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**Conference of the States Parties to the United
Nations Convention against Corruption
Fourth session**

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**Proposals for a multi-year workplan for the Open-ended
Intergovernmental Working Group on Asset Recovery**

The Open-ended Intergovernmental Working Group on Asset Recovery discussed the development of a multi-year workplan at its fourth and fifth intersessional meetings, held in Vienna on 16 and 17 December 2010 and on 25 and 26 August 2011. At its fourth meeting, the Working Group stressed the importance of preparing States parties for the review of implementation of Chapter V during the second review cycle, and, for that purpose, recommended that the Secretariat develop, through the StAR Initiative or other relevant initiatives, a multi-year workplan for consideration by the Working Group. At its fifth meeting, the Working Group discussed document CAC/COSP/WG.2/2011/4, entitled "Preparing the ground for reviewing the asset recovery chapter: proposed multi-year workplan, 2011-2015", which focused on developing a workplan for the Secretariat. The Working Group decided that in the time until the 4th session of the Conference of the States Parties, focus should be on developing a workplan for itself. It was concluded that the Chairman of the Working Group would approach the Regional Groups with a request to submit relevant proposals, and the Secretariat would compile the proposals in a working document for the consideration of the Conference of the States Parties at its fourth session.

Following a Note by the Rapporteur of the Conference of the States Parties in his capacity as the Chairman of the Working Group, seven States Parties submitted their proposals (Australia, Canada, Egypt, Nicaragua, Switzerland, the United Kingdom and the United States of America). The submissions converge in their view that the Open-ended Inter-Governmental Working Group should increasingly focus on specific, substantive challenges to and good practices for effective asset recovery. Several States Parties concurred that the Working Group should address ways to overcome barriers to effective international cooperation in criminal matters, including in asset tracing, and expedite procedures, including in cases where there is no previous conviction. Furthermore, some concrete proposals addressed the organization of work of the Working Group, proposing to regularly allot different

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slots in the Working Group to the discussion of specific topics, thus allowing for the structured discussion of different aspects of asset recovery as identified in Chapter V of the Convention and the resolutions on asset recovery of the Conference of the States Parties.

The present paper contains a compilation of the responses received.

Australia

Australia agrees with the idea that the Asset Recovery Working Group focus on specific, substantive challenges to effective asset recovery.

Australia would welcome a plan that is in synergy with the G20 Anti-Corruption Action Plan.

Australia regards successful international cooperation in asset tracing and recovery as one of the major barriers to effective asset recovery worldwide. Australia would welcome the Working Group's focus on topics that address this barrier.

Canada

Canada supports the identification and discussion of barriers to effective asset recovery.

The Asset Recovery Working Group should avoid overlap with existing asset recovery initiatives.

The work being done in the G20 on a guidebook for seeking Mutual Legal Assistance from G20 states could be presented to the Asset Recovery Working Group by the G20 Chair.

Egypt

Egypt is of the view that a forum should be provided for discussions on practical aspect of asset recovery, including challenges and good practices, with a view to preparing for the conduct of such discussions at the fourth session of the Conference of the States Parties.

Nicaragua

La restitución de activos es un principio fundamental de la Convención, pues así lo destaca el arto. 51, con el cual se inicia el capítulo V dedicado a este tema requiriendo a los Estados parte prestar “la más amplia cooperación y asistencia entre sí a este respecto”. Sobre el particular, atinamos con los expertos en el tema, que en dicho Capítulo se organiza el más completo tratamiento de los asuntos relacionados con la incautación, decomiso, y recuperación de activos que cualquier otro Tratado Internacional Anticorrupción.

En función de ello y, la República de Nicaragua alienta a los Estados Partes que a la luz de las disposiciones en la Convención, se promuevan mecanismos más ágiles que faciliten una pronta decisión — sin que necesariamente tenga que mediar una sentencia condenatoria.

Nuestra moderna sociedad globalizada y el padecimiento de una criminalidad igualmente globalizada, exige que la cooperación internacional, ceda al empirismo

con que las Naciones afectadas por actos de corrupción requieren para la pronta devolución del erario público enviado a otros países. Alertamos la especial atención por parte de todas las Naciones suscriptoras de la Convención, que debe generar el del peligro que podría ocasionar la demora en la restitución de los activos, versus la precaria situación económica de mucho de nuestros países que tornan necesario el clamor de urgencia para el retorno de esos activos ilícitamente sustraídos.

Switzerland

Despite important international efforts, there is still a significant lack of political commitment to fully and effectively implement Chapter V of UNCAC. Achieving political acceptability and gaining full political commitment remains one of the main challenges. Furthermore, deficiencies in the area of international cooperation at different levels of the mutual legal assistance process need to be addressed appropriately. In providing the global architecture for asset recovery UNCAC can play a key role in improving the political willingness and cooperation in asset recovery.

Switzerland also believes that there is a need to identify the main deficiencies in this area and to elaborate adequate and practical solutions and principles to improve the recovery of assets. Barriers and obstacles to asset recovery have to be identified to improve enhanced cooperation. In this sense we welcome the study made by StAR on barriers to asset recovery. Switzerland therefore proposes to discuss this topic during the next meetings of the working group on asset recovery in order to implement key findings and recommendations made so far. Creative and innovative solutions are needed to overcome these main deficiencies. Any solution must be harmonized and coordinated at international level, for example by setting up common standards of cooperation (level for acceptance) for the decisive stages of the proceeding (detection, freeze, seizure, return).

The working group on asset recovery has to focus more on practical solutions to improve asset recovery. The identification of success factors of concrete cases could provide a possibility to mobilize the necessary political will. For its part UNCAC can draw on lessons learned and identify good practices in order to provide guidance on how to implement the provisions of Chapter V of UNCAC. However there should also be an identification of what went wrong and didn't work.

In the sense described above, Switzerland proposes the following specific topics for the next meetings of the working group on asset recovery:

- Barriers to asset recovery and identification of ways to overcome them.
- Identification of success factors of concrete cases and best practices.
- Enhance international cooperation.

United Kingdom

To accommodate the unpredictable, and to allow for revisiting earlier themes if events/interest require, the United Kingdom could structure sessions such that one day has the allotted "sequential" topic and the second allows for coverage of another aspect (perhaps returning to a topic already covered previously if new demand arises, or following up on an issue that emerges from a previous session

that requires more detailed treatment). We would then have a planned structure that ensured we covered all aspects at least once, and flexibility to meet contingencies.

United States of America

The following concept is intended to help States Parties pursue implementation of Chapter V and best prepare for the second round of reviews in 2014/2015. It foresees using the group to provide States Parties with targeted discussions of key asset recovery topics, in a planned, systematic manner. Depending on the decisions taken by future COSPs to renew the Working Group's mandate, there will likely be six meetings of the group in 2012-2014. The Articles of Chapter V, with special consideration of the issues highlighted by States Parties in resolution 3/3 of the COSP in Doha, would serve as the focus for the group's work during that period. By the beginning of the second round of reviews, the group would have been able to take up each of the Articles and priority issues from the resolution.

Without prejudice to the need to take up other emergent matters, in principle each meeting would include the following components, in an appropriate format, with respect to each major topic (as defined by the Articles and issues raised in Res. 3/3, see below) under discussion at that session:

Progress in implementation, good practices, and challenges encountered by States Parties on that topic: Panel with presentation by States Parties, followed by discussion and relevant examples from other delegations.

Analyses of practices that reveal horizontal trends and challenges in implementation; and knowledge or other resources available to support implementation (e.g., reference materials, guides, and other knowledge products; capacity-building initiatives underway or planned; etc.): Panel presentation(s) by relevant organizations, followed by discussion.

Conclusions and recommendations to States Parties and the COSP.

The agenda would also provide an opportunity for interested States Parties to inform the group about other significant developments.

The issues for discussion, as identified by Chapter V and Resolution 3/3, would include (in any appropriate order):

Article 52 — *Prevention and Detection* and Article 56 — *Special Cooperation*, which should, inter alia, cover (a) good practices in ensuring that financial institutions adopt and implement effective standards of customer due diligence and the identification of beneficial ownership; (b) good practices in making sua sponte disclosures of information on proceeds of offenses to other States parties; and (c) good practices in requests for notifications under Article 56 and 52 (6) (Res. 3/3, PP 3, OP 2 and 12).

Article 53 — *Measures for direct recovery of property* and Article 54 — *Mechanisms for recovery of property through international cooperation in confiscation*, which should, inter alia, cover (a) good practices in the central authority function; (b) good practices relating to seizure and restraint of assets for a time period sufficient to preserve assets during the pendency of foreign proceedings; and (c) good practices in cooperation in the enforcement of foreign judgments (Res. 3/3, OP 3, 4, and 8).

Article 55 — *International cooperation for the purposes of confiscation*, which should, inter alia, cover (a) good practices in mutual legal assistance procedures and (b) good practices in identifying the flow of corruption proceeds (Res. 3/3, PP 3).

Article 57 — *Return and disposal of assets* and Article 59 — *Bilateral and multilateral agreements and arrangements*, as well as good practices in establishing appropriate limits for domestic legal immunities; and good practices in the use of modern information and communications technologies to expedite asset recovery operations (Res. 3/3, OP 11 and 16).

Covering these issues will occupy the majority of the anticipated six meetings. However, the workplan should additionally envision that at the appropriate moment the Asset Recovery Working Group would review the portion of the draft questionnaire for the second round of reviews prepared by the secretariat, relevant to Chapter V.
