

## International Expert Meeting on the management and disposal of recovered and returned stolen assets, including in support of sustainable development

### Addis Ababa and beyond: A Concept Note

---

The following three mandates call for actual work to strengthening the recovery and return of stolen assets:

- **Sustainable Development Goal 16:** Promote peaceful and inclusive societies for sustainable development, provide **access to justice for all** and build effective, **accountable and inclusive institutions** at all levels. **Target 16.4: By 2030**, significantly reduce illicit financial and arms flows, **strengthen the recovery and return of stolen assets** and combat all forms of organized crime.
- **Addis Ababa Action Agenda** of the 3rd International Conference on Financing for Development: Urges all countries that have not yet done so to ratify and accede to the United Nations Convention against Corruption, and encourage parties to review its implementation. Commits to making the Convention an effective instrument to deter, detect, prevent and counter corruption and bribery, prosecute those involved in corrupt activities and recover and return stolen assets to their country of origin; **Encourages the international community to develop good practices on asset return.**
- **Resolution 6/3 of the Conference of the States Parties to the United Nations Convention against Corruption** on “Fostering effective asset recovery” encourages States parties and the United Nations Office on Drugs and Crime to continue sharing experiences and building knowledge on the management, use and disposal of frozen, seized, confiscated and recovered assets, and **to identify good practices as necessary, building upon existing resources that address the administration of seized and confiscated assets, including with a view to contributing to sustainable development.**

With a view to advancing the work on strengthening the recovery and return of stolen assets, the international expert group meeting is to identify good practices for the return of stolen assets in support of sustainable development. It will be held in Addis Ababa, bringing together for the first time different constituencies working on asset recovery and return from the perspective of the implementation of UNCAC and the Financing for Development angle. It will be a first step towards developing good practices on seized and confiscated assets and on asset return.

## A. Introduction

1. The asset recovery provisions under Chapter V of the UNCAC were hailed at the time of the adoption of the Convention as a major breakthrough in the area of international cooperation. Not only did they regulate the recovery and return of corruption proceeds, but they recognised the return of assets as a fundamental principle of the Convention.

2. Chapter V of the Convention stipulates that States parties shall afford one another the widest measure of cooperation and assistance in that regard (article 51). Moreover, the Convention sets forth substantive provisions to address specific measures and mechanisms of international cooperation for the purpose of the recovery and repatriation of assets derived from offences covered by UNCAC. In its article 57, it establishes for the first time that proceeds of embezzlement of public funds should be returned upon confiscation to the country of origin, whereas for the proceeds of other offences, a differentiating regime has been adopted taking into account damages, prior ownership and victims.

3. Much has happened since the adoption of the Convention and the issue has remained high on the international agenda. The Conference of the States Parties to the UNCAC called for increased efforts in asset recovery leading to the launch of the Stolen Asset Recovery Initiative (StAR) by the World Bank and UNODC, in 2007 which provides technical assistance and developed a range of knowledge products on different stages of the asset recovery process.<sup>1</sup> Increased efforts have also been made by the G8 and the G20, including the publication by the G8 as part of the Deauville Partnership with Arab Countries in Transition of a guide that describes specific steps required for assistance and cooperation in matters related to tracing, freezing, confiscation, and return of proceeds of corruption. Both the Arab Spring and the subsequent discovery of millions of looted assets have ensured that the issue remains a high priority, both for financial centres and developing countries.

4. The Lausanne process, facilitated by the Swiss government in close cooperation with the International Centre for Asset Recovery (ICAR) of the Basel Institute on Governance and with the support StAR Initiative has also contributed to knowledge building efforts. Through periodic seminars of asset recovery practitioners, they have consolidated this accumulated knowledge in the form of the Guidelines for the Efficient Recovery of Stolen Assets.

5. As a complement to these efforts, UNODC started in early 2014 to work with the Calabria Region in Italy, in the field of management, use and disposal of seized and confiscated assets. This initiative seeks to identify good practices with a view to developing relevant tools and guidelines on the issue of administration of seized and confiscated assets, both at the domestic level and within the context of international asset recovery cases. The outcome of this effort will be a guide on managing stolen assets.

---

<sup>1</sup> StAR publications include: Management of Returned Assets: Policy Considerations (2009); A Good Practice Guide for Non-conviction-based Asset Forfeiture (2009); Towards a Global Architecture for Asset Recovery (2010); The Asset Recovery Handbook: A guide for Practitioners (2011); Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action (2011); The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It (2011); Politically Exposed Persons: Preventive Measures for the Banking Sector (2012); On the Take: Criminalizing Illicit Enrichment to Fight Corruption (2012); Public Office, Private Interests: Accountability through Income and Asset Disclosure (2012); The joint StAR-OECD Analysis: Identification and Quantification of Proceeds of Bribery (2012); Left out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery (2014); and Public Wrongs, Private Actions: Civil Lawsuits to Recover Stolen Assets (2015).

