence, and another State could refuse assistance if the underlying evidence had been acquired through a criminal offence, or if the proceedings had violated basic human rights or the rule of law.

43. All States but four indicated that consultations with a requesting State party would take place prior to the lifting of any provisional measure and that the requesting State party would be given an opportunity to present its reason in favour of continuing the measure (art. 55, para. 8). Countries either had specific legislation on this issue or, in the case of eight States, could consult as a matter of practice resulting in recommendations to those eight States for statutory amendments in this regard. In States where the Convention was self-executing, consultations were seen as mandatory by the implementing States parties. Two States included a provision on consultations in all its bilateral treaties, and one of those States parties ensured that consultations were held even when circumstances would allow the refusal of the request. In two of the States that indicated that consultations were not mandatory or common, notice was given to the requesting State prior to the lifting of any provisional measures. One State placed specialists in countries to advise on criminal justice and asset recovery and deployed liaison prosecutors to priority countries to assist with, inter alia, mutual legal assistance. Another State referred to a letter of refusal as the last resort and as a matter of practice always wrote to requesting States, identifying potential grounds for refusal and requesting the issuance of a new or supplementary request. The same State conducted regular formal and informal

meetings with the diplomatic representatives of foreign requesting States to address issues regarding mutual legal assistance requests. A few States parties encouraged foreign authorities to submit draft requests for review prior to submitting the formal request so as to ensure that all necessary information was included. One State reported that discussions had been held with another State party over a number of months in relation to the form and content of a particular order, resulting in its successful registration. One State used senior official meetings with countries from the same region as a platform for discussion and coordination. Another State could allow the competent authorities of the requesting State to participate in the execution of a request.

D. Return and disposal of assets (article 57)

44. Few States had practical experience with the return of sizeable amounts of assets, while most States indicated that no return had taken place so far, usually because no requests had been received or made. To date, only one State had been commended by its reviewers for the successful return of assets.

45. Provisions on the return or disposal of assets were in place in most States parties, although in some States asset return was foreseen only for certain offences, under narrowly defined procedural circumstances or at the discretion of the relevant minister. In several States confiscated property could be returned by direct application of the Convention, while the domestic legal bases for international cooperation in criminal matters could be found in the acts on mutual legal assistance, criminal procedure or proceeds of crime, or sometimes in acts to combat corruption, money-laundering or the financing of terrorism. Two States reported that amendment bills were being prepared to allow for the return of assets to a requesting State.

46. In most States, assets became the property of the State when confiscated, but could subsequently be returned to the requesting State (art. 57, paras. 2–3). In all but two States, the applicable legislation provided for the protection of the interests of bona fide third parties in recovery and return proceedings (art. 55, para. 9, and art. 57, para. 2). One State allowed for the direct transfer of confiscated assets to a victim in a foreign State, even without a request by that State or a criminal conviction. In another State, assets could be returned solely upon sufficient demonstration of a reasonable basis for ownership by the requesting State. Legislation in another State stipulated that seized items must be returned to those who had lost possession as a result of an offence.

47. Whereas legislation in most States foresaw the possibility of asset-sharing agreements for confiscated assets, mechanisms for victim compensation, the protection of bona fide third parties or mandatory and unconditional return in cases of embezzlement of public funds or the laundering of those embezzled funds (art. 57, para. 3 (a)) was not foreseen under domestic legislation in any State. Instead, return was usually at the discretion of the competent authorities, while those States in which the Convention was applicable directly said that that discretion was bound by article 57, paragraph 3. One State had transposed the scenarios of article 57, paragraph 3, into its asset recovery guide for requests under the Convention, whereas for other cases it relied on standing or ad hoc asset-sharing agreements, but authorities were guided by compensation principles that helped to identify cases where compensation to economic crime victims in other countries was appropriate, and swift action to return funds to affected countries, companies or people was called for.

48. Roughly half of all States of the African, Asia-Pacific and Western European and other States Groups, as well as both States of the Latin American and Caribbean Group, received recommendations regarding the return of assets, with a particular focus on mandatory return in cases of embezzlement of public funds.

49. Most States parties could deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposal of confiscated property (art. 57, para. 4). Several States parties reported that assets were usually

returned in full, without any deductions being made. Two States indicated that expenses would be deducted only in exceptional cases; one of those States reported that to date, assets had always been returned in full, and the other State negotiated the amount of expenses of a substantial or extraordinary nature in advance consultations with the requesting State.

50. Most States parties could conclude, on a case-by-case basis, agreements or arrangements for the final disposal of confiscated property, and a few States had concluded such agreements or arrangements, leading to the successful or partial return of assets to the requesting State (art. 57, para. 5). One State reported that its taxpayers had been identified as victims of the underlying corruption offences, and the funds returned to that State were invested in social projects benefiting society.

IV. Outlook

51. The present report reflects the analysis of 27 finalized country reviews and is based on the executive summaries and the more detailed information provided in the country review reports. Once more executive summaries have been finalized and more data have been compiled, a more comprehensive analysis and regional addenda will be produced to keep the Implementation Review Group informed of successes and challenges identified in the course of the reviews.
