



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

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Agenda item 5

### Asset recovery

#### United States of America: revised draft resolution

### Fostering effective asset recovery through [domestic action and] international cooperation

*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 and assistance in that regard,

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

*Recognizing* that those who engage in corrupt acts, whether natural or legal persons, consistent with the requirements of the Convention, should be held accountable and prosecuted by the competent authorities, and that all efforts should be made to conduct a financial investigation into assets illegally acquired by them and to recover such assets 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 States parties face in asset recovery, taking into account the particular importance of the recovery of proceeds of crime 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],

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



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

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

[*Noting*] the Lausanne process initiative on practical guidelines for efficient asset recovery, developed by 30 States parties in close collaboration with the International Centre for Asset Recovery and with the support of the Stolen Asset Recovery Initiative of the World Bank and the United Nations Office on Drugs and Crime, which are aimed at providing effective and coordinated approaches to asset recovery for practitioners from requesting and requested States,

*Recognizing* that States parties continue to face challenges in recovering assets, owing in part to differences between legal systems, the complexity of multijurisdictional investigations and prosecutions, lack of clarity on mutual legal assistance procedures in a requested State, including the ability to implement tools such as non-conviction-based confiscation and other administrative or civil procedures leading to confiscation, and difficulties in tracing the proceeds of corruption,

*Acknowledging* the vital importance of ensuring the independence and effectiveness of the authorities charged with investigating and prosecuting corruption-related cases and of recovering the proceeds of such crimes by several means, such as establishing the necessary legal framework and allocating the necessary resources,

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

*Noting also* the particular challenges involved 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,

*Stressing* the critical importance of mobilizing political will for the 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 and return to requesting States parties, prior legitimate owners or the victims of the crime in accordance with article 57 of the Convention,

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

*Recalling* the Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic

Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation,<sup>2</sup> in which Member States stated that they were striving to implement effective measures to detect, prevent and counter corruption, as well as the transfer abroad and laundering of assets derived from corruption, and to strengthen international cooperation and assistance to Member States to assist in the identification, freezing or seizure of such assets, as well as in their recovery and return, in accordance with the Convention against Corruption,

[*Acknowledging* the usefulness for Member States of sharing information on best practices in the management, use and disposal of frozen, seized and confiscated assets,]

*Recalling* its resolution 1/4 of 14 December 2006, by which it established the Open-ended Intergovernmental Working Group on Asset Recovery, and the continued relevance of its resolutions 2/3 of 1 February 2008, 3/3 of 13 November 2009 and 4/4 of 28 October 2011, in which it decided that the Working Group should continue its work,

*Noting with appreciation* the development of good practices and lessons learned, as reflected in the reports of the Open-ended Intergovernmental Working Group on Asset Recovery, and the sharing of those good practices,

*Noting with appreciation also* the technical resources produced by the United Nations Office on Drugs and Crime, the Stolen Asset Recovery Initiative of the World Bank and the United Nations Office on Drugs and Crime, and the International Centre for Asset Recovery of the Basel Institute on Governance,

1. *Encourages* States parties, in a common effort, to apply lessons learned in all areas of asset recovery cooperation through, inter alia, establishing legal frameworks, strengthening domestic institutions and enhancing international cooperation, including through participation in international law enforcement networks, such as the asset recovery focal points, the Global Focal Point Initiative supported by the International Criminal Police Organization and the Stolen Asset Recovery Initiative and the Camden Asset Recovery Information Network, and regional initiatives such as the Arab Forum on Asset Recovery, as appropriate;

2. *Stresses* the importance of sustained and enhanced political will and the commitment of all States parties, consistent with the United Nations Convention against Corruption,<sup>1</sup> to criminalize and prosecute corruption offences and effectively cooperate to recover the proceeds derived from corruption offences;

3. *Encourages* States parties to remove barriers to asset recovery, including by simplifying and preventing the abuse of their legal procedures, and also encourages States parties to limit, where appropriate, domestic legal immunities, in accordance with their legal systems and constitutional principles;

