



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

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Implementation Review Group

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Draft report

Addendum

V. State of implementation of the United Nations Convention against Corruption

A. Exchange of information, practices and experiences gained in the implementation of the Convention

1. A representative of the secretariat presented an update on the most common good practices and challenges identified in the thematic report on the implementation of chapter V (Asset recovery) of the Convention ([CAC/COSP/IRG/2021/7](#)), as well as in the report on the implementation at the regional level of chapter V ([CAC/COSP/IRG/2021/8](#)), which was focused on the regional implementation of article 52, paragraphs 5 and 6, and article 53. She informed the Implementation Review Group that both reports were based on 53 finalized executive summaries and that the trends regarding both challenges and good practices identified in previous thematic reports had remained consistent. Articles 52, 57 and 54 of the Convention remained the provisions with the largest numbers of recommendations. With regard to article 52, on which the most recommendations had been issued, implementation gaps had been identified in 51 out of 53 States parties. Only a few recommendations had been issued in relation to articles 56 and 59, indicating a positive trend in the conclusion of bilateral and multilateral agreements and in the spontaneous sharing of information. A substantial number of good practices had been identified only under articles 51, 52, 54 and 55, in particular with regard to robust legal and institutional arrangements in place for asset recovery, as well as with regard to the ability to use all options available under the Convention to recover assets.

2. Furthermore, in reference to article 52, paragraphs 5 and 6, of the Convention, the implementation of which was analysed in the report on implementation at the regional level, the representative of the secretariat noted that a large number of recommendations and a corresponding low number of good practices had been identified. Gaps existed across all regions, but the data showed that the more developed an asset disclosure regime was found to be, the more recommendations to further refine and improve it were issued by reviewers. While the majority of States were found to have some financial disclosure obligations in place for certain public officials, differences were observed with regard to the categories of public officials covered, the effectiveness of the disclosure systems and the accessibility of asset



declarations. The few good practices identified under article 52, paragraph 5, were related to verification methods for asset declarations and the publication of declarations without personal data. No correlation was found between the implementation of paragraph 5 and that of paragraph 6 of article 52, meaning that financial disclosure systems in place frequently did not extend to foreign bank accounts.

3. In reference to article 53, the representative informed the Group that 68 recommendations had been issued to roughly half of the States parties for which executive summaries had been completed, with implementation levels varying greatly among regions. She highlighted that while most States allowed foreign States to claim compensation or damages through civil action in their courts, there was still little experience with that process, for which reason the panel discussion on article 53 had been organized.

4. Finally, she reminded delegations that future versions of the thematic report and the reports on the implementation at the regional level of chapter V of the Convention would no longer be anonymized, and that in the future countries used in illustrative examples of good practices would be identified.

B. Thematic discussion

1. Panel discussion on gaps and challenges in the implementation of the asset recovery provisions of the Convention

5. In his introductory remarks, a representative of the secretariat recalled the joint commitment, made in the political declaration adopted by the General Assembly at its special session against corruption, to address challenges and remove barriers to applying measures for the recovery of assets, in particular by clarifying or simplifying legal procedures, by improving mutual legal assistance processes and making them more effective and efficient and by improving the implementation of the measures available under the Convention for asset recovery and return. He noted that the political declaration further laid out ways to overcome challenges, and he highlighted the need for trusting partnerships between requesting and requested States, better communication and reliable and timely information exchange and sharing, and the use of all available instruments, including non-conviction-based confiscation or direct recovery.

6. The panellist from Switzerland noted that Swiss legislation allowed authorities to freeze assets in the very early stages of proceedings, to uphold freezing orders for long periods of time and to return assets at any stage of the proceedings, usually upon enforcement of a final foreign confiscation order. With regard to challenges faced, she highlighted the need for complete mutual assistance requests that contained all necessary information. Secondly, she noted that it was important for the requesting States to keep Swiss authorities informed of the progress made in the confiscation proceedings abroad, which was vital in order for Switzerland to uphold a freezing order. Thirdly, she noted that different legal approaches applied in asset recovery proceedings, such as the use of administrative proceedings or settlements, could pose challenges, which could be overcome by experience and by adapting and applying the existing legal frameworks. She explained that direct and personal contact between practitioners in the jurisdictions involved allowed both parties to address any questions or improve the drafting of requests in an informal manner. To illustrate her presentation, she described the Montesinos case, in which Swiss authorities froze a Swiss bank account at the request of the Peruvian authorities in 2001. The Swiss and Peruvian authorities were in constant contact, which allowed Switzerland to uphold the freezing order for 17 years. In 2018, the Peruvian authorities signed a legal agreement with the holder of the frozen assets which regulated their return to Peru. That agreement was considered by Switzerland as a decision in accordance with its national legislation and could thus serve as the basis for the return of \$15 million from

Switzerland to Peru. The mutual legal assistance request upon which the assets were returned was based on a bilateral treaty and on the Convention.