6. Efforts also continue in the development context. The developmental impact of asset recovery stems from its potential for use for development purposes. Some returns have resulted in improvements in the health and education sectors and in the reintegration of displaced persons. Recovering the proceeds of corruption also has broader effects that go beyond the financial benefit: There can be no prevention, confidence in the rule of law and criminal justice processes, proper and efficient governance, official integrity or a widespread sense of justice and faith that corrupt practices never pay, unless the fruits of the crime are taken away from the perpetrators and returned to the rightful parties.<sup>2</sup>

7. The concern over the steady increase in funds of illicit origin flowing out of developing countries, and the impact of that on the rule of law, the ability to manage economic policy, and raise domestic resources to enable governments to deliver basic services in health, security and education have prompted Member States to accelerate action on asset recovery in a various multilateral fora. International commitments to address illicit financial flows including those related to corruption, have been included in the Addis Ababa Action Agenda (AAAA) which urged all countries to ratify and accede to the United Nations Convention against Corruption; to support the Stolen Asset Recovery Initiative; to combat money laundering and terrorism financing; and to ensure effective implementation of the United Nations Convention against Transnational Organized Crime. Similarly, the 2030 Agenda for Sustainable Development and the Sustainable Development Goals call on countries to significantly reduce illicit financial and arms flows by 2030;<sup>3</sup> to substantially reduce corruption and bribery in all their forms;<sup>4</sup> to develop effective, accountable and transparent institutions;<sup>5</sup> to strengthen domestic resource mobilization, including through international support to developing countries.<sup>6</sup> For more detailed information on the current asset recovery and financing for development landscape see Annex 1.

8. Despite all of these and other efforts, very little money is being returned to the countries of origin. For example, in a recent survey of OECD members, foreign assets totalling \$1.4 billion were frozen between 2010 and 2012. In the same period only \$147.2 million were returned by OECD members to the country of origin, with a further US\$ 276.3 million having been returned between 2006 and 2009.<sup>7</sup> These amounts are a fraction of the estimated \$20 to \$40 billion stolen each year from developing and transition jurisdictions.<sup>8</sup> Information gaps continue to exist in terms of (1) Why levels of returns remain low; (2) Where weaknesses in the overall system lie? (3) Whether there is anything that can be done to further facilitate returns by Member States?

---

2 Legislative guide for the implementation of the United Nations Convention against Corruption, para 765.

3 (SDG target 16.4).

4 (SDG target 16.5).

5 (SDG target 16.6).

6 (SDG target 17.1).

7 Few and Far: The Hard facts on Stolen Asset Recovery (2014) (StAR Publication), p. 18.

8 Few and Far: The Hard facts on Stolen Asset Recovery (2014) (StAR Publication), p. 21.

## **B. Trends in Asset Returns**

9. There has been considerable diversity of approaches in the way countries have tackled the return and disposal of assets. These experiences can be used to inform future asset returns which will hopefully become more frequent as a result of increased global efforts to recover stolen assets. As most jurisdictions are still quite inexperienced in this matter, there is strong demand for the development of global knowledge and guidance on effective ways to manage and dispose of seized and confiscated assets both domestically and when more than one jurisdiction is involved.

10. Thus, there is an opportunity for the international community to take cognizance of and analyse existing experiences with a view to identifying good practices and possibly embarking on the development of principles to offer guidance to the States parties to the Convention in the administration and return of stolen assets. However, to be useful such an exercise would have to reflect the current “state of play” and needs to be based on a deeper understanding of the different legal frameworks around the world and the diverse approaches countries have taken in the management, use and disposal of seized and confiscated assets.

11. Based on the aforementioned experiences of States, the Stolen Asset Recovery Initiative in its publication, “Management of Returned Assets: Policy Considerations (2009)” identified principles that should be considered by States engaged in this process. The objective of the publication was to provide guidance and analytical elements to national authorities of the alternative institutional arrangements for the management of returned assets. Underlying the note are two fundamental principles: The first is that the use of returned assets is the sovereign decision of the national authorities in the country that recovers its stolen property. This is in line with UNCAC which recognizes the return of assets as a fundamental principle of the Convention. The second underlying principle relates to the importance of ensuring access to information, particularly access to information for the general public. The note further identified the following lessons learnt:

### ***I. Potential Benefits of the Asset Return***

From a financial management perspective, international asset recovery presents policy makers with the challenge of maximizing the benefit that can be gained from the use of the funds that are returned. When assets are returned, national authorities can take advantage of the heightened level of public awareness regarding the funds that are recovered. These efforts will help demonstrate that the fight against corruption can be successful and that corruption does not pay. More ambitiously, a country may use the return of stolen assets as an opportunity to raise the profile of the fight against corruption, encouraging broad participation in discussions about the use of the funds that are recovered. Countries to which assets are returned may choose to make special arrangements for the management of returned assets. Special arrangements may serve as a very visible departure from “business as usual” and highlight a fresh commitment to transparency and accountability. The use of special arrangements may help build confidence that the returned assets will be used in ways that benefit the population and the risk that funds may be diverted will be minimized. In this way, the use of special approaches may generate benefits in terms of enhanced credibility and confidence in the country’s broader governance and anti-corruption strategy.

## **II. Planning Asset Return**

The management of asset return is complex and requires forward planning. Particular consideration should be given to the timing of returns, the disposal of assets, budgetary and economic impacts, the institutions and stakeholders to be involved in decision-making and the appropriate structuring of decisions regarding the allocation of funds and management arrangements.

