United Nations CAC/COSP/WG.2/2019/6

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

Distr.: General
2 July 2019

Original: English

Report on the meeting of the Open-ended Intergovernmental Working Group on Asset Recovery held in Vienna on 29 and 30 May 2019

I. Introduction

1. In its resolutions 1/4, 2/3, 3/3, 4/4, 5/3, 6/2, 6/3 and 7/1, the Conference of the States Parties to the United Nations Convention against Corruption established and continued the work of the Open-ended Intergovernmental Working Group on Asset Recovery.

2. In its resolution 7/1, the Conference welcomed the outcome of the meetings of the Working Group and invited it to propose future agenda items, and decided that the Working Group should continue its work by, inter alia:

(a) Continuing its efforts to gather information on and conduct enhanced analysis of best practices for the identification and compensation of all different types of victims in accordance with the Convention, including, as necessary, by soliciting information from States parties, facilitating exchanges among experts and organizing expert panels, while taking into consideration similar work undertaken at prior meetings of the Working Group, by expert panels and in discussions;

(b) Conducting analysis on third-party challenges and their impact on asset recovery under chapter V;

(c) Continuing to collect data on best practices, with a view to developing non-binding guidelines concerning the timely sharing of information to enable States parties to take appropriate action, in accordance with article 56 of the Convention;

(d) Conducting an analysis of how communication and coordination between various asset recovery practitioner networks could be improved, with a view to developing guidelines for the proactive and timely sharing of information, as mentioned in subparagraph (c) above.

II. Organization of the meeting

A. Opening of the meeting

3. The Working Group on Asset Recovery held its thirteenth meeting in Vienna on 29 and 30 May 2019. The meeting included two meetings held jointly with the Implementation Review Group, on 29 May.

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4. The thirteenth meeting of the Working Group was chaired by María Consuelo Porras Argueta (Guatemala).

5. The representative of the European Union made a statement on behalf of the European Union and its member States, in which he noted, inter alia, that the recovery of stolen assets was essential and that the identification, tracing, freezing, confiscation and recovery of assets were effective ways to tackle corruption and prevent its proceeds from being re-invested in the licit economy and used for further acts of corruption. Referring to chapter V of the Convention, he also noted that asset recovery could play an important role in increasing the domestic resources of developing countries. The representative outlined the efforts of the European Union in areas such as the confiscation of assets; the mutual recognition of freezing and confiscation orders; the establishment of national asset recovery offices; the improvement of cooperation between law enforcement authorities and financial intelligence units, and between financial intelligence units; the expediting of financial investigations on serious and organized crime; and the combating of money-laundering. The representative highlighted the importance of a wide exchange of best practices and international cooperation in asset recovery and stressed the support of the European Union for the 2030 Agenda for Sustainable Development, in particular its Sustainable Development Goal 16. In addition, the representative noted that returned assets must be used and managed according to the principles of transparency and accountability and in a manner conducive to their contributing to sustainable development, if appropriate.

B. Adoption of the agenda and organization of work

6. On 29 May 2019, the Working Group adopted the following agenda:

1. Organizational matters:
   (a) Opening of the meeting;
   (b) Adoption of the agenda and organization of work.
2. Overview of progress made in the implementation of asset recovery mandates.
3. Forum for advancing practical aspects of asset recovery, including challenges and good practices.
4. Thematic discussions:
   (a) Best practices for the identification and compensation of all different types of victims in accordance with the Convention;
   (b) Third-party challenges and their impact on asset recovery under chapter V.
5. Forum for discussions on capacity-building and technical assistance.
6. Adoption of the report.

C. Attendance

7. The following States parties to the Convention were represented at the meeting of the Working Group: Afghanistan, Albania, Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belgium, Benin, Bhutan, Bolivia (Plurinational State of), Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cambodia, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czechia, Dominican Republic, Ecuador, Egypt, El Salvador, Finland, France, Georgia, Germany, Ghana, Greece, Guatemala, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Lebanon, Libya, Madagascar, Malaysia, Malta,

Mexico, Morocco, Myanmar, Netherlands, Nigeria, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Russian Federation, Saudi Arabia, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, South Sudan, Spain, State of Palestine, Switzerland, Thailand, Timor-Leste, Togo, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia and Zimbabwe.