7. In presenting the Montesinos case from the Peruvian perspective, the panellist from Peru recounted that, in 2000, Peru had sought international judicial cooperation from Switzerland and other countries with the aim of repatriating assets from a corruption network in Peru. A commission constituted in the Congress of Peru to investigate the origin and destination of the money in question concluded that the funds in the Swiss accounts had their origins in illicit activities and in the misappropriation of public funds. The panellist noted that the first challenge appeared at the domestic level when the first repatriated assets were not used to support the fight against corruption in the country. As assets were still being seized in Luxembourg and Switzerland, the Government of Peru decided to use any assets recovered in the future to strengthen the institutions responsible for investigation, prosecution and the legal defence of the State. Instead of awarding all assets recovered to one of the three institutions involved in such efforts, in 2017, a commission comprising representatives of the Ministry of Justice, the judiciary and the Public Prosecutor's Office was established, with the Ministry of Foreign Affairs holding the presidency and acting as the technical secretariat, "to carry out the necessary inter-institutional coordination leading to the repatriation and execution of the assets in the most effective manner". A multisectoral working group negotiated a tripartite agreement reflecting the commitment to the appropriate and transparent use of the assets, in accordance with the provisions of the Convention against Corruption and targets 16.4, 16.5 and 16.6 of the Sustainable Development Goals. Once the agreement was in force, the funds from Switzerland were transferred to the account of the national programme for seized assets.

8. The panellist from Nigeria outlined the success and challenges of her country's asset recovery efforts. Citing several renowned cases, she explained that recovered assets had become a separate, identifiable source of government income and revenue. She explained that Nigeria allowed both conviction-based and non-conviction-based forfeiture and stated that corruption offences, usually involving politically exposed persons, constituted the main predicate offences for money-laundering in her country. However, establishing the link between the asset and the criminal activity was a complex, highly technical and time-consuming process. As a result, one of the main challenges encountered was a limited investigative capacity to track and trace illicit assets, which were often channelled through different accounts and hidden using corporate vehicles. The Economic and Financial Crimes Commission had therefore invested in continuous training of its officers. Furthermore, effective inter-agency collaboration among the multiple anti-corruption agencies in Nigeria was underlined as another domestic challenge. Regarding international asset recovery cases, the panellist stated that challenges identified included limited cooperation and limited information-sharing between the countries where assets were located and the States seeking to recover them. The panellist highlighted that barriers in national legislation and onerous requirements for mutual legal assistance frequently caused delays in recovery processes. In presenting a practical solution to that challenge, the panellist referred to a cooperation agreement between Nigeria, the United States and the United Kingdom under which each country approached the case from the angle of its domestic law while recognizing Nigeria as a victim in relation to any assets recovered. Finally, while much remained to be done, the panellist outlined how efforts to communicate clearly the intended use of recovered assets could send positive messages to partners, thereby building trust both among States and among the public.

9. In the ensuing discussion, many speakers reiterated their countries' commitment to the Convention and the Implementation Review Mechanism and acknowledged the progress made to date in the framework of the Mechanism. One speaker noted that it was important to highlight the good practices that emerged from country reviews and, in that regard, referred to the efforts of her Government to address foreign bribery and the establishment of an initiative targeting kleptocracy.

10. Some speakers recalled the political declaration adopted by the General Assembly at its special session against corruption, in which Member States reaffirmed their common commitment to effectively implement measures to prevent, criminalize, detect, investigate, prosecute and adjudicate corruption offences and to improve asset recovery and return, in particular concerning the identification of gaps and challenges in implementation. The declaration was an important reference document for national and international anti-corruption efforts, and some speakers mentioned how the discussions on challenges could help to ensure more effective and practical implementation of the Convention.

11. One speaker noted that many challenges remained to be identified and addressed, such as how to eliminate safe havens for the proceeds of corruption, how to expand beneficial ownership transparency and how to address widespread impunity. She highlighted that responses might include improved and increased technical assistance and the further elaboration of norms and standards. The speaker also emphasized the need to tap into the potential of information and communications technologies.

12. Another speaker expressed the view that additional bilateral cooperation instruments to facilitate asset recovery, as well as more support for international law enforcement bodies, were required, especially in relation to investigations, prosecutions and adjudications involving persons with dual citizenship.

13. In relation to progress made in international cooperation and asset recovery, one speaker pointed out that adjustments to the *modi operandi* of authorities during the ongoing COVID-19 pandemic had demonstrated that requests for mutual legal assistance could be made and effectively responded to by electronic means. He also expressed the view that the spontaneous transmission of information and direct contact were crucial to successful cooperation. Similarly, another speaker highlighted how authorities in his country had been able to respond to a request and information shared informally with one of its national institutions, which had led to the recovery and return of a considerable amount of illicit assets. In the same vein, to conclude the discussion, the panellist from Switzerland reiterated her call for frequent and direct contact between jurisdictions to discuss any concerns bilaterally, which was a good practice for facilitating successful asset recovery and asset return.