The key actors undertaking the asset recovery process are generally public prosecutors or, in the case of criminal proceedings, the agency responsible representing the state in civil litigation, and the central authority responsible for legal cooperation with other states. These agencies will generally follow and contribute to the legal process through domestic and foreign courts. However, they will generally not be the agencies responsible for making decisions regarding the management of returned assets. Ultimate responsibility for these decisions will generally lie with the treasury or ministry of finance, as the body responsible for the management of the state's capital, and, if the returns are substantial or relate to a high-profile case, may involve the head of government together with other members of the executive.

In order for preparations to get under way, it is important for those responsible for supporting legal proceedings to inform the ministry of finance, and other key decision makers designated by the national authorities, regarding progress in the case, and the likely amount and timing of any return. Ideally, key decisions regarding the management of the returned assets will already have been taken by the time the funds are returned.

### *i. Timing*

Planning for the asset return should begin while legal proceedings are still ongoing. Assets are transferred to the ownership of the returned State as soon as the period set for the submission of appeals expires or, if appeals are filed, upon final judgment. Some asset recovery cases have taken years to reach final judgment; others have reached final judgments suddenly and unexpectedly.

### *ii. The disposal of assets*

One of the first decisions to be made is regarding the disposal of the assets. The assets returned may include funds in bank accounts and liquid financial instruments, but also property, vehicles, jewelry, companies, and even livestock. It is important to ensure that the assets are properly inventoried, valued and the arrangements are made for their disposal in a transparent manner following established procedures so as to ensure accountability and maximize the returns. The authorities in the foreign jurisdiction where the property is located may be able to provide assistance in managing and disposal of assets in order to facilitate the repatriation of funds. Alternatively these matters can be managed by agents designated by the receiving State.

### *iii. Budgetary and economic impacts*

The ministry of finance should be informed of all prospective and actual asset returns. Returned assets belonging to the State have to be booked in state accounts and the application of funds reflected on the budget, regardless of whether funds will be managed

through special arrangements or not. Early engagement with the ministry of finance is particularly important where the asset return is substantial relative to the overall size of the budget. The macro-economic implications of substantial returns will need to be taken into account when determining the application of funds and management arrangements.

*iv. The institutions and stakeholders to be involved in decision-making*

The national authorities will need to determine the process by which decisions regarding the allocation and management of the returned assets are made. The national authorities may determine that the returned funds will be managed through the budget process. Alternatively, a policy decision may be taken to apply special arrangements, reflecting the substantial amount of the returns, the high-profile nature of the asset return or other policy considerations. Special arrangements may also be a result of settlement agreements. Where special arrangements are to be put in place, it is important to consider which institutions and stakeholders will be involved in the design of these arrangements. These may include government agencies, the legislature—since funds will have to be appropriated and the special arrangements may require specific legislation—and other relevant stakeholders, such as civil society.

The national authorities will need to determine whether, how, and at what point to engage external partners in the decision making processes and the management of the asset return. External partners may be able to provide technical advice on the management of the returned funds and contribute financing to support management and monitoring arrangements. In some circumstances, the involvement of external partners may serve to endorse the approach adopted by national authorities and generate confidence in the arrangements among stakeholders. Should the national authorities determine that it would be helpful to collaborate with external partners, they may decide to formalize these arrangements in an agreement with the partners involved. In general, transparency in the process is seen to increase confidence among key stakeholders and the general public.

*v. Structuring of decisions regarding the allocation of funds and management arrangements.*

Finally, decisions will need to be taken regarding the design of the special arrangements for the management of returned assets. These decisions are divided into two parts. The first part relates to the intended use of the returned assets, in terms of the sectors, programmes, activities, and /or intended beneficiaries of these funds. This decision is addressed below. The second part of the decision relates to the appropriate governance arrangements. The design of these arrangements will need to take into account the allocation objectives and the national authority's objectives in terms of meeting public expectations for the treatment of the returned assets and ensuring appropriate standards of transparency and accountability.

**III. The Allocation of Returned Assets**

The decision to allocate the returned assets to a specific purpose helps manage expectations and facilitates the tracking of the funds. The process of decision making around the application of funds can also provide an opportunity for constructive debate around development priorities and appropriate use of funds of the returned proceeds of corruption.

When considering the appropriate application of funds, it is important to bear in mind the likely amount of money available and the expected flow of funds over time. Investment projects can be selected to take account of available funding and can be effective use of both small and large scale asset returns. Experience suggests that different countries have sought to apply the proceeds from corruption to quite different purposes. These have included financing for anti-corruption and law enforcement activities; social development activities such as education and health; specific programmes tied to specific policy outcomes or goals, such as those included in the poverty reduction strategies tied to the Millennium Development Goals; and specific beneficiaries or groups of persons, such as those that have been the victim of corruption or human rights abuses.

When determining the appropriate allocation of returned assets, it is also important to bear in mind the results that the resources are expected to achieve. Results should be clearly identified in terms of measurable and, ideally, visible outputs (for instance, schools, roads) and the outcomes that they are expected to deliver in terms of improvements in the quality of life. The definition of expected results can also be used to verify whether the funding is sufficient or not and can provide a basis for verifying whether the funds have been spent as intended. This is particularly important when responding to public expectations, since the public will not be able to verify how funds are spent, but it will be able to see if the outputs that were originally promised were delivered or not.

