



# Conference of the States Parties to the United Nations Convention against Corruption

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## Working Group on Asset Recovery Thirteenth Meeting Vienna, 29–30 May 2019

### Draft report

#### Addendum

## IV. Overview of progress made in the implementation of asset recovery mandates

1. A representative of the secretariat provided an overview of the progress made in the implementation of asset recovery mandates. It was noted that, in line with its mandate, the Group focused on three main objectives: (a) developing cumulative knowledge; (b) building confidence and trust between requesting and requested States; and (c) technical assistance, training and capacity-building.

2. With regard to the development of cumulative knowledge, the United Nations Office on Drugs and Crime (UNODC) had continued the development of its Tools and Resources for Anti-Corruption Knowledge (TRACK) portal. Specifically, it was stated that UNODC was redesigning and reconceptualizing the legal library in terms of its contents and search functions. Moreover, as part of the Group of 20 (G-20) Anti-Corruption Working Group and the Global Forum on Asset Recovery, the Stolen Asset Recovery (StAR) Initiative had been assisting national authorities in creating country-specific beneficial ownership guides. UNODC also reported on its work on gathering of information on good practices on the management and disposal of recovered and returned stolen assets in support of sustainable development and gathering of information on experiences and best practices on measures and remedies to enhance international cooperation and asset recovery related to corruption, including when it involves vast quantities of assets. The representative of the secretariat noted, inter alia, that the International Expert Meeting on the return of stolen assets, took place from 7 to 9 May 2019, organized by UNODC with the support of the Governments of Ethiopia and Switzerland. The meeting brought together experts from all over the world to discuss challenges and good practices in asset return, the experts agreed on a draft containing general non-binding recommendations for States parties to consider when dealing with cases of asset return and disposal. It was explained that the draft with the recommendations was circulated among the experts for further comments and a final version would be made available on UNODC's website.

3. With regard to building confidence and trust between requesting and requested States, it was highlighted that UNODC and the StAR Initiative had continued their active support for regional and international networks engaged in asset recovery. It was reported that UNODC had initiated the data migration of the online directory of



competent national authorities under the Convention to the directory of competent national authorities in the Sharing Electronic Resources and Laws on Crime (SHERLOC) system. UNODC and the StAR Initiative had also continued to engage in advocacy in a number of international forums to promote the development of approaches and measures creating an international policy and legal framework conducive to the recovery and return of stolen assets. Such forums included the Anti-Corruption and Transparency Working Group of Asia-Pacific Economic Cooperation (APEC), the International Criminal Police Organization (INTERPOL), the European Union and Eurojust, the Group of Seven, the G-20 Anti-Corruption Working Groups and the World Economic Forum, in particular its Partnering against Corruption Initiative. With regard to technical assistance, training and capacity-building, it was reported that UNODC had continued to regularly respond to technical assistance requests by States parties, in order to strengthen their capacity in implementing chapter V of the Convention.

4. One speaker made a presentation on institutional reform in his country, including the establishment of an asset recovery and management agency in 2018 and its activities.

5. Many speakers indicated the great importance attached by their countries to asset recovery and anti-corruption work as a whole and briefed on developments in their legislative and institutional measures taken in this area.

6. Several speakers emphasized that cooperation between requesting and requested States was of paramount importance, with one speaker also noting that both requested and requesting States were responsible for the disposition of assets through their judicial processes.

7. A number of speakers emphasized that respect for sovereignty was a fundamental principle in both requested and requesting States. In this regard, one speaker noted that the use of judicial processes at the national level obligated those doing so to ensure that assets recovered using these processes were disposed of appropriately.

8. Some speakers noted that prevention should be a fundamental part of any asset recovery strategy and States parties needed to focus on implementing these commitments in equal measure.

9. Some speakers commended the initiatives taken to enhance the dialogue through expert group meetings (EGMs), while expressing concern that these EGMs covered specific topics of the Convention, and that there was a need to make sure that all different provisions of the Convention were covered in a balanced manner, including in particular the articles 53-57 of the Convention. They requested the secretariat to work on creating new forums to discuss the topics that were not covered in the EGMs in order to have informed discussions before the eighth session of the Conference of the States Parties and the special session of the General Assembly against corruption. The speakers also reiterated the importance of transparency and accountability, and that they were the responsibility and prerogative of the requesting States, and should not be used to impose conditionality on the return of assets to requesting States.

