

29 August 2017

English only

Seventh session

Vienna, 6-10 November 2017

**INTERNATIONAL EXPERT MEETING ON THE
MANAGEMENT AND DISPOSAL
OF RECOVERED AND RETURNED STOLEN ASSETS,
INCLUDING IN SUPPORT OF SUSTAINABLE
DEVELOPMENT**

**14 to 16 February 2017
United Nations Conference Centre
Addis Ababa, Ethiopia**

Report of the Meeting





INTRODUCTION

The International Expert Meeting on the Management and Disposal of Recovered and Returned Stolen Assets, including in Support of Sustainable Development was held in Addis Ababa, Ethiopia from 14 to 16 February 2017 to respond to calls for the international community to strengthen efforts for the recovery and return of stolen assets. The meeting which was jointly organized by the Governments of Ethiopia, Switzerland and UNODC brought together for the first time different constituencies working on asset recovery and return from the perspective of the implementation of the United Nations Convention against Corruption (UNCAC) and the Financing for Development angle. It was a first step towards developing good practices on seized and confiscated assets and on asset return, in response to three mandates emanating from:

- 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.

SESSION 1: OPENING

The meeting was opened by *H.E. Mr. Wedo Atto*, Deputy Commissioner of the Federal Ethics and Anti-Corruption Commission of Ethiopia. In his remarks, Mr. Atto welcomed cooperation with Switzerland, as well as UNODC, in the organization of the meeting, and the attendance of all participants in particular the Attorneys-General of Guatemala and Nigeria. He highlighted the core principles contained in Article 51 of UNCAC and noted the resolutions of the Conference of the States Parties to the UNCAC, which had advanced the work of the international community on asset recovery. The Addis Ababa Action Agenda (Addis Agenda) of the Third International Conference on Financing for Development showed the premium the international community placed on the issue of asset recovery. He noted that further work was needed on international cooperation to curb illicit financial flows to implement the Addis Agenda and Ethiopia had contributed to this by making the fight against corruption a priority. He stressed the return, disposal and use of recovered assets for the benefit of society and noted that returned assets in support of sustainable development should be used in a transparent and accountable manner. He emphasized that the meeting was to examine how returned assets could be utilized to achieve the Sustainable Development Goals (SDGs) and the Addis Agenda. Furthermore, he called on experts to consider ways to involve all relevant stakeholder groups to ensure efficiency, accountability and transparency, for example by the creation of multi-stakeholder partnerships. The sustainability and long term impact of programmes financed through returned assets was also to be considered. The Deputy

Commissioner called upon the meeting to share lessons learned and provide input to the Conference of the States Parties and its Asset Recovery Working Group.

H.E. Ambassador Andrea Semadeni of Switzerland welcomed the participants and highlighted the importance of bringing together asset recovery experts with development practitioners. He referred to the Addis Ababa Action Agenda and the need for a paradigm shift to focus on creating sustainable financial flows. This included considering the issue of domestic resource mobilization. He stressed that large scale corruption cases diverted funds for the achievement of the SDGs in situations where resources were already scarce. In this context he highlighted the developmental impact the return of stolen assets can have. In addition, returning funds was also an effective way to combat impunity. Noting that the Government of Switzerland had returned US\$2 billion over the past two decades, he highlighted the need for the Addis Agenda, the achievement of the SDGs and the global anti-corruption agenda to all work together. The Ambassador called on the two different communities of practitioners to work towards a shared understanding and develop good practices on asset return.

Brigitte Strobel-Shaw, Chief of the Conference Support Section, Corruption and Economic Crime Branch (UNODC) welcomed the participants and highlighted UNODC's work on this topic including through the joint UNODC and World Bank Stolen Asset Recovery (StAR) Initiative. She noted the work carried out on the implementation of the Sustainable Development Goals and on financing the efforts towards the achievement of the goals and stressed that while asset recovery and return could play an important role, other efforts to prevent the loss and outflow of valuable financial means were equally important. She stressed that the principle of asset recovery is enshrined in UNCAC and is part of the Sustainable Development Goals and the Addis Ababa Action Agenda, as well as other policy commitments. She regretted that despite these commitments, returns still fell short of expectations and while UNCAC set a comprehensive framework, more practice was needed to overcome challenges such as differences in legal systems. She expressed the hope that the meeting, by bringing a diverse group of practitioners together would contribute to a better understanding of different perspectives and practical challenges.