As a general rule, the narrower the range of sectors, programmes, and projects that will be financed from the asset return, the easier it will be to monitor the application of the specific funds. However, the absorptive capacity of any particular programme needs to be kept in mind, as it might be limited.

Any attempt to allocate funds from a particular source to specific programmes faces the question as to whether the funding is additional and is not undercut by the withdrawal of funds from other sources. If the returned funds are allocated to education, for instance, but appropriations from the budget are cut by the same amount, there will be no actual increase in spending on education. For the returned funds to provide additional resources for the intended purpose, financing from other sources would have to at least remain constant. Verifying the “additionality” of funding is a challenge under any management arrangement.

#### ***IV. Alternative Management Arrangements***

Principles of sound public financial management require that public funds be used transparently, so that the public is kept informed regarding the money entrusted to the state; efficiently and effectively, with due regard to value for money in achieving the intended objectives; and with clear lines of accountability, to ensure that public funds are used only for the purposes intended. These principles can be applied through a variety of arrangements for the management of returned assets. These include for example, the use of country systems, enhanced country systems, autonomous funds, and nongovernmental organizations.<sup>9</sup>

---

<sup>9</sup> Management of Returned Assets: Policy Considerations (2009), pages 2-11.

*i. Country Systems*

Use of country systems entails channeling funds from the central treasury account to spending agencies through the budget process, with expenditures incurred using the country's budget formulation and reporting, as well as execution and procurement procedures. Lines of accountability are drawn through government institutions subject to monitoring and review by the national oversight institutions. They have the following strengths and weaknesses:

- It will be possible to track returned assets, dollar for dollar, through the system to identify the final application of funds: the school, the textbook, the clinic, the medicine financed by the returned assets. This expectation is frequently expressed by stakeholders and therefore merits serious consideration.
- Public expenditure management systems use the budget to assign funds to particular programmes, activities, and the outputs that they expect to generate. However, not all country systems are robust throughout the expenditure management chain.
- Public expenditure tracking surveys may be used to verify the extent to which actual expenditures match the budgets originally allocated. These surveys track expenditures through the entire transfer chain, from the Ministry of Finance through each of the intervening levels of administration down to the intended spending unit.

*ii. Enhanced Country Systems*

“Enhanced” arrangements are designed to complement country systems rather than substitute for procedures prescribed by legislation. Consequently, these arrangements can usually be implemented fairly quickly, through administrative instructions or by instructions included in budget documents. For example, country authorities may decide that the existing procurement legislation and rules will apply but that the mechanisms by which such legislation is implemented will be strengthened in some way, such as by having an external firm manage the bidding process. They have the following strengths and weaknesses:

- The enhanced measures will usually imply additional costs, both financial costs related to the contracting of external agents to undertake—or verify—functions that would normally be undertaken by the public sector, and transactions costs in terms of additional processing steps and reporting requirements.
- Furthermore, the enhanced arrangements require some form of “ring-fencing” of a particular institution, programme or project. The arrangements cannot be applied across the whole public sector; they are used for a particular purpose. Institutions may have to run parallel procedures, one set of programmes or projects operating under core country systems and another under enhanced arrangements.
- Nonetheless, ring-fencing and enhanced arrangements can assist national authorities to highlight the special characteristics of the programmes and projects financed with returned assets.

*iii. Autonomous Funds*

Autonomous funds are established by law with a specific purpose and separate governance arrangements and will generally enjoy administrative, legal, and financial autonomy. Lines of accountability are to the body established to oversee the management and application of the resources channeled through the fund. This body may be drawn primarily from the public sector, though boards often include a wider range of stakeholders, including representatives of the sectors that are the intended beneficiaries of the resources and civil society organizations that can contribute to oversight and transparency. Autonomous funds have been established specifically for the purpose of managing assets returned following high-profile corruption cases, including the FEDADOI set up in Peru to receive funds recovered in the context of the Montesinos/Fujimori cases. They have the following challenges:

- Risk of improper targeting of individuals for purposes of seizing assets for personal gain or institutional purposes. Possible solutions include: Senior-level supervision over case initiation and seizure approvals; No direct payment of salaries of investigators and prosecutors involved in seizure process; Salaries of property managers, analysts, and support staff are appropriately paid from fund receipts.
- Risk of fund misuse in jurisdictions with weak financial management. Possible solutions include: External auditing, transparent reporting, practice guidelines, and periodic statistical reports, all of which would be publicly available.
- Risk of reduction of appropriate funds in anticipation of forfeiture revenue. Possible solutions include: The enabling legislation for an autonomous fund should state that returned assets are used to supplement appropriated funds, not supplant (replace) them.
- Risk that operation of an autonomous fund imposes additional costs on government.
- Additional benefits of an autonomous fund include better oversight and greater opportunity to protect against misuse.

*iv. Non-governmental Organizations*

National authorities may choose to channel returned assets through a non-governmental or community-based organization or organizations where such arrangements offer benefits that could not be realized by using country systems, enhanced country systems, or special funds. These benefits may include:

- an ability to channel resources to particular target groups that would otherwise be difficult to reach;
- capacity to mobilize and engage broad participation in activities at the grass roots level;
- capacity to deliver quality public services efficiently and effectively, such as through performance-based contracting or community-managed approaches, that would otherwise be difficult to implement in the public sector; and
- credibility and perceived independence of the organizations with key stakeholders.