10. One speaker expressed the view that the case-by-case arrangements in article 57 (5) should remain the last resort, and that the other provisions in the same article should be focused upon achieving agreement on the return of assets. Other speakers noted their disagreement with the notion that article 57 (5) was a measure of last resort and stressed that there was no hierarchy among the provisions of the Convention. One speaker noted his interpretation of article 57 (5) as only applying to the final disposal of confiscated property rather than the return of such property. Some speakers referred to differences in interpreting the Convention, while another speaker indicated that the Working Group was not the proper forum to discuss the interpretation of the Convention.

11. In addition, speakers requested the secretariat to continue collecting examples and statistics on asset recovery, including collecting good practices in this regard,

gathering information on asset return, in particular on the use of article 57(5), in order to ensure transparency in asset recovery.

12. Some speakers indicated that the principles of transparency and accountability enshrined in Chapter II of the Convention should be applied in the context of asset recovery in accordance with Chapter V of the Convention and proposed that more research on the linkages between chapters II and V of the Convention should be conducted, while another speaker noted that caution should be exercised in automatically applying the principles enshrined Chapter II of the Convention on preventive measures to Chapter V of the Convention on asset recovery.

13. One speaker expressed the view that, in view of significant gaps and difficulties with regard to mutual legal assistance, the differences in procedures and legal norms and in investigations in different States and other challenges, there was a need to address existing legal ambiguities and inconsistencies and to develop a multilateral legal instrument to clearly set forth measures for the disposal of frozen, seized and confiscated assets. In this regard, he also referred to discussions held in the framework of a high-level meeting in New York in May 2019, where it was proposed that such an instrument be developed under the auspices of the United Nations. Other speakers noted that the development of a new treaty or protocol on asset recovery would pose serious risks and undermine the progress that had been made by States to comply with their obligations under the Convention and other treaties. For example, countries may suspend ongoing law enforcement efforts as they wait for new international commitments to be finalized. It was also noted that a new treaty or protocol could contravene existing commitments and domestic laws, threatening the existing partnerships that law enforcement officials had worked hard to establish. Moreover, it was noted that a new treaty could undermine the Convention's inclusivity, as its provisions were carefully negotiated to attract universal membership and would fragment this universality and make international cooperation more difficult.

14. Moreover, a number of speakers noted that it was premature to draw generalized assessments about the effectiveness of the asset recovery contained in the Convention, in view of the ongoing second cycle of the Implementation Review Mechanism, which dealt with the review of Chapter V. It was noted that the information emanating from the country review reports would further inform the discussion on progress made in the implementation of the asset recovery provisions of the Convention. In this regard, some speakers encouraged States parties to publish their full country review reports to share lessons learned and better identify technical assistance needs.

15. Several speakers expressed appreciation to UNODC, as well as Ethiopia and Switzerland, in relation to the organization of the International Expert Meeting on the Return of Stolen Assets, in Addis Ababa from 7 to 9 May 2019. In this regard, representatives from Ethiopia and Switzerland briefed the Working Group about this meeting which had brought together experts from over 30 jurisdictions to draw on lessons learned from previous returns. The meeting aimed at developing good practices on asset return, taking into account, inter alia, the Convention, the Sustainable Development Goals, and other processes and initiatives such as the asset recovery principles emanating from the Global Forum for Asset Recovery (GFAR). To this end, the expert meeting analysed cases in which assets were returned to identify trends and developments, common obstacles to international cooperation in the return of assets and innovative ways at overcoming them, including the available options for ensuring the return of assets in line with the Convention. The outcome of the expert meeting was to be made available to the Conference of the States Parties.

16. In reference to the outcome of the International Expert Meeting, speakers noted inter alia that the discussions had been very interesting and detailed and that, in particular, the principles of transparency and accountability were highlighted. One of the concerns raised was the common and shared interest, as well as the responsibility of both requesting and requested States in making sure that returned assets would not be reinvested in criminal circuits. Moreover, one speaker noted that the Addis expert meetings offered an informal platform for asset recovery experts and practitioners to

discuss and find viable avenues for asset return and brought together different expertise. The meeting confirmed that there was both ongoing interest and a need to discuss and further develop aspects of asset return and to collect data on State practice. Moreover, the speaker noted that participants had discussed challenges and concrete examples in relation to articles 53, 57 (3) and 57 (5).

17. Several speakers made specific comments on and proposals to amend the revised draft non-binding guidelines on the management of frozen, seized and confiscated assets. The Secretary of the meeting informed the Group that the comments would be reflected in the revised draft non-binding guidelines and made available, together with any further comments States parties may wish to submit, to the Implementation Review Group at its first resumed tenth session and, subsequently, to the Conference of the States Parties.

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