SESSION 2: BRINGING TOGETHER TWO CONSTITUENCIES

The session was aimed at providing an opportunity for dialogue between asset recovery experts, development practitioners and specifically participants with a background on financing for development. In two parts, participants elaborated on past work streams and practical and policy agendas moving forward.

PART 1: CURRENT STATE OF THE INTERNATIONAL DEBATE ON THE MANAGEMENT OF RECOVERED AND RETURNED ASSETS AT THE INTERNATIONAL LEVEL

Moderator: Salome Steib (Switzerland)

Panellists: Phil Mason (UK); Andrey Onufrienko (Russian Federation); Shervin Majlessi (UNODC/StAR); Hermione Cronje (UNODC/StAR); Gretta Fenner (ICAR)

In part one of the session panellists discussed the current state of policy considerations on the management of returned assets and key issues and trends, also with regard to the intergovernmental processes in the context of the Conference of the States Parties to the United Nations Convention against Corruption. In particular, the panellists briefed the meeting about the outcomes of an international workshop entitled 'Returning Stolen Assets', held in Küsnacht, Switzerland in October 2013; and the Expert Group Meeting on the Management, Use and Disposal of Frozen, Seized and Confiscated Assets, held in Calabria, Italy in April 2014, as well as other international fora which placed asset recovery high on the agenda, such as the Anti-Corruption Summit held in London in 2016 and the work of the G20 Anti-Corruption Working Group.

Phil Mason drew the attention of participants to paragraphs 1 and 3 of the preamble to UNCAC which allude to 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, while also jeopardizing sustainable development and the rule of law. He noted that cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of State resources, threatened the political stability and sustainable development of those States. These provisions, which were the first of their kind, introduced a new fundamental principle, as well as a framework for stronger cooperation between States to prevent and detect corruption and to return the proceeds. This was a particularly important issue for many developing countries where corrupt high officials had plundered national wealth and where new Governments badly needed resources to reconstruct and rehabilitate their societies. He noted that the UN General Assembly already in 2012 in its resolution 67/192 on *Preventing and combating corrupt practices and the transfer of proceeds of corruption, facilitating asset recovery and returning such assets to legitimate owners, in particular to countries of origin, in accordance with the United Nations Convention against Corruption*, recognized that fighting corruption at all levels is a priority and that corruption is a serious barrier to effective resource mobilization and allocation and diverts resources away from activities that are vital for poverty eradication and sustainable development. He highlighted the work carried out by the UNCAC Asset Recovery Working Group, which in 2007 recognized that the illicit diversion of public assets also hampers the establishment of transparent economic management and destroys trust in government institutions and financial systems in both developed and developing countries and that enhancing cooperation for the return of assets helps countries not only to recover wealth but also to develop and strengthen institutions and build much-needed trust in order to prevent such cases in the future. He noted that every year immense wealth was diverted from public budgets and that those funds could hold great potential for development in the countries of origin.

Andrey Onufrienko reiterated the return of assets as a fundamental principle of UNCAC, and that States parties shall afford one another the widest measure of cooperation and assistance in this regard. He explained the different Russian state authorities involved in the recovery of stolen assets from abroad, including their roles. In this regard, he elaborated on the process for requesting legal assistance in criminal matters where there was evidence to the effect that the funds and property had been illegally exported from Russia. He further noted the role of police to police cooperation, primarily through INTERPOL, and the cooperation of financial intelligence authorities through the Egmont group network in cases involving money-laundering and financing of terrorism. The recovery of stolen assets was among the key priorities of the Prosecutor General's Office of the Russian Federation which had established a national contact point for international cooperation on identification, seizure, confiscation and recovery of proceeds of corruption. He further informed the meeting that his Government was currently in the process of designating the Prosecutor General's Office as coordinating authority for detecting, seizure and recovery of assets derived from crime, conferring on it all rights to apply to foreign courts with appropriate claims and conclude agreements and arrangements with competent authorities of foreign States on disposal of the assets confiscated abroad. He noted that the lengthy execution of requests remained a challenge, which was in part due to the differences in legal systems. He highlighted the need to elaborate a mechanism for information sharing already at the pre-investigation stage, and to encourage measures allowing for administrative and civil liability for corruption offences as well as the prevention of corrupt practices. He noted that this was reaffirmed in the resolutions adopted at the fifth and sixth sessions of the Conference of the States Parties to the United Nations Convention against Corruption and the provisions of Articles 43 and 48 of the UNCAC.