## ***V. Selecting the Appropriate Management Arrangements***

The value, frequency, regularity, and structure of the flow of funds from asset returns are key considerations in determining whether it is worth investing in special arrangements and the nature of these arrangements. Creating a separate management structure when the volume of funds to be handled is small, and the flow erratic, may not make sense unless there is a very strong symbolic value in doing so. There may be a minimum overhead in putting in place procedures to manage funds. Thus, the smaller the size of the funds, the higher the proportion that will be used up by administrative expenses. Light administrative structures, using existing organizational systems as far as possible are to be preferred when the asset return is small and irregular.

The financial management dimensions that will need to be taken into account may also vary according to the system or the management arrangement. Some of the considerations in determining the appropriate choice of management arrangements are outlined in the following table. The table in Annex 2 presents a summary comparing the alternative arrangements' treatment of key public expenditure management functions. It should be stressed that the alternative management arrangements are not exclusive; where there are substantial returns, national authorities may want to consider using a variety of arrangements to meet their development and governance arrangements.

## ***VI. Structuring the Decision-Making Process***

The selection of the appropriate management arrangements for returned assets is likely to be the subject of much debate, the more so the larger the amount of money concerned. Perceptions, expectations, and opinions may diverge markedly between key stakeholders in the administration, civil society, and the broader public. The national authorities will have to navigate carefully through the decision-making process if the asset return is to be seen as a success.

A transparent, structured decision-making process can be of considerable assistance in this context. Informed public debate can help highlight the strengths and weaknesses of alternative management arrangements and the trade-offs between differing objectives. The authorities will likely need to balance and compromise between opposing views. In these circumstances, the technical ideal may not be the most viable option.

The decision tree contained in Annex 3 illustrates how a structured series of decisions can be used to guide decision makers through the alternatives. The structured decision flow diagram, as well as its conclusions should be treated as illustrative only, as many factors, depending on context, are likely to enter into play.

### **C. Key stakeholders**

12. Returning stolen assets involves many different stakeholders, both in the countries where the assets are found and in the countries where they have been stolen from. Ensuring that assets are returned requires practitioners, policymakers and other stakeholders in both countries to work together strategically.

13. The complexity of asset recovery is mirrored by the variety of actors that are involved in the process starting from tracing and confiscating to the ultimate return. Asset recovery experts generally range from government employees such as law enforcement professionals, financial intelligence units, central authorities, to non-governmental organisations appearing as parties in suits.

14. Experts involved in asset management often range from government attorneys who secure court orders, or accountants involved in allocating returned funds for use, to non-State actors such as civil society and the private sector who may play a role in oversight as well as collecting reliable data pertaining to returns. While asset recovery practitioners and competent authorities dealing with international cooperation have various fora and networks for exchanging information, there are limited opportunities for key actors involved in asset management and return. Very often, governmental bodies involved in asset management differ from the principal actors involved in the asset recovery process. They may include the ministry of finance, and other offices acting on behalf of the executive. Engaging asset management professionals will entail looking at what entities are tasked with the preservation, use and disposal of seized and confiscated assets, the different approaches used and the systems for the management of seized and confiscated assets globally. This has largely been addressed by the Calabria and Lausanne processes.

15. In the context of asset returns, financial experts are committed to combating corruption at all levels and forms and enabling the effective, efficient and transparent mobilization and use of resources.<sup>10</sup> They include amongst others, professionals with expertise in finance, development, taxation issues, and the infrastructure, as well as business sectors. As these experts have a different focus from asset recovery practitioners, any guidelines or tools developed will need to also address concerns from their point of view.

16. In addition, non-state actors have played an important role in some countries in ensuring the returned funds are used for victims of corruption.

17. Because the preservation, management and return of assets requires cooperation and coordination among a range of key actors in various sectors at the national and international level, efforts to build knowledge on asset returns needs to draw from the experience of professionals involved in Asset Recovery (including asset management, and asset returns) as well as experts involved in financing for development.

#### **D. Addis and beyond**

18. The return of stolen assets cannot be seen without considering the context in which it takes place. Ensuring coherence between national considerations and international normative frameworks is crucial to establish trust and confidence. Policy effectiveness can be supported by aligning national efforts with international initiatives and standards and strengthening international co-operation.

---

<sup>10</sup> Para. 5, AAAA.

19. The UNCAC as a binding global treaty which currently has 181 States parties serves as a strong framework for asset returns. Its provisions, inter alia, provide criteria for the return of embezzled public funds, and the establishment of ownership or damage for the returns of assets related to other UNCAC offences. The 2030 Agenda for Sustainable Development and the Sustainable Development Goals call on countries to significantly reduce illicit financial flows, to strengthen the recovery and return of stolen assets by 2030, and to develop effective, accountable and transparent institutions at all levels. The Addis Ababa Action Agenda of July 2015 provides a global framework for financing sustainable development and is an integral part of the 2030 Agenda for Sustainable Development, supports and complements it, and helps to contextualize its means of implementation targets with concrete policies and actions.

20. Against this international policy background, there will be political and policy considerations at play in both the country where the assets were found and in the country they will be returned to. Identifying these considerations and ensuring that all stakeholders, both nationally and internationally, are involved will ensure greater success of the returns.

