



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

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Agenda items 5 and 6

## Asset recovery

## International cooperation

### **Nigeria, South Africa on behalf of the Group of African States: revised draft resolution**

### **Facilitating international cooperation in asset recovery and the return of proceeds of crime [to prior legitimate owners]**

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

*Recalling* that the return of assets of illicit origin is a fundamental principle of the United Nations Convention against Corruption,<sup>1</sup> and bearing in mind that chapter V of that Convention is one of the chapters critical to the successful implementation of the Convention,

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

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

*Reiterating* that corruption in all forms, including illicit enrichment, poses a serious challenge to the stability and security of States, undermines institutions, ethical values and justice and jeopardizes sustainable development and the rule of law,

*Acknowledging* the right of the requested State party, under article 57, paragraph 4, of the Convention, to deduct, where appropriate, unless States parties

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



decide otherwise, reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property,

*Recalling* its resolution 1/4 of 14 December 2006, setting up the Open-ended Intergovernmental Working Group on Asset Recovery, and its resolution 2/3 of 1 February 2008, in which it reaffirmed the mandate of the Working Group, and taking note of the contributions of the Stolen Asset Recovery Initiative of the World Bank and the United Nations Office on Drugs and Crime, the International Centre for Asset Recovery and similar initiatives committed to improving the capacity of States to effectively implement the Convention and, in particular, the recommendations made as part of these initiatives to improve the process of asset recovery,

*Recalling also* its resolution 5/3 of 29 November 2013, on facilitating international cooperation in asset recovery, and restating the importance of the spontaneous sharing of information without prejudice to domestic law, the expeditious return of proceeds of crime consistent with article 57, paragraph 3, of the Convention and the establishment of practical guidelines to facilitate the recovery of assets,

*Recalling further* article 56 of the Convention, and encouraging each State party, without prejudice to its domestic law, 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,

*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 chapter V of the Convention and in that regard to continue discussing innovative modalities to improve mutual legal assistance in order to speed up asset recovery proceedings and render them more successful,

*Recalling also* the Addis Ababa Action Agenda of the Third International Conference on Financing for Development,<sup>3</sup> in which the international community was encouraged to develop good practices on asset return,

*Noting with concern* the steady increase in funds of illicit origin flowing from developing countries in particular, and the danger that increase poses to the sustainable development, rule of law and security of nations,

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

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

*Welcoming* the cooperation and assistance that States parties have afforded requesting States in the recovery and return of proceeds of crime,

*Welcoming also* the Lausanne process initiative on practical guidelines for efficient asset recovery, developed by 30 experienced States in close collaboration with the International Centre for Asset Recovery and with the support of the Stolen Asset Recovery Initiative, which is aimed at developing effective and coordinated approaches to asset recovery for practitioners from requesting and requested States,

*Recognizing* that States continue to face challenges in the recovery of assets owing, inter alia, to differences in their legal systems, the limited implementation of mechanisms such as non-conviction-based confiscation, the complexity of multi-jurisdictional investigations and prosecutions, lack of familiarity with the mutual legal assistance procedures of other States parties and difficulties in identifying and exposing the flow of proceeds of corruption,

*Noting* in particular that a large proportion of the proceeds of corruption, including those emanating from transnational bribery and other offences established under the Convention, are yet to be returned to the requesting States parties, their prior legitimate owners and victims of the crimes,

*Concerned* about the practical difficulties both requested and requesting States face in asset recovery,

*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,

*Noting with concern* that the huge cost of recovery of assets in some jurisdictions has made such recovery difficult and, accordingly, has led to the abandonment of some cases seeking the return of proceeds of crime to the countries of origin,

*Noting* the trend of the use of settlements and other alternative legal mechanisms by some States parties to conclude transnational corruption cases, and acknowledging that these new mechanisms, which have enhanced enforcement actions in some corruption cases worldwide, should be used in such a way that is mindful of the goals of the Convention to enhance the recovery of proceeds of crime and international cooperation among all affected States parties,