8. The European Union, a regional economic integration organization that is a party to the Convention, was represented at the meeting.

9. The following United Nations programmes and funds, institutes of the United Nations crime prevention and criminal justice programme network and specialized agencies of the United Nations system were represented by observers: Basel Institute on Governance and World Bank.

10. The following intergovernmental organizations were represented by observers: Asian-African Legal Consultative Organization, Cooperation Council for the Arab States of the Gulf, European Union Agency for Law Enforcement Cooperation (Europol), International Anti-Corruption Academy, League of Arab States and Organization for Security and Cooperation in Europe.

11. The Sovereign Order of Malta, an entity maintaining a permanent observer office at Headquarters, was represented at the meeting.

III. Forum for discussions on capacity-building and technical assistance

12. At its meetings held jointly with the Implementation Review Group on 29 May 2019, the Working Group on Asset Recovery considered item 5 of its agenda, entitled “Forum for discussions on capacity-building and technical assistance”, as well as item 4, entitled “Technical assistance”, of the agenda of the Implementation Review Group (CAC/COSP/IRG/2019/1). The joint meetings were held in line with resolution 6/1 of the Conference, in which the Secretariat had been requested to structure the provisional agendas of the Implementation Review Group and the other subsidiary bodies established by the Conference in such a way as to avoid duplication of discussions, while respecting their mandates. The joint meetings were also held pursuant to the workplan agreed for the period 2017–2019.[1]

13. To facilitate the Working Group’s discussion a panel was organized on the technical assistance required and provided in relation to the management of frozen, seized and confiscated assets.

14. A representative of the Secretariat outlined how the draft non-binding guidelines on the management of frozen, seized and confiscated assets had been developed in line with resolutions 7/1 and 7/3 of the Conference of the States Parties. The representative recalled that earlier versions of the draft non-binding guidelines had been presented at the twelfth meeting of the Working Group, held in Vienna on 6 and 7 June 2018, and at the second resumed ninth session of the Implementation Review Group, held in Vienna from 11 to 14 November 2018.

15. The representative informed the Working Group that the non-binding guidelines contained in document CAC/COSP/WG.2/2019/3 reflected the comments received from States parties, including comments provided in response to a note verbale sent on 28 January 2019. In addition, the representative presented specific examples of the

[1] Information on the panel and the ensuing discussions on the technical assistance required and provided in relation to chapter V of the Convention, which were held during the joint meetings of the two working groups, is contained in the report of the tenth session of the Implementation Review Group (CAC/COSP/IRG/2019/9).

changes made, such as the removal of the annotations under each specific guideline, in view of making them more user-friendly and improving their practical application.

16. The panellist from Czechia gave a presentation on the management of seized assets in his country, including relevant developments and challenges. He noted that asset management policies had been evolving owing to dramatic increases in the volumes of the seized assets. For that purpose, a centre for seized assets had been established within the Ministry of the Interior in his country, with a two-fold objective of preserving the value of assets and reducing asset maintenance costs. He also referred to the challenges encountered in the asset management process, such as a lack of coordination in pre-seizure planning between police investigators and asset management offices, the lack of specialized personnel in terms of managing seized assets, difficulties arising from coordination among various competent authorities, and inadequate public awareness and confidence in that regard. In addition, the panellist highlighted the importance of international cooperation and provided information on the membership, objectives and activities of the Criminal Assets Management and Enforcement Regulators Association.