21. In order to facilitate the process of asset return, the practice of convening key stakeholders and building knowledge from their experiences is key. All policy issues that cut across traditional policy-making boundaries cannot be addressed effectively by a single policy unit located within a silo at a lower level of the administration. Effective asset return requires support from the highest level and a whole-of-government approach on the side of both the returning country and the country where the assets are being returned to. Therefore, an approach which builds on close dialogue and cooperation of all interested parties involved.

22. In order to address the above issues, the following activities and outputs will be pursued:

- i. The Government of Ethiopia announced during the 6th session of the Conference of the States Parties to the United Nations Convention against Corruption (St. Petersburg, 2-6 November 2015) its intention to host, as a follow-up to the Third International Conference on Financing for Development, an international expert meeting to share experiences and identify good practices in the return and disposal of recovered assets and their use for the benefit of society. The international expert group meeting on “Identifying good practices to improve stolen asset return and disposal in support of sustainable development” in Addis Ababa, Ethiopia, aims to create a platform for countries, which have cooperated in the past in the recovery and return of assets, to share their knowledge and experience in transnational corruption cases and interact with other interested States. It will further allow practitioners to determine the underlying rationale, as well as advantages and disadvantages of these different approaches and assess whether there are any good practices emerging based on past experience. The meeting will bring together diverse communities of practitioners, including asset recovery experts, public finance managers who played a role in the return of assets, as well as development practitioners and recipients who participated in the implementation of programmes and projects funded with returned assets.

- ii. The Addis Ababa meeting should build upon other processes, such as the work of UNODC on national experiences and good practices in the field of asset management, the Lausanne guidelines, the G20 principles and others (for more detail see Annex I).
- iii. It will start where these processes stopped and take stock on what can be learned from past practices on asset return. It will highlight elements of these past cases that could be considered as emerging good practices in this context, including practices which would protect returned assets from renewed financial crime and ensure that returned assets will benefit in an accountable and transparent way the sustainable development of the country of origin. It would further elaborate the role of a broad engagement of all stakeholders in the determination of return mechanisms.
- iv. The outcome of this meeting will expand and update existing policy papers on the subject to date, including the work carried out by StAR on the “Management of Returned Assets: Policy considerations”, which are heavily quoted above, but which are not up to date with recent cases and at the time were not based on sufficient experiences to determine what could be considered a good practice. It is envisaged that the outcome of the meeting takes into account elements of a good asset management regime, highlights domestic coordination mechanisms, as well as reviews sector-specific approaches to asset management and returns.
- v. Further knowledge concerning the experiences of countries engaged in the process and negotiations surrounding asset returns will be generated, both from the perspectives of the requesting and the requested states. This will include details of approaches used to facilitate returns,
- vi. an examination of the systems of accountability and transparency used to facilitate the return of embezzled funds to the country of origin, the use of settlements and their implications on the recovery and return of stolen assets. In terms of settlements, information gathered will build upon the study conducted by the StAR Initiative<sup>11</sup> and look into existing practices surrounding settlements and other alternative legal mechanisms of return. Specific points of consideration could be the impact these practices have had, including the allocation of funds received as a result of settlements for the compensation of victims. A further focus will be to explore to what extent returned assets have been used to compensate victims and support the sustainable development goals, and what can be done to improve on existing efforts.
- vii. Based on experiences shared by experts in the various sessions and the ensuing discussions, the meeting is expected to produce a directory of previous examples of returns which should already allow for drawing out good practices in the various aspects of asset return. The role national sustainable development strategies and national development agencies can play in support of the asset recovery agenda; and at what stage of the process the line ministries involved in the discussions on return will need to include not only the ministries of justice, but also the ministries of finance and development (or similar ministries and professionals) will also be highlighted.

---

<sup>11</sup> StAR, *Left out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery*, 2014.

- viii. Pending the outcome of the meeting in Addis Ababa, follow-on expert group meetings could be envisaged in other regions with the objective of compiling a directory of examples of available approaches to the management of assets and their return and elaborate good practices from these approaches.
- ix. The 2017 Economic and Social Council forum on financing for development follow-up which will convene from 22 to 25 May, will provide a further opportunity to build on these efforts. It will also bring together different constituencies such as a special high-level meeting with the Bretton Woods institutions, the World Trade Organization and the United Nations Conference on Trade and Development.
- x. Furthermore, the outcomes of the above meetings are intended to feed into the Working Group on Asset Recovery scheduled for August 2017 and the Conference of the States Parties to the United Nations Convention against Corruption in November 2017. The Working Group on Asset Recovery at its ninth session and the Conference of the States Parties to the UNCAC at its sixth session adopted resolutions<sup>12</sup> in which they encourage the sharing of experience and building knowledge on the management, use and disposal of frozen, seized, confiscated and recovered assets. This is with the objective of developing non-binding guidelines,<sup>13</sup> with a view to contributing to sustainable development.<sup>14</sup>
- xi. Ultimately, the outcome of this process could lead to a set of Good Practices or Models on the Management and Disposal of Recovered and Returned Stolen Assets, including in Support of Sustainable Development which could inspire and facilitate future partnerships on asset returns and disposal.

---

<sup>12</sup> CAC/COSP/2015/10, resolution 6/3; and CAC/COSP/WG.2/2015/4, para. 69.