Shervin Majlessi provided an update on recent discussions related to asset recovery, return and management at the global level. He first focused on a number of events and milestones during the past two years, including expert meetings on asset

management as part of the Calabria project and the last sessions of the Conference of the States Parties to UNCAC and its Asset Recovery Working Group (ARWG), the meetings of the StAR/Interpol Global Focal Point Network on Asset Recovery and the United Kingdom Anti-Corruption Summit in May 2016.

He then highlighted the two substantive issues of settlement of transnational corruption cases and victims of corruption, which were discussed in the last meeting of the ARWG and were the subject of further discussion under Session 3 of the expert group meeting. He provided an overview of five practice areas of StAR (country engagement, policy influence, partnerships, knowledge and innovation, and advocacy and communications). He also highlighted that in the context of the 2nd cycle of the UNCAC Implementation Review Mechanism, which started in 2016, the Chapter on Asset Recovery was under review. In this context, Member States have increased their efforts to ensure their measures are in compliance with the Convention and have identified gaps and technical assistance needs in the area of asset recovery. He also drew the attention of the group to a number of upcoming global meetings, including the Lausanne X seminar on developing Guidelines for the Efficient Recovery of Stolen Asset (February 2017), and the sessions of the ARWG and COSP (August and November 2017 respectively), as well as the first Global Forum on Asset Recovery (July 2017).

Hermione Cronje informed the group about the work carried out by UNODC in response to resolutions 5/3 and 6/3 of the Conference of the States Parties to UNCAC on facilitating international cooperation in asset recovery. The resolutions encourage States parties and UNODC to share experience on the management, use and disposal of frozen, seized and confiscated assets; 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. In this respect, UNODC had organized two expert meetings, in 2014 and in 2015 bringing together experts from countries with experience and expertise in management, use and disposal of frozen, seized and confiscated assets. In order to reflect the outcome of these meetings UNODC was in the process of finalizing a “*Compilation on Management of Seized and Confiscated Assets*” with the objective of identifying issues confronting countries when designing legal and institutional frameworks and building operational capacities for the management and disposal of seized and confiscated assets at the domestic level. The compilation includes references to international knowledge products and developments in the area of asset management to date; country specific policy considerations and trends; and specific chapters dedicated to the interim management of assets prior to final confiscation orders; the disposal of assets after the final confiscation determination; and the institutional (organizational) arrangements to manage and dispose of assets.

The panellist further presented some considerations on institutional arrangements and provided some examples. In conclusion, she noted the importance of having an appropriate legislative framework and strong domestic institutions to manage seized and confiscated assets, which in turn would contribute to countries’ capacity to manage the recovery and return of seized and confiscated criminal property across jurisdictions.

Gretta Fenner reported on the international workshop on “Returning Stolen Assets” which took place in Küsnacht, Switzerland in 2013 and which concluded with a number of principles that should ideally be considered by concerned States in future asset returns. These included for example that: the parties have a shared interest that stolen assets are returned to country of origin; asset recovery is a partnership from beginning to end, making constructive and early dialogue advisable; all stakeholders have an interest in ensuring that assets are not stolen again (transparency, accountability); and manage expectations and ensure desired symbolic impact through cross-government dialogue and engagement with concerned citizen groups. She reported that the meeting also identified factors that would determine the end use, including: the nature of the original offence and concerned victims; expectations of requesting and requested States and their citizens; socio-economic context, quality of

governance; volume, sustainability and long-term impact; provision in the final court order (if applicable); and the relationship between requesting State's authorities and perpetrators. She noted that there was agreement that there would be no one-size-fits-all solution and that at least five basic models were available. In addition, the role of third parties in planning, implementation and monitoring should be considered.

The panellist also presented a draft study on *Decision-making processes on asset return: The cases of Kazakhstan, Nigeria, Peru and the Philippines* which was prepared by ