



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

Distr.: Limited  
28 November 2013

Original: English

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## Fifth session

Panama City, 25-29 November 2013

Agenda item 5

### Asset recovery

#### Canada, Egypt, Ghana, Nigeria and United States of America: draft resolution

#### Facilitating international cooperation in asset recovery

*The Conference of the States Parties to the United Nations Convention against Corruption,*

*Bearing in mind* that the return of assets is one of the main objectives and a fundamental principle of the United Nations Convention against Corruption<sup>1</sup> and that the States parties to the Convention are obligated to afford one another the widest measure of cooperation in that regard,

*Recalling* that asset recovery is an integral part of the Convention,

*Recalling also* article 51 of the Convention obligating States parties to afford one another the widest measure of cooperation and assistance with regard to asset return,

*Reiterating* the concern about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law,

*Reaffirming* the commitment of States parties, and determined to give effect to the obligations set out in chapter V of the Convention in order to prevent, detect, deter and recover in a more effective manner the international transfer of proceeds of crime and to strengthen international cooperation in asset recovery,

*Recalling* its resolution 1/4 of 14 December 2006, by which it established the Open-ended Intergovernmental Working Group on Asset Recovery, and its resolutions 2/3 of 1 February 2008, 3/3 of 13 November 2009 and 4/4 of

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<sup>1</sup> United Nations, *Treaty Series*, vol. 2349, No. 42146.

\* Reissued for Technical reasons.

28 October 2011, in which it decided that the Working Group should continue its work,

*Welcoming* the conclusions and recommendations of the Working Group, acknowledging the continued relevance of resolutions 2/3, 3/3 and 4/4, and noting with interest the background paper prepared by the Secretariat on the progress made in the implementation of those recommendations,

*Recognizing* that those who engage in corrupt acts, whether natural or legal persons, consistent with domestic law and the requirements of the Convention, should be held accountable and prosecuted by their domestic authorities, and that all efforts should be made to conduct a financial investigation into assets illegally acquired by them and to recover the same through domestic confiscation proceedings, international cooperation for purposes of confiscation, or appropriate direct recovery measures,

*Concerned* about the difficulties, particularly the legal and practical difficulties, that both requested and requesting States face in asset recovery, taking into account the particular importance of the recovery of stolen assets for sustainable development and stability, and noting the difficulties of providing information establishing a link between the proceeds of corruption in the requested State and the crime committed in the requesting State, which in many cases can be difficult to prove,

*Recognizing* the common difficulties experienced by States parties in establishing a nexus between identified assets and the crime from which such assets are derived, and emphasizing the critical importance of effective domestic investigative efforts and international cooperation to overcome such difficulties,

*Recalling* article 56 of the Convention encouraging each State party to endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with the Convention to another State party without prior request, when it considers that the disclosure of such information might assist the receiving State party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State party under chapter V of the Convention,

*Noting* the right of the requested State party under article 57, paragraph 4, of the Convention to deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposal of confiscated property, and noting the mutual benefit to both requested and requesting States when such expenses are reasonable,

*Encouraging* States parties to make full use of the asset recovery tools set forth in chapter V of the Convention, including mechanisms for assistance in the enforcement of foreign restraining and confiscation orders, as a means to significantly reduce expenses that a jurisdiction normally might incur in pursuing asset recovery,

*Noting* proactive efforts made by some States parties to sanction their domestic entities for offences specified in the Convention, through both confiscation and monetary sanctions or other legal mechanisms, and acknowledging the benefits of

early and proactive information sharing, consistent with domestic law and the requirements of the Convention, in furthering enforcement,

*Recognizing* the critical importance of effective international cooperation in efforts to combat corruption, particularly with respect to offences specified in the Convention with a transnational element, and encouraging continued cooperation by States parties, consistent with the requirements of the Convention, in all efforts to investigate and prosecute natural and legal persons, including the use of other legal mechanisms, where appropriate, for specified offences in the Convention and recover assets related to the same, consistent with chapter V of the Convention,

*Calling upon* all States parties and, in particular, requested and requesting States, to cooperate to recover the proceeds of corruption and demonstrate strong commitment to ensure the return or disposal of the same in accordance with article 57 of the Convention,

*Encouraging* requested States parties to respond to requests for assistance pursuant to article 46 of the Convention in the absence of dual criminality,

*Noting* the efforts made by all States parties in tracing, freezing and recovering their stolen assets, and underlining the need to redouble efforts to assist in the recovery of those assets in order to preserve stability and sustainable development,

*Noting also* the work of other initiatives in asset recovery, such as the Arab Forum on Asset Recovery, and welcomes efforts to enhance cooperation between requesting and requested States,

*Taking note* of the Lausanne process initiative on practical guidelines for efficient asset recovery, which is being undertaken with a view to identifying good practices in effective and coordinated approaches to asset recovery for practitioners from requesting and requested States, with the support of interested States, implemented in close collaboration with the International Centre for Asset Recovery and with the support of the World Bank/United Nations Office on Drugs and Crime Stolen Asset Recovery Initiative,

*Recognizing* that States parties continue to face challenges in recovering assets owing to differences between legal systems, the complexity of multijurisdictional investigations and prosecutions, the limited implementation of effective domestic tools such as non-conviction-based forfeiture for asset recovery, as well as other administrative or civil procedures leading to confiscation, lack of familiarity with the mutual legal assistance procedures of other States and difficulties in identifying the flow of corruption proceeds, and noting the particular challenges posed in recovering the proceeds of corruption in cases involving individuals who are or have been entrusted with prominent public functions, as well as their family members and close associates,

*Noting* the responsibility of requesting and requested States parties to cooperate to ensure that a greater proportion of the proceeds emanating from corruption are recovered, returned or otherwise disposed of in accordance with the provisions of the Convention,

*Acknowledging* the vital importance of ensuring the independence and effectiveness of authorities charged with investigating and prosecuting corruption

crimes and of recovering the proceeds of such crimes by several means, such as establishing the necessary legal framework and allocating the necessary resources,

*Concerned* that some persons accused of crimes of corruption have managed to escape justice and thus have eluded the legal consequences of their actions, and have been successful in hiding their assets,

*Taking into account* the need to hold corrupt officials accountable by depriving them of their stolen assets,

*Stressing* the critical importance of mobilizing political will for effective implementation of chapter V of the Convention,

*Calling upon* all States parties, acting as both requested and requesting States, to continue to commit the political will to act together to recover the proceeds of corruption and to work together to overcome obstacles to effective asset recovery,

*Determined* to prevent, detect and deter in a more effective manner international transfers of illicitly acquired assets and to strengthen international cooperation in asset recovery,

*Acknowledging* the fundamental principles of due process of law in criminal proceedings and in civil or administrative proceedings to adjudicate property rights,

1. *Renews* the commitment of all States parties to the United Nations Convention against Corruption<sup>1</sup> to effective national action and international cooperation to give full effect to chapter V of the Convention and to contribute effectively to the recovery of the proceeds of corruption;

2. *Urges* Member States consistent with chapter V, to ensure that they have adequate laws and mechanisms in place to prosecute those involved in acts of corruption, to detect the illegal acquisition and transfer of assets derived from corruption and to ensure that there are suitable mechanisms in place — conviction and, where appropriate, non-conviction-based — to recover through confiscation the identified proceeds of corruption, and that such laws and mechanisms are vigorously enforced;

3. *Calls upon* States parties, in accordance with the Convention, to afford one another the widest possible cooperation and assistance in the identification, tracing, and recovery of stolen assets and proceeds of corruption and in the extradition of individuals accused of predicate offences;

4. *Also calls upon* States parties to afford one another the widest possible cooperation and assistance in the identification of stolen assets and proceeds of corruption and in the extradition of individuals accused of the predicate offences, consistent with the Convention;

5. *Encourages* States parties to afford one another, when feasible, international cooperation, including mutual legal assistance as appropriate, in civil and administrative proceedings for the identification, freezing and confiscation of assets in accordance with article 43, paragraph 1, and article 46, paragraph 3, of the Convention, and in this regard requests that the Secretariat invite States parties to provide, to the extent possible, information on such proceedings, for submission to the Open-ended Intergovernmental Working Group on Asset Recovery, in order to

identify the scope of assistance that could be provided in relation to such proceedings;

6. *Urges* States parties not to refuse to render mutual legal assistance for offences established in accordance with the Convention on the ground of the absence of a bilateral treaty concerning mutual legal assistance or its pending ratification, once such an agreement is signed;

7. *Calls upon* States parties to give particular and timely consideration to the execution of international mutual legal assistance requests that need urgent action, including those related to the States concerned in the Middle East and North Africa, as well as other requesting States, and to ensure that the competent authorities of requested States have adequate resources to execute requests, taking into account the particular importance of the recovery of these assets for sustainable development and stability;

8. *Also calls upon* States parties to take measures to improve the development and exchange of information between requesting and requested States in corruption investigations, which may include, when necessary, inviting financial investigators of cooperating States to work side by side with one another's officials to trace corruption proceeds, and in such cases, as permitted by the domestic laws of both States, to facilitate access to records or other evidence in the other State;

9. *Urges* States parties to take a proactive approach to international cooperation in asset recovery by making full use of the mechanisms provided for in chapter V of the Convention, including initiating requests for assistance, making spontaneous disclosures of information on proceeds of offences to other States parties and considering making requests for notifications, in accordance with article 52, paragraph 2(b) of the Convention, and where appropriate implementing measures to permit the recognition of non-conviction-based forfeiture judgements;

10. *Encourages* States parties to compile and provide information in accordance with article 52 of the Convention, and to undertake actions that help to establish the linkage between assets and offences under the Convention, in accordance with article 48 paragraph (1) (b) ii) and iii);

11. *Also encourages* States parties, to consider, where appropriate and in accordance with article 49 of the Convention, establishing joint investigation teams;

12. *Encourages* requested States and assistance partners, to the same end, to work with requesting States to identify asset-recovery-related capacity-building needs of requesting States and, to the extent possible, to prioritize the needs to be met, stressing specific, practical efforts;

13. *Encourages* States parties to make use of opportunities for cooperation through existing practitioner-based networks, such as, among others, where feasible, the Global Focal Point Initiative established by Interpol and StAR,] particularly before making formal requests for mutual legal assistance, and to designate officials or governmental institutions, as appropriate, as technical experts in international cooperation and asset recovery, to assist their counterparts;

14. *Calls upon* States parties that have yet to designate a central authority for international cooperation in accordance with the Convention to do so, and to appoint focal points for the purposes of international cooperation and mutual legal

assistance in asset recovery, and, where appropriate, encourages States parties to make full use of the network of focal points of the Working Group on Asset Recovery to facilitate cooperation and implementation of the Convention;

15. *Welcomes* the cooperation and assistance that requested States have afforded requesting States parties in the recovery of proceeds of corruption, and encourages them to use and promote informal channels of communication, in particular prior to making requests for mutual legal assistance by, inter alia, designating officials or institutions with technical expertise in international cooperation and asset recovery to assist their counterparts in effectively meeting requirements for formal mutual legal assistance;

16. *Encourages* States parties to consider, consistent with chapter V of the Convention, taking proactive approaches to the identification, tracing, freezing and confiscating of stolen assets, including those hidden through the use of shell companies and other complex legal mechanisms, and to strengthen measures for the spontaneous exchange of information, as permitted by domestic law, between requesting and requested States, as a good practice complementary to cooperation in mutual legal assistance;

17. *Urges* States parties to ensure that procedures for international cooperation allow for the seizure and/or restraint of assets for a time period sufficient to preserve those assets in full, pending confiscation proceedings in another State, to ensure that there are adequate mechanisms in place to manage and preserve the value and condition of assets pending the conclusion of confiscation proceedings in another State, and to allow or expand cooperation in the enforcement of foreign seizure and restraint orders and confiscation judgements, including through awareness-raising for judicial authorities;

18. *Encourages* States parties to support the development of and to utilize existing secure information-sharing tools, with a view to enhancing early and spontaneous information exchange within the international law enforcement community;

[19. *Calls upon* States parties, where appropriate and in accordance with domestic law, to take proactive measures to ensure that individuals who have been entrusted with prominent public functions, their family members and close associates, cannot hide their illicitly acquired assets by making relevant enquiries to determine the identity and ownership of illicitly acquired assets, freezing suspected criminal proceeds, undertaking efforts to initiate other national mechanisms of recovery, as consistent with the Convention and under domestic law, when appropriate, and also encouraging States parties to work with well-established networks of financial intelligence units to identify methodologies for coordinated approaches to such measures;]

20. *Urges* States parties to remove barriers to asset recovery by ensuring that financial institutions and, where applicable, designated non-financial services and professions adopt and implement effective standards to ensure that such entities are not being used to hide stolen assets, which may include such measures as customer due-diligence requirements, the identification and enhanced scrutiny of assets belonging to individuals who are or have been entrusted with prominent public functions and to their family members and close associates, and the collection and provision of beneficial ownership information, and by ensuring, in accordance with

the Convention and domestic law, through robust regulatory action, that they adequately implement those requirements;

21. *Notes* that under article 57, paragraph 4, of the Convention, where appropriate, unless States parties decide otherwise, requested States parties may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property, but urges States parties to consider waiving or reducing such expenses, particularly in cases involving a developing country;

22. *Calls upon* States parties to cooperate closely in the return and disposal of assets in accordance with article 57 of the Convention;

23. *Urges* States parties to ensure that reliable beneficial ownership information on companies is accessible onshore to law enforcement agencies and other relevant authorities, including, as appropriate, financial intelligence units and tax administrations, thus facilitating the investigation process and execution of requests;

24. *Encourages* States parties to cooperate in order to implement the necessary measures to enable them to obtain reliable information on beneficial ownership of companies, legal structures or other complex legal mechanisms, including trusts and holdings, used to commit crimes of corruption or to hide and transfer proceeds;

25. *Calls upon* States parties to promote the sharing of experience in dealing with the challenge of the transliteration of names in tracing assets;

26. *Urges* States parties to consider the use of the tools set out in chapter V of the Convention when resolving cases involving offences outlined in the Convention, including transnational bribery;

27. *Encourages* States parties to give urgent consideration to the implementation of article 46, paragraph 4, and article 56 of the Convention;

28. *Urges* States parties to proactively share information in accordance with article 48, paragraph 1(f), article 46, paragraph 4, and article 56 of the Convention, where doing so does not compromise an ongoing investigation, prosecution or judicial proceeding, and also urges States parties whose natural or legal persons were engaged in corrupt acts to actively and robustly pursue domestic investigations and prosecutions of the same and share such information in accordance with the Convention to facilitate the tracing and confiscation of corruption proceeds;

29. *Calls upon* States parties to share with the Secretariat best practices for the efficient resolution of criminal offences specified in the Convention, and requests that the Secretariat collect and disseminate such information to the Open-ended Intergovernmental Working Group on Asset Recovery and to States parties;

30. *Urges* States parties to ensure that their anti-corruption authorities or other relevant bodies have sufficient resources to fulfil their mission, have an appropriate level of investigative and prosecutorial independence, are trained sufficiently and on a regular basis, have the requisite authority, legislative and otherwise, to identify, trace, freeze and confiscate corruption proceeds, including in terms of access to the financial and other information necessary to do so, and have the authority to share information, cooperate and coordinate corruption

investigations with other domestic agencies and other Governments, when appropriate;

31. *Encourages* requesting States to ensure that adequate national investigative procedures have been initiated and substantiated so that they may serve as an adequate basis for the submission of requests for mutual legal assistance;

32. *Encourages* requested States to make all possible efforts to assist requesting States to meet requested States parties' procedural requirements for legal assistance without any undue delay;

33. *Urges* States parties to consider, consistent with their domestic legal frameworks, the adoption of measures that facilitate the freezing and confiscation of corruption proceeds, including the use of non-conviction-based confiscation, restraint based on a formal request and the receipt of evidence of an arrest or charge in the requesting jurisdiction or restraint in the absence of a formal request, and confiscation of equivalent values in the absence of recoverable assets;

34. *Also urges* States parties to give effect, consistent with their domestic law, to freezing and confiscation orders related to property of persons against whom freezing and confiscation orders have been obtained to ensure that the subjects of such orders do not benefit from the proceeds of corruption;]

35. *Encourages* States parties to make widely available information on their legal frameworks and procedures, in a practical guide or other format designed to facilitate use by other States, and to consider, where advisable, the publication of that information in other languages;

36. *Calls upon* requesting and requested States with practical experience in asset recovery to develop, as appropriate, in cooperation with interested States and providers of technical assistance, non-binding practical guidelines, such as a step-by-step guide, for efficient asset recovery, with a view to enhancing effective approaches to asset recovery based on the lessons learned from past cases, being mindful to seek to add value by building upon existing work in this area;

37. *Encourages* States parties to share approaches and practical experience for the return of assets, consistent with article 57 of the Convention, for further dissemination through the Secretariat;

38. *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;

39. *Decides* that the Open-ended Intergovernmental Working Group on Asset Recovery shall continue its work to advise and assist the Conference in the implementation of its mandate with respect to the return of the proceeds of corruption and shall hold at least two meetings prior to the sixth session of the Conference of the States Parties, within existing resources and consistent with its workplan;

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41. *Encourages* States parties to voluntarily share experiences on actions taken consistent with elements of the present resolution and of Conference resolutions 2/3, 3/3 and 4/4, in the context of the intersessional meetings of the Working Group;

42. *Decides* that the Working Group shall continue to submit reports on its activities to the Conference of the States Parties;

43. *Requests* the Secretariat, within existing resources, to assist the Working Group in the performance of its functions, including by providing interpretation services in the six official languages of the United Nations;

44. *Invites* States and other donors to provide extrabudgetary resources for the purposes identified in the present resolution, in accordance with the rules and procedures of the United Nations.