[3 bis. *Encourages* States parties to enhance the timely and effective recovery of proceeds of crime from individuals who are or have been entrusted with prominent public functions, as well as their family members and close associates, and to consider the use of alternative legal mechanisms, such as settlements, to facilitate the quick recovery of proceeds of crime, especially in transnational

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<sup>2</sup> Economic and Social Council resolution 2015/19, annex.

corruption cases, and reducing the costs of both requested and requesting States parties;]

[3 ter. *Calls upon* States parties to give due consideration to the involvement of the jurisdictions of persons with prominent political functions and where the corruption-related cases originate, and to proactively share information;]

[3 quat. *Directs* the Open-ended Intergovernmental Working Group on Asset Recovery, in accordance with articles 53 and 57 of the Convention, to initiate the process of developing guidelines for collaboration and proactive information-sharing in accordance with article 56 and to initiate guidelines for identifying and recognizing victims of corruption and parameters for compensation;]

4. *Encourages* States parties [to take into account the [non-binding] Lausanne practical guidelines for efficient asset recovery in their asset recovery practice and] to continue to exchange their practical experiences and consolidate them into a [non-binding,] step-by-step guide or asset recovery manual, in cooperation with interested States and providers of technical assistance, upon the request of the relevant interested parties;

5. *Encourages* requested States parties, in applying article 46 of the Convention, to give due consideration to adopting such measures as may be necessary to enable them to provide a wider scope of assistance pursuant to that article in the absence of dual criminality, consistent with article 46, paragraph 9 (c);

6. *Commends* States parties, and where relevant, the Stolen Asset Recovery Initiative and the International Centre for Asset Recovery, for the increasing response to supporting effective asset recovery, and encourages continued close cooperation and efforts to promote coordination and reduce duplication or gaps;

[7. *Notes* that, under article 57, paragraph 4, of the Convention, where appropriate and unless States parties decide otherwise, the requested State party 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 to the barest minimum, particularly in cases involving a developing country;][MOVE TO END]

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

[7 ter. *Urges* States parties to ensure that assets returned pursuant to the Convention are used and managed in a transparent and accountable manner conducive to their contribution to sustainable development;]

[7 quat. *Invites* States parties, in accordance with national legislation and policies, to collect and make public data on the volume of assets seized, confiscated and returned or disposed of by their jurisdictions, including on the countries of origin of those assets;]

[7 quint. *Urges* States parties to consider establishing effective and appropriate procedures and instrumentalities to permit and enable information and evidence provided through mutual legal assistance in a criminal corruption case to be effectively utilized by the requesting State, in appropriate circumstances and under appropriate safeguards, in civil and administrative proceedings relating to the same

corruption matter, even when such civil and administrative proceedings are not part of the same legal proceedings as the criminal case;]

8. *Reiterates* the importance of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption in assisting in the implementation of the Convention, including chapter V;

9. *Urges* States parties, consistent with chapter V of the Convention, to ensure that they have adequate legal and institutional frameworks in place to prosecute corruption, to detect the illegal acquisition and transfer of assets derived from corruption, to request and provide international legal cooperation, including mutual legal assistance, 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, to enforce foreign conviction- and non-conviction-based orders in accordance with the requirements of the Convention and to ensure that such frameworks are enforced;

10. *Also urges* States parties to establish or strengthen domestic mechanisms for intragovernmental coordination and intergovernmental cooperation and to ensure appropriate levels of information-sharing and coordination between competent authorities that have a role in efforts to prevent and prosecute corruption and in asset recovery, including but not limited to, regulatory authorities, investigative authorities, financial intelligence units and prosecutorial authorities;

[11. *Notes* the importance of prevention and detection [and exposure] of transfers of proceeds of corruption abroad in accordance with chapter V of the Convention;]

12. *Encourages* States parties to consider establishing effective financial disclosure systems for appropriate public officials, consistent with article 52, paragraph 5, and to consider taking such measures as may be necessary to permit its competent authorities to share that information, consistent with the requirements of domestic law, with other States parties;