17. The panellist from the State of Palestine recalled the unique legal tradition and system of his country and referred to its efforts in adopting national anti-corruption legislation and in amending it in order to duly reflect the recommendations emanating from the first cycle review under the Convention. In referring to successful cases of recovering assets from foreign jurisdictions, he highlighted challenges that his country had faced, such as the lack of national seizure and confiscation measures for corruption cases, and difficulties in negotiating mutual legal assistance agreements with other States. The panellist indicated that the Convention had not been used as a basis in any of the asset recovery cases to date. He expressed his country's willingness to learn from the good practices of other States in strengthening institutional arrangements in that area. The panellist referred to a request sent by his country for training on the management of seized and confiscated assets, and on the use of the Convention in asset recovery. He explained that a training activity was organized at the Rule of Law and Anti-Corruption Centre in Doha and was jointly delivered by UNODC and the Central Office for Seizure and Confiscation in Belgium. He noted that, pursuant to that training, the State of Palestine was considering establishing a dedicated asset management office.

18. The panellist from Italy outlined the tasks carried out by his country's national agency for the management and disposal of assets seized and confiscated from organized crime. He highlighted that, after the final confiscation, assets stolen by national and/or transnational organized criminal groups were returned to the local communities by allocating them for social reuse or for institutional purposes of the State, such as reallocation to law enforcement organizations. For example, confiscated assets had been donated to volunteer organizations and had been used to establish youth centres or provide assistance to victims of trafficking in persons. He underscored the high symbolic value of social reuse, which demonstrated that criminal organizations were not invincible. With regard to the confiscation of companies, the panellist noted that, for each company, an assessment was being carried out to determine whether it could continue to operate licitly, or whether it had to be dissolved. He indicated that it was important to avoid dissolving licit companies, whose business model remained viable, in order to preserve employment and job opportunities.

19. A panellist from UNODC presented information about the seizure and confiscation of cryptocurrencies. He explained the unique nature of cryptocurrencies and highlighted their wide use in the commission of various types of crimes, including corruption. He also stressed the challenges encountered by law enforcement authorities in seizing and confiscating cryptocurrencies as their transactions were decentralized. In addition, he noted the challenges regarding their management, and the dilemma in whether to keep or sell them, owing to the constant fluctuation of their value. He provided information on the technical assistance provided by UNODC to States in addressing challenges posed by cryptocurrencies, in particular the training

courses, which encompassed practical exercises, guidelines, software and e-learning modules, and encouraged States parties to avail themselves of those courses.

20. During the ensuing discussion, one speaker acknowledged the importance of bilateral and multilateral agreements in facilitating mutual legal assistance and shared information on his country's good practices in that area. He stressed that his country had faced practical challenges in managing seized and confiscated assets, in particular in maintaining seized assets until their final confiscation.

21. In addition, one speaker raised a question on the applicable conditions for pre-confiscation sale of assets, while another speaker required more information on the seizure of bitcoins.

22. One speaker noted that her country considered illicit financial flows as a global challenge, which called for increased cooperation in the sense of shared responsibility and shared interests. She gave different examples on how her country was supporting the recovery of stolen assets by fostering collaboration among law enforcement agencies at local, regional and global levels, and enhancing the operational and technical capacities of several regional asset recovery inter-agency networks. The speaker reiterated the importance of the support provided by the Stolen Asset Recovery (StAR) Initiative of UNODC to asset recovery efforts and stressed the importance of including civil society organizations in the process of returning stolen assets.

23. One speaker described various technical assistance initiatives that his country was supporting. He noted that such assistance focused on the support of international anti-corruption networks, such the Mechanism for the Review of Implementation of the Convention, as well as other review mechanisms. He emphasized his country's continuous voluntary contributions to support those networks and also encouraged other States to continue their financial support. The speaker further highlighted his country's support of the Global Focal Points Network on Asset Recovery of the StAR Initiative and the International Criminal Police Organization (INTERPOL). He noted the support provided for UNODC regional anti-corruption advisors and encouraged other donors to also support their important work. He emphasized that the technical assistance his country provided improved its cooperation with foreign counterparts, allowed them to better implement the Convention domestically and prevent the stealing of assets. The speaker also highlighted the importance of the Working Group as a forum for the sharing of experiences and of the Implementation Review Mechanism as a tool to identify technical assistance needs and encouraged States to make their review reports public, which would allow for a better analysis of technical assistance needs by interested donors.

24. In response to queries and comments raised, a panellist explained that, in his country, pre-confiscation sales could be applied in some cases, subject to certain conditions. Such cases related primarily to movable assets that: (a) were perishable; (b) could lose their value rapidly; (c) were difficult to maintain or needed special maintenance expertise; (d) were too costly to maintain relative to their value; or (e) were easily replaceable. He also highlighted that other types of assets could be sold with the consent of the owner. The panellist also highlighted his country's practices with regard to the disposal of confiscated assets, such as compensating the victims, or allocating the confiscated assets to the State budget.

25. In response to a question on jurisdiction matters, another panellist explained the steps and measures that could be taken by law enforcement in seizing and confiscating bitcoins, such as locating the bitcoin keys (passwords). He also noted the role played by gatekeepers in identifying the owners of the bitcoins. In that regard, he stressed the importance of ensuring that such gatekeepers were licensed or registered by central banks or securities commissions and that bitcoin businesses were licensed and regulated.

26. A representative of the secretariat drew the attention of the meeting to the UNODC study entitled *Effective Management and Disposal of Seized and Confiscated Assets 2017*.

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

27. 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.

28. With regard to the development of cumulative knowledge, 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 StAR Initiative had been assisting national authorities in creating country-specific beneficial ownership guides. UNODC also reported on its work on the gathering of information on good practices on the management and disposal of recovered and returned stolen assets in support of sustainable development, as well as the 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 involved vast quantities of assets. The representative of the secretariat noted, inter alia, that the international expert meeting on the return of stolen assets, organized by UNODC with the support of the Governments of Ethiopia and Switzerland, had been held in Addis Ababa from 7 to 9 May 2019. 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 text 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 had been circulated among the experts for further comments and a final version would be made available on the UNODC website.

29. 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 knowledge management portal known as Sharing Electronic Resources and Laws on Crime (SHERLOC). 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, INTERPOL, the European Union and Eurojust, the Group of Seven and G-20 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.

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

31. 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 that area.

32. Several speakers emphasized that cooperation between requesting and requested States was of paramount importance, with some speakers also noting that both requested and requesting States were responsible for the disposition of assets through their judicial processes. Other speakers emphasized that the disposal of assets was a sovereign right and should be the responsibility of the requesting State.

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

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

35. In addition, speakers requested the secretariat to continue collecting examples, comments and statistics on asset recovery, including collecting good practices in that regard and gathering information on asset return. One speaker requested the continued collection of information regarding efforts to ensure transparency and accountability in asset return.

36. Speakers emphasized that the principles of transparency and accountability enshrined in the Convention should be respected. One speaker 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 should be conducted, while another speaker noted that caution should be exercised in automatically applying the principles enshrined in chapter II, on preventive measures, to chapter V, on asset recovery.

37. 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 that regard, he also referred to discussions held in the framework of a high-level meeting in New York in May 2019, where some countries had proposed that such an instrument be developed under the auspices of the United Nations. Several 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 might suspend ongoing law enforcement efforts as they waited 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 inclusivity of the Convention, since its provisions had been carefully negotiated to attract universal membership and would fragment that universality and make international cooperation more difficult.

38. Some speakers noted that the report prepared by the secretariat on asset recovery on the basis of the outcome of reviews that had been concluded showed that few States had practical experience with the return of sizeable amounts of assets, while most States had not had any return to date. Those speakers also suggested that the Working Group and the secretariat should try to determine why asset return under chapter V of the Convention had not materialized and also determine the reasons for the difference in the amounts of assets stolen, confiscated and returned.

39. 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 that regard, some speakers encouraged States parties to publish their full country review reports in order to share lessons learned and better identify technical assistance needs.

40. Some speakers expressed concerns over challenges faced by requesting States including those related to bilateral cooperation, translation, and the costs and the duration of the proceedings. Those speakers emphasized the importance of technical assistance. They requested the secretariat to work on standardized guidelines in that regard. Speakers also highlighted that more focus should be given to the obligation to return assets consistent with chapter V of the Convention.

41. Several speakers expressed appreciation to UNODC, as well as to the Governments of Ethiopia and Switzerland, for the organization of the international expert meeting on the return of stolen assets, which was held in Addis Ababa from 7 to 9 May 2019. In that regard, representatives from Ethiopia and Switzerland briefed the Working Group about the meeting, which had brought together experts from over 30 jurisdictions to draw on lessons learned from previous returns. The meeting was aimed at developing good practices on asset return, taking into account 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. To that end, the expert meeting analysed cases in which assets had been returned in order 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 report of the expert meeting will be made available as a conference room paper to the Conference of the States Parties.

42. In reference to the outcome of the international expert meeting, speakers noted that the discussions had been very interesting and detailed and that, in particular, the principles of transparency and accountability had been highlighted. One speaker noted that one of the concerns that had been 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, some speakers noted that the expert meetings held in Addis Ababa 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 practices. Moreover, the speaker noted that participants had discussed challenges and specific examples in relation to article 53; article 57, paragraph 3; and article 57, paragraph 5.

43. Some speakers commended the initiatives taken to enhance the dialogue through expert group meetings, while expressing concern that those meetings covered specific topics of the Convention. The speakers stressed that there was a need to make sure that all different provisions of the Convention were covered in a balanced manner, in particular articles 53 to 57. They requested the secretariat to work on creating new forums to discuss the topics that were not covered in the expert group meetings 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. Speakers 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. Those speakers expressed the view that case-by-case arrangements, in line with article 57, paragraph 5, of the Convention, should remain the last resort, and that the other provisions in the same article should be focused on achieving agreement on the return of assets.

44. Several speakers noted their disagreement with the notion that article 57, paragraph 5, was a measure of last resort and stressed that there was no hierarchy among the provisions of the Convention.

45. One speaker noted his interpretation of article 57, paragraph 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 and emphasized that that issue should be discussed by the Working Group and be referred to the Conference of the States Parties for its attention and proper action. Another speaker indicated that the Working Group was not the proper forum to discuss the interpretation of the Convention.

46. 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 might wish to submit, to the Implementation Review Group at its first resumed tenth session and, subsequently, to the Conference of the States Parties.

V. Forum for advancing practical aspects of asset recovery, including challenges and good practices

47. A representative of the Secretariat presented a conference room paper on mutual recognition of non-conviction-based freezing orders and confiscation judgments, prepared pursuant to a recommendation issued at the twelfth meeting of the Working Group (CAC/COSP/WG.2/2019/CRP.1). The paper contained an exploration of the various dimensions of the issue, focusing on the concept of non-conviction-based confiscation, relevant information obtained from the Implementation Review Mechanism, as well as the main challenges and good practices that could provide possible solutions. It was noted that the main practical obstacles to the enforcement of foreign non-conviction-based confiscation and freezing or seizure orders were related to the lack of analogous mechanisms in the domestic legal systems of the requested States, as well as to significant differences, both in the identification of the court (civil or criminal) and in the procedural and substantive elements of non-conviction-based confiscation mechanisms, in requesting and requested jurisdictions. However, as a limited number of States parties had provided comprehensive responses to the information requests circulated by the secretariat, more information was needed in order to be able to produce a more complete analysis of the issue.

48. A representative of the secretariat presented the revised draft non-binding guidelines on the timely sharing of information in accordance with article 56 of the Convention and improving communication and coordination between various asset recovery practitioner networks (CAC/COSP/WG.2/2019/4). The first draft of the document together with the background note (CAC/COSP/WG.2/2018/5) was prepared and submitted for the consideration of the Working Group at its twelfth meeting. Following discussions, and at the request of the Working Group, the secretariat shared the draft with States parties, with a view to eliciting further comments through two notes verbales, issued in December 2018 and January 2019. On the basis of general observations and specific suggestions received in responses from States parties, the representative explained that a number of changes had been made to the draft to further clarify the guidelines, emphasize their non-binding and flexible nature to accommodate different approaches to the implementation of article 56 among States parties and ensure consistency in the use of specific terminology. Finally, he highlighted that the comments generally confirmed the need for such guidelines and the importance of supporting the work of and investing necessary resources in asset recovery practitioner networks.

49. A representative of Belgium presented a case study, entitled “CRIMORG”, which dealt with the issue of fraud committed by a chief executive officer. She illustrated the different steps taken to identify the perpetrator and his criminal network. Furthermore, she explained how the money was laundered in that case. The panellist highlighted the importance of international cooperation in the case and explained how that cooperation was structured in five phases:

(a) Phase 1 emphasized collaboration at the national level, in particular between the financial intelligence unit and the judicial authorities;

(b) Phase 2 consisted of spontaneous sharing of information at the international level;

(c) Phase 3 included the establishment of a joint investigation team, which facilitated cooperation among the various national authorities and between the national authorities and the European Anti-Fraud Office;

(d) Phase 4 integrated Europol into the joint investigation team;

(e) Phase 5 included cooperation with overseas authorities to identify fraudulent European importers.

50. The panellist underscored how the collaboration with authorities in other States had been strengthened and a network of contacts based on mutual trust and understanding had been created through cooperation in that case, and highlighted the usefulness of that network for any potential future cooperation.

51. A representative of Malaysia presented a case study involving the misuse of the 1MDB State investment fund by former senior government officials. He noted that the assets of the fund were transferred to foreign countries over several years and laundered in several phases and across many jurisdictions using complex schemes. He explained in detail the investigative activities carried out domestically and internationally, as well as the various challenges faced by the investigation, such as serious attempts to interfere with witnesses and frustrate the investigation. Regarding international cooperation, the speaker outlined a number of unique and extensive engagements and arrangements made with foreign jurisdictions during the investigation and prosecution phases, as well as during the return of assets. He emphasized that those engagements and arrangements had made it possible to overcome many obstacles usually associated with cooperation in cases involving multiple suspects and jurisdictions. Finally, the speaker offered solutions to some of the challenges faced in the 1MDB case, including the need for beneficial ownership transparency, laws to protect whistle-blowers and the importance of tracing and targeting stolen assets.

52. In the ensuing discussion, many speakers highlighted the efforts their countries had undertaken to facilitate the recovery of stolen assets, including through establishing specialized law enforcement bodies, introducing legislation allowing for non-conviction-based forfeiture and strengthening inter-institutional cooperation, in particular between law enforcement bodies and financial intelligence units. In that regard, one speaker encouraged experts to carefully review whether a financial intelligence unit had administrative freezing power and highlighted the importance of making use of any such freezing powers to ensure that funds were preserved while a request for a longer-term freezing order was being made to the competent authority.

53. At the international level, several speakers noted that their countries had produced and made available guides or toolkits for asset recovery designed to assist counterparts from other States in understanding the legal system and its provisions governing asset recovery. Furthermore, several speakers indicated that their countries had entered into bilateral or multilateral treaties facilitating international cooperation, including in relation to asset recovery, or signed memorandums of understanding with international counterparts.

54. As a result of those efforts, many speakers were able to share with the Working Group successful examples of assets that had been recovered. In sharing those

examples and good practices, speakers reiterated the importance of making full use of all modalities foreseen by the Convention and highlighted the importance of early and direct contact between requesting and requested States, including prior to the submission of any formal mutual legal assistance requests.

VI. Thematic discussion

Best practices for the identification and compensation of all different types of victims in accordance with the Convention; and third-party challenges and their impact on asset recovery under chapter V

55. Representatives of the secretariat introduced the note on best practices for the identification and compensation of all different types of victims in accordance with the Convention, and third-party challenges and their impact on asset recovery under chapter V (CAC/COSP/WG.2/2019/5). The note contained the following:

(a) Information on the practices of States, based on the information received in response to two notes verbales sent by the secretariat;

(b) Information collected during the first cycle of the Implementation Review Mechanism;

(c) Information related to the UNODC report entitled *State of Implementation of the United Nations Convention against Corruption: Criminalization, Law Enforcement and International Cooperation*;

(d) Findings of various relevant tools and publications, in particular those developed by UNODC and the StAR Initiative.

Based on the analysed information, the note also offered some important practical considerations relevant to those issues for the attention of the Working Group.

56. To facilitate discussions under the agenda item, a panel discussion was held on best practices for the identification and compensation of all different types of victims in accordance with the Convention and on third-party challenges and their impact on asset recovery under chapter V.

57. The panellist from France explained that the French law allows physical and legal persons in addition to States to claim compensation in French courts, either by participating in criminal proceedings as *partie civile* or by instituting separate civil proceedings. She further explained that the Criminal Procedure Code strengthened the provisions related to the compensation of victims in the course of criminal proceedings by ensuring that all victims were kept fully informed during criminal proceedings. Pursuant to article 53-1 of the French Criminal Procedure Code, the judicial police was required to inform victims of their right to obtain compensation for the damage suffered and of the possibility of obtaining the assistance of a victim support association, which might, in accordance with article 41 of the same Code, be required by the public prosecutor to provide assistance to the victim of an offence. Those provisions were equally applicable to States. The panellist further explained that several foreign States had brought civil actions before French courts, and the proceedings were ongoing. Those actions concerned acquisition of property through the laundering of embezzled public funds, aggravated breach of trust and concealment. Lastly, the panellist noted that licensed non-governmental organizations that were combating corruption and were based in France also had the right to bring civil actions in French courts.

58. The panellist from Nigeria stressed the importance of compensating both the direct victims of corruption and society as well. He explained that although there was no definition of victim of crime or victim of corruption in Nigeria, victims were identified under various laws with reference to those who suffered injury, damage or harm as a consequence of a crime, which included acts of corruption. The panellist indicated that claims for compensation could be made simultaneously with criminal proceedings. However, the court might take into consideration the compensation paid

or recovered in the criminal proceedings when awarding damages in a civil suit. The panellist noted that Nigerian legislation recognized non-conviction-based asset forfeiture, which was also addressed in the Constitution. Accordingly, actions in rem could be brought against proceeds of crime at both the federal and the state levels, and recovered assets could be used as compensation for victims of corruption. He further noted that administrative remedies were also available for the compensation of victims. The panellist explained that Nigerian law recognized the right of a genuine third party with interest in an asset related to crime and underscored that malicious third-party claims could affect the payment of compensation. He referred to a case where Nigeria had experienced delays in the return of assets from a foreign State pursuant to a legal practitioner's claim of 40 per cent of confiscated proceeds as legal fees. The panellist concluded by encouraging a liberal, broad and flexible interpretation of the identification of victims and forms of compensation.

59. The panellist from Kazakhstan gave a presentation on the experience of his country as a victim in transnational corruption cases. He noted that $10 billion had been transferred out of Kazakhstan in the past 10 years and that 1,500 of the criminals involved had escaped abroad, to more than 200 countries. The panellist presented an example of a case involving abuse of position – in which an ex-mayor of Almaty siphoned off public assets – and explained the schemes used in laundering the ill-gotten proceeds. Subsequently, the city of Almaty hired a Swiss law firm and constituted itself as a civil party in the criminal proceedings before the Swiss courts. Furthermore, the city of Almaty, together with a bank, filed a civil complaint against the ex-mayor in courts in London and New York. The panellist highlighted some of the challenges that a State can face with regard to civil proceedings, including the choice of an appropriate law firm and the associated cost. The panellist briefed on the stolen asset recovery project, which included the development of clear and short guidelines, in addition to unified mutual legal assistance and financial intelligence unit request templates. He further noted that 200 investigators and 10 national trainers had been trained with the support of UNODC and the StAR Initiative. He also stressed the importance of that support for his Government, including by facilitating contacts with different foreign jurisdictions; helping with the efforts of Kazakhstan to join asset recovery inter-agency networks, including the Camden Asset Recovery Inter-Agency Network, the Asset Recovery Inter-Agency Network for Asia and the Pacific and the Asset Recovery Inter-Agency Network for West and Central Asia; and further developing the asset recovery guidelines and templates.

60. The panellist from Jersey gave a presentation on its legislative framework governing asset returns, in particular in relation to third-party challenges and their impact on asset recovery. Using the Doraville/Abacha monies as an example, he informed the Working Group how Jersey had returned $163 million to Nigeria through an agreement, and highlighted the challenges related to recovering the balance of approximately $325 million to $330 million that remained after that first return. Proceedings to forfeit Doraville assets in the United States were brought on the basis that the assets had been laundered through the United States financial system, and an in rem default judgment was obtained in the United States in November 2013. A property restraint order was obtained in Jersey in February 2014. Four sets of third-party challenges were brought:

(a) Doraville and the Abacha family challenged the property restraint order;

(b) Lawyers claiming to represent Nigeria claimed contingency fees of over $200 million;

(c) A large international bank claimed that it had a lien to the assets;

(d) Nigeria claimed constructive trust.

61. The panellist from Jersey indicated that all claims had ultimately been dismissed but had caused considerable delays in the return process. He explained that the registration of the United States judgment in Jersey's courts had been obtained and that negotiations were under way for a tripartite agreement with Nigeria, the United

States and Jersey for the return of those assets. Sharing lessons learned from that case, the panellist underscored the importance of non-conviction-based forfeiture for asset recovery. He further highlighted the need for trust and confidence as well as teamwork between requesting and requested jurisdictions to ensure that the assets could be restrained, confiscated and returned.

62. The panellist from the United States gave a presentation on the legislation governing civil and criminal forfeiture in her country, highlighting in particular the framework for third-party challenges in both proceedings. In civil proceedings, if a party has legal standing, it must prove either that the property is not forfeitable, or that the party is the innocent owner in accordance with Title 18, section 983, paragraph (d), of the United States Code. In criminal forfeiture, the defendant may challenge the forfeiture at trial, while third parties must assert their claims in an ancillary proceeding, in line with Federal Rule of Criminal Procedure 32.2, paragraph (c), and establish superior or bona fide purchaser rights in property under Title 21, section 853, paragraph (n), of the United States Code. The panellist noted how delays in acquiring evidence, the uncontrollable pace of litigation and high expenses all constituted common litigation issues that affected asset recovery. She also shared how the defence of filed claims, some of which might be frivolous, and communication challenges could further complicate litigation for asset recovery. To overcome such challenges, she underscored the importance of effective intergovernmental coordination and cooperation throughout the asset recovery process, highlighted the importance of considering and consulting with the litigating State party on any potential unintended consequences of third-party intervention, and suggested the consideration of alternative third-party recovery mechanisms.

63. Owing to time constraints, the Chair requested that discussions on the topic be continued at the next meeting of the Working Group. Accordingly, the Chair asked the Secretariat to include the topic on the agenda of the fourteenth meeting of the Working Group.

VII. Adoption of the report

64. On 30 May 2019, the Working Group adopted the report on its thirteenth meeting (CAC/COSP/WG.2/2019/L.1, CAC/COSP/WG.2/2019/L.1/Add.1 and CAC/COSP/WG.2/2019/L.1/Add.2), as orally amended. Parts of the report on items 3 and 4 of the agenda were adopted after the conclusion of the session, by silence procedure.