



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

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Open-ended Intergovernmental Working Group on Asset Recovery

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Draft report

Addendum

V. Thematic discussions

B. Challenges, good practices and lessons learned, and procedures allowing the confiscation of proceeds of corruption without a criminal conviction from States parties that have implemented such measures in accordance with article 54, paragraph 1 (c), of the Convention

1. A representative of the Secretariat recalled resolution 8/9 of the Conference of the States Parties to the Convention and introduced the note by the Secretariat entitled “Procedures allowing the confiscation of proceeds of corruption without a criminal conviction” ([CAC/COSP/WG.2/2021/4](#)), which had been prepared on the basis of information received from 43 States parties in response to a note verbale sent by the Secretariat, as well as information obtained from open sources and publications.
2. The representative of the Secretariat provided an overview of the different existing models of non-conviction-based confiscation. Those models could be classified according to whether they were located within or outside a country’s criminal justice system. There were also hybrid models that could not be classified as purely criminal or civil proceedings. Another model was confiscation based on unjustified wealth. In addition, he indicated that the scope and subjects of confiscation also varied among jurisdictions. Regarding the enforcement of foreign non-conviction-based confiscation, he noted that formal mutual legal assistance was necessary and the dual criminality principle must be fulfilled. He also highlighted some challenges faced by States and good practices used to overcome those challenges.
3. The panellist from Colombia highlighted the role of the Office of the Comptroller General in the fight against corruption. The powers of that institution had been strengthened by virtue of a recent legislative amendment, and he provided an example to illustrate the increase in recovered assets in comparison with previous years. Regarding challenges encountered, he mentioned the difficulties in obtaining information on assets located in different jurisdictions. In that regard, he referred to fraudulent concealment practices that contributed to the lack of transparency of beneficial owners, as well as bank secrecy, the absence of inter-institutional cooperation and the lack of international cooperation manuals and guides containing



information on means of cooperation. Regarding good practices to foster asset recovery, he referred to compliance with guidelines issued by relevant international organizations, such as the International Organization of Supreme Audit Institutions and the Organization of Latin American and Caribbean Supreme Audit Institutions, and the establishment of information exchange mechanisms between authorities from different jurisdictions. Lastly, he reaffirmed the usefulness of criminal procedures and made reference to the need to make use of the civil and administrative procedures available for asset recovery.

4. The panellist from New Zealand gave an overview of his country's legal and institutional frameworks for fighting corruption offences and related economic crimes. With regard to the institutional framework, New Zealand had established a financial crime group consisting of nearly 150 financial intelligence analysts, money-laundering and asset recovery investigators, and accountants. Concerning the legal framework, he reported that New Zealand had enacted domestic laws that included measures for the effective investigation of corruption offences, such as the collection of tax information, and that required the production of documents and information as well as the recovery of assets in the absence of a conviction. As challenges, he noted the cases in which predicate offences were committed abroad and resulted in money-laundering in New Zealand, and he informed the Working Group of actions taken in that regard. He highlighted that New Zealand was implementing a legal reform that would facilitate the restraint of proceeds of crime generated abroad. He reported that the reform introduced a reduced standard of proof and compelled the legitimate owners of proceeds of crime to establish lawful ownership of such proceeds in New Zealand. In concluding, the speaker listed some good practices, such as collecting performance data, establishing well-trained and dedicated multi-skilled teams for investigations and adopting media strategies for better community engagement in the detection of illicit proceeds.

5. The panellist from Singapore provided an overview of his country's law on the confiscation of proceeds of corruption without a criminal conviction. While noting that Singapore had, in general, a conviction-based confiscation regime, he indicated that the legislation against drug trafficking and other serious crimes provided for an exception when the accused had absconded. He highlighted that the term "absconded" was also used for those who died before the initiation of criminal proceedings or before conviction and those who could not be found, apprehended or extradited. Regarding the standard of proof, the panellist explained that the court should be satisfied of two elements: (a) on balance of probabilities, that the person had absconded; and (b) that the evidence presented before the court would warrant his conviction if not rebutted. He further provided a case example of that kind of confiscation and explained that the term "confiscation" could encompass the seizure of a sum equivalent in value to the benefits derived from criminal conduct. Moreover, the panellist noted that the civil confiscation of proceeds of serious offences had recently been adopted for use in organized crime cases. He explained that it could be used for corruption offences and had an extraterritorial scope; the assets needed to be linked to an organized criminal activity. Assets affected by criminal confiscation orders could not be considered for civil confiscation. He noted, however, that the acquittal of the defendant would not have an impact on civil confiscation.

6. The panellist from the Russian Federation presented an overview of domestic legal instruments in his country, as well as relevant statistics on the confiscation of proceeds of corruption without a criminal conviction. In general, the framework in the Russian Federation included measures to monitor the expenses of public officials and civil action against suspects and other individuals in cases where the legal origin of funds was not confirmed. He explained that it was also possible to confiscate funds of equivalent value and that the Civil Code of the Russian Federation allowed for the initiation of civil action regardless of the results of criminal proceedings. In addition, he provided an overview of measures and procedures to streamline asset recovery and statistics and the efforts made by the Office of the Prosecutor General of the Russian Federation in that regard. While noting the challenges regarding international

cooperation outside of criminal proceedings, he stressed that the Russian Federation actively used the Convention as a legal basis for its requests to foreign authorities. In 2020 alone, the Office of the Prosecutor General had sent 48 international requests outside of criminal proceedings, of which 22 had already been executed. He expressed the hope that the newly established GlobE Network could be effectively used for the exchange of operational information in the future. Cooperation channels between financial intelligence units, customs authorities, central banks and the national central bureaux of INTERPOL were also used, as were diplomatic channels. In concluding, he presented challenges and made several proposals, including elaborating new and updating existing guidelines on different aspects of international cooperation on asset recovery outside of criminal proceedings.

7. In the ensuing discussions, one speaker highlighted the need to address institutional gaps in asset recovery and called upon States to implement effective measures to address such gaps.

8. In response to the questions raised, one panellist clarified that it was important to swiftly identify the beneficial owners of assets and accounts involved in channelling illegal funds. Another speaker noted that it was essential to address the risks associated with cryptocurrencies and the difficulties in tracing them, and that it was important to focus attention on those challenges and develop new tools to overcome them.

9. One speaker provided an overview of his country's mechanisms and procedures for non-conviction-based confiscation. Although his country did not have a separate, dedicated legal instrument in that regard, existing domestic laws allowed for the confiscation of proceeds of corruption originating in foreign jurisdictions in the absence of a conviction provided that certain procedural requirements were met.