[13. *Urges* States parties, in accordance with the Convention and domestic law, to remove barriers to and facilitate 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, through robust regulatory action, that they adequately implement those requirements;]

14. *Encourages* States parties to implement the necessary measures to enable them to obtain and share reliable information on beneficial ownership of companies, legal structures or other complex legal mechanisms, including trusts and holdings, misused to commit or conceal crimes of corruption or to hide and transfer proceeds, thus facilitating the investigation process and execution of requests;

15. *Also encourages* States parties to make widely available information on their legal frameworks and procedures, including those used in settlements and alternative legal mechanisms, in a practical guide or other format designed to

facilitate use by other States, and to consider[, where appropriate,] the publication of that information in other languages;

[16. *Further encourages* States parties, consistent with article 56 of the Convention, to strengthen measures for the spontaneous exchange of information, without prejudice to domestic law, in accordance with the Convention, as a good practice complementary to cooperation in mutual legal assistance;]

17. *Encourages* States parties to consider making use of opportunities for cooperation through existing practitioner-based networks, such as the asset recovery focal points, the Global Focal Point Initiative supported by the International Criminal Police Organization and the Stolen Asset Recovery Initiative, and the Camden Asset Recovery Information Network, and information provided at the financial intelligence unit level, [particularly before making] [in the course of making] requests for mutual legal assistance;

18. *Also encourages* States parties to designate providers of technical assistance and officials or governmental institutions, as appropriate, as technical experts in international cooperation and asset recovery, to assist their counterparts in effectively meeting requirements for mutual legal assistance without undue delay;

[19. *Urges* requesting States to ensure that [adequate] national investigative procedures have been initiated so that they may serve as a [adequate] basis for the submission of requests for mutual legal assistance;]

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

[20 bis. *Also urges* States parties to ensure that procedures for international cooperation allow for the seizure and/or freezing of assets for a time period sufficient to preserve those assets in full, pending confiscation proceedings in another State, and to allow or expand cooperation in the enforcement of foreign seizure and freezing orders and confiscation judgements, including through measures to permit recognition of non-conviction-based seizure and freezing orders and confiscation judgements, where possible;]

21. *Further urges* States parties to ensure that procedures for international cooperation facilitate the disposition of confiscated proceeds of corruption in a transparent and accountable manner and, according to national legal frameworks, in a manner that directly benefits those harmed by corruption, recognizing that returned assets can contribute to sustainable development, and encourages States parties, as agreed in the Addis Ababa Action Agenda,<sup>3</sup> to ensure that standards of good practices on asset return or disposition are developed that will guide future asset disposition;

[21 bis. *Encourages* States parties and the United Nations Office on Drugs and Crime to continue sharing experience and building knowledge on the management,

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<sup>3</sup> General Assembly resolution 69/313, annex.

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 ensuring that such assets benefit those harmed by corruption and advance the 2030 Agenda for Sustainable Development;<sup>4]</sup>

[22. *Notes* the important role that civil society can play in asset recovery, including in the phase of confiscated asset disposition, where it can, when appropriate, promote transparency[ and, at the request of the receiving country, provide input on the use of returned, confiscated assets in a manner that takes into account the particular importance of recovered assets for sustainable development and stability];]

[23. *Decides* that the Open-ended Intergovernmental Working Group on Asset Recovery shall continue its work, in coordination with the Implementation Review Group, to advise and assist the Conference in the implementation of its mandate with respect to the recovery of the proceeds of corruption, within existing resources, also decides that the agenda of the first meeting of the Working Group to be held in 2016 shall focus on [to be inserted], and calls upon the Secretariat to solicit proposals for the agenda of the second meeting in 2016, for discussion and adoption at the first meeting;]

[24. *Encourages* States parties to voluntarily share experiences of actions taken consistent with elements of the present resolution and of Conference resolutions 2/3, 4/4 and 5/3 of 29 November 2013, in the context of the aforementioned intersessional meetings of the Working Group;]

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

[26. *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;]

27. *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.

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<sup>4</sup> General Assembly resolution 70/1.