<sup>13</sup> CAC/COSP/WG.2/2015/4, para. 69.

<sup>14</sup> CAC/COSP/2015/10, resolution 6/3.

## **ANNEX 1:**

### ***The current landscape***

1. Following the entry into force of UNCAC, a variety of initiatives have emerged at the international level to support countries tackling the challenges briefly described above both domestically as well as within the context of international asset recovery cases.

- The issue of administration of seized assets has been addressed, among others, by the G8 Best Practices for the Administration of Seized Assets (2005) , which are intended in particular to help states preserve the value of seized assets during (primarily domestic) confiscation proceedings.
- In 2006, the G8 endorsed the Principles and Options for Disposition and Transfer of Confiscated Proceeds of Grand Corruption with a view to providing greater transparency, predictability and effectiveness in the disposition and transfer of confiscated assets in grand corruption cases. The principles reaffirm the commitment to disposition and return of assets, including in embezzlement cases, as articulated in article 57 of UNCAC. The principles govern, subject to national law, how transfers could be accomplished consistent with UNCAC, including, where appropriate, pursuant to voluntary agreements executed in accordance with paragraph 5 of article 57.
- A study carried out by the Organization of American States (OAS) analyses the systems for the management of seized and confiscated assets in the region and highlights the existence of two main models: (1) entities with extended functions, ranging from the search of potential assets to their identification, seizure, forfeiture, management, coordination, destination, etc.; and (2) entities tasked with the mere management of assets.
- A study published by the International Centre for Asset Recovery (ICAR) of the Basel Institute on Governance identifies a number of core themes – notably efficiency, accountability and transparency – that were common to all of the main international asset return cases in the past 10-15 years, but which have been addressed differently in each of the analysed cases .
- A study produced by the joint UNODC/World Bank Stolen Asset Recovery (StAR) Initiative outlines four possible approaches to the management of returned assets and illustrates the benefits and disadvantages for each of these: (1) country systems: ordinary channels through the public financial management systems; (2) enhanced country systems: enhanced channels building on the ordinary system with adjustments to improve control systems that are considered weak; (3) autonomous funds that are designated for specific programmes with clear public reporting and accountability requirements; and (4) assignment of the management to Non-Governmental Organizations (NGOs).
- The issue of confiscated assets is also addressed, among others, by the FATF Best Practices on Confiscation (Recommendations 4 and 38) and a Framework for Ongoing Work on Asset Recovery (2012) , which sets out international best practices to assist countries in their implementation of Recommendations 4 and 38, and to address impediments to effective confiscation and asset recovery in the international context. The FATF, for example, recommends the establishment of asset forfeiture funds by member states, to give consideration to use all or at least a portion of confiscated

property for law enforcement, health, education or other appropriate purposes, and regardless of the specific end use, to ensure that confiscated property is used transparently and to fund projects that further the public good.

- ICAR and the Swiss Federal Department of Foreign Affairs in October 2013 organized an international workshop on "Returning Stolen Assets" in Küsnacht, Switzerland, with participants from 13 requesting and requested States. Using past experiences as a basis for discussion, the workshop concluded with a number of principles that should ideally be considered by concerned States in future asset returns, including, notably, that: returned assets should be disposed of in a transparent and accountable way, involving whenever possible representatives from all concerned stakeholder groups in the determination of end use; returned assets should benefit the victims of the original crime; five different models can be distinguished when looking at past experiences; and due consideration should be given to the sustainability and long-term impact of programmes financed through returned assets.
- At the G20 Anti-Corruption Working Group (G20 ACWG) meeting held in Istanbul in March 2015, countries agreed to "consider development of principles on the disposition of recovered assets, taking into consideration existing work and research". At the G20 ACWG in Washington DC in June 2015, the Group considered a note prepared by UNODC and the StAR Secretariat informing the members of the working group about on-going initiatives that bear important synergies with the work of the G20 ACWG relating to the management of confiscated assets, with a view to ensuring that efforts are mutually reinforcing. At the G20 ACWG held in Paris in October 2015, the Group did not finalize consideration of a draft of proposed principles on the disposition and management of recovered assets but agreed to take the issue up again in 2016. To that end, the World Bank and UNODC submitted a note on the disposition and management of recovered assets to the first G20 Anti-Corruption Working Group Meeting, held in Beijing in January 2016.
- Target 16.4 of the Sustainable Development Goals requires strengthening the recovery and return of stolen assets by 2030. Furthermore, the recovery and return of stolen assets has been identified in the Addis Ababa Action Agenda of the 3rd International Conference on Financing for Development (Addis Ababa, 13-16 July 2015) as a crucial element towards the financing of the 2030 Agenda. The Addis Ababa Action Agenda encourages the international community to develop good practices on asset return.

2. The Guidelines for the Efficient Recovery of Stolen Assets are another important initiative. The call to develop the Guidelines was initially adopted by the UN General Assembly and the Conference of States Parties to the UNCAC (COSP) in 2013. The mandate has been renewed since, expressing the international support to the Guidelines and the Lausanne process, which led to their development by offering a platform for countries to exchange their practical experiences and to consolidate them. Since Lausanne IX in 2016, focus has been given in breaking down the Guidelines into steps for action. Lausanne X to take place in February 2017 is being organized by Switzerland in close cooperation with the International Centre for Asset Recovery (ICAR) of the Basel Institute on Governance and with the support of the World Bank/UNODC Stolen Asset Recovery (StAR) Initiative has the objective to develop examples and practical guidance for the implementation of the Guidelines in requesting and requested countries and to support their endeavour to act more efficiently together and to develop a more coherent and proactive approach to asset recovery in practice.

3. At its fifth session the Conference of the States Parties to the United Nations Convention against Corruption adopted resolution 5/3 on “Facilitating international cooperation in asset recovery” which, inter alia, “encourages States parties and the United Nations Office on Drugs and Crime to share experience on the management, use and disposal of frozen, seized and confiscated assets, and to identify best practices as necessary, building upon existing resources that address the administration of seized assets, and to consider developing non-binding guidelines on this issue”. At the meeting of the Working Group on Asset Recovery from 3-4 September 2015 in Vienna, the Group recommended to States parties and UNODC to continue sharing experience on the management, use and disposal of frozen, seized and confiscated assets, and to identify best practices as necessary, building upon existing resources that address the administration of seized assets, and to consider developing non-binding guidelines on this issue. At its 6th session, the Conference of the States Parties to the United Nations Convention against Corruption adopted resolution 6/3 on “Fostering effective asset recovery” which “encourages States parties and the United Nations Office on Drugs and Crime to continue sharing experience and building knowledge on the management, use and disposal of frozen, seized, confiscated and recovered assets, and to identify good practices as necessary, building upon existing resources that address the administration of seized and confiscated assets, including with a view to contributing to sustainable development”.

4. In carrying out this mandate, UNODC started in early 2014 to work with the Regione Calabria, Italy, in the field of management, use and disposal of seized and confiscated assets. This initiative seeks to identify good practices with a view to developing relevant tools and guidelines on the issue of administration of seized and confiscated assets, both at the domestic level and within the context of international asset recovery cases.

5. A first Expert Group Meeting held in April 2014 produced a set of findings and recommendations on how to advance the work and thinking of the international community in the areas of: (i) international cooperation in identifying, seizing and confiscating criminal assets, particularly those of Mafia-based criminal organizations; (ii) domestic management, use and disposal of seized and confiscated assets; and (iii) management of returned assets in asset recovery cases. The outcomes of the April 2014 Meeting reaffirmed that the management of assets recovered and returned in line with the requirements of Chapter V of UNCAC constituted a crucial topic for a large number of countries.

6. UNODC conducted an international expert group meeting in September 2015 in Vienna involving over 40 participants from more than 15 jurisdictions to discuss issues such as: the recognition of non-conviction based seizure and confiscation orders as well as asset management orders issued by foreign courts; measures to maintain the value of seized and confiscated assets; institutional frameworks and specialized agencies dedicated to the management of seized and confiscated assets; the concept of social re-use – successes and challenges; the creation of operational databases to support the management and disposal of seized assets; innovative approaches to the disposal and/or use of seized assets; creation of multi-stakeholder partnerships around the management and disposal of seized and confiscated assets; and training needs and training programmes for various stakeholders involved in the management of seized and confiscated assets. As an outcome, a compilation of national experiences and good practices in this field will be developed to help those directly tasked with developing policy frameworks as well as the management of such assets in learning from these experiences and avoiding and/or managing some of the risks and liabilities involved.

**Annex 2:**

**Table of possible management arrangements**

<b>PFM Dimension</b>	<b>Country Systems</b>	<b>Enhanced Country Systems</b>	<b>Autonomous Fund</b>	<b>Non-Governmental Organization</b>
Organizational Structure	Civil service reporting to political leadership	Civil service reporting to political leadership, with technical and managerial support	Management reporting to board which sets policy and approves fund's budget, as laid out in enabling legislation	Management reports to NGO's board, accountable to authorities on contractual basis for grants
Budgeting and Resource Allocation	Appropriated through budget from general pool, no specific budget code for returned assets	Appropriated through budget, returned assets flagged as source of funds or specific programs and projects	Returned assets may be earmarked to the fund or appropriated as transfer, allocation to activities determined by board	Appropriated as grant, allocation to activities determined by NGO management on basis of the grant agreement
Banking and Payments	Single central treasury account and payments through treasury system	Sub-account within central treasury account, payments through treasury system	Central treasury account or commercial bank, own payments system	Commercial bank and NGO payment system
Accounting and Reporting	No specific accounting code for returned assets	Returned assets flagged as source of funds or specific programs and projects	Fund accounts, no specific code for returned assets	NGO accounts, specific accounts and reports as determined by grant agreement
Procurement	National procurement regulations and civil servants	National procurement regulations and civil servants, use of procurement advisors and agents	National procedures or specific fund procedures, fund staff	NGO procedures and staff, unless otherwise specified in grant agreement
Audit	National audit authority	National audit authority, with technical support or twinned with commercial auditor	National audit authority	Commercial auditor, guidelines laid out in grant agreement
Reporting and Oversight	Internal reports and report to legislature	Internal reports and report to legislature, with specific reference to returned assets	Report by board to oversight body, as laid out in enabling legislation	Report by NGO board, reports to authorities as laid out in grant agreement

Annex 3:

Figure 1. Decision tree