*Noting also* the growing practice of the use of settlements and other alternative legal mechanisms by States parties in concluding transnational bribery cases, and calling upon States parties to give due consideration to the involvement of the jurisdictions where the bribery schemes originated or where foreign officials were bribed,

[*Noting with concern* the fact that of the over 6.2 billion United States dollars realized so far through settlements worldwide, only a small percentage [3 per cent] has been returned to the requesting States in cases of embezzlement or laundering of public funds, returned to the prior legitimate owner or used to recover the damages of the States whose officials were bribed and where the corrupt transactions took place, thus eroding the right of victims to restoration, which is a key principle of chapter V of the Convention,]

1. *Urges* all States parties to cooperate to recover the proceeds of crime, including embezzled public funds, stolen assets and unaccounted assets that are found in safe havens, and to demonstrate strong commitment to ensuring the return or disposal of such assets, including their return to the countries of origin, in accordance with article 57 of the United Nations Convention against Corruption;<sup>1</sup>

2. *Also urges* States parties to ensure that procedures for international cooperation allow for the seizure and restraint of assets for a time period sufficient to preserve those assets in full, pending proceedings in another State, and to allow or expand cooperation in the enforcement of foreign confiscation judgements, including through awareness-raising for judicial authorities;

3. *Further urges* States parties, pursuant to chapters III and V of the Convention, to:

(a) Prevent, detect and deter in a more effective manner the international transfer of proceeds of crime and funds of illicit origin;

(b) Take measures, including measures to ensure compliance by financial and designated non-financial institutions, to identify, trace, seize, recover and return the proceeds of crime and funds of illicit origin;

4. *Calls upon* States parties to give particular and timely consideration to the execution of requests for mutual legal assistance in asset recovery;

5. *Encourages* States parties to incorporate the Lausanne practical guidelines for efficient asset recovery into their practice in the area of asset recovery and continue to exchange their practical experiences and consolidate them in a step-by-step guide or asset recovery manual in cooperation with interested States and providers of technical assistance;

6. *Directs* the Open-ended Intergovernmental Working Group on Asset Recovery, in accordance with articles 53 and 57 of the Convention:

(a) To collect best practices and initiate the process of developing guidelines for identifying and recognizing victims of corruption and parameters for compensation;

[(b) To initiate the process of developing guidelines for distilling from disgorged profits and criminal fines just entitlements of harmed entities in the context of the Convention;]

(c) To develop guidelines for the proactive and timely sharing of information to enable involved States parties to take appropriate action, in accordance with article 56 of the Convention;

[(d) To collect information, including on the sharing of best practices, with the support of the Secretariat, regarding States parties' use of settlements and other alternative mechanisms, with a view to considering the feasibility of developing guidelines in order to facilitate a more coordinated and transparent approach for cooperation among affected States parties, and to report its findings, with the support of the Secretariat, to the Conference of the States Parties at its seventh session;]

7. *Calls upon* Member States to consider waiving or reducing to the barest minimum reasonable expenses deducted when recovering assets, particularly when

the requesting State is a developing country, bearing in mind that the return of illicitly acquired assets is needed for sustainable development;

8. *Encourages* requested States parties to respond to requests for assistance pursuant to article 46 of the Convention in the absence of dual criminality;

9. *Encourages* States parties to enhance international cooperation and asset recovery by interpreting terms such as “proceeds of crime” and “victims of crime” in a manner consistent with the Convention;

10. *Urges* States parties that are using settlement and other alternative legal mechanisms to resolve corruption-related cases to work collaboratively with all relevant States parties to enhance international cooperation, information-sharing and recovery of proceeds of crime;

11. *Urges* States parties, while pursuing settlements and other alternative legal mechanisms, to proactively share information without prior request so as to engage all the States parties concerned early in the process, in accordance with article 46, paragraph 4, article 48, paragraph 1 (f), and article 56 of the Convention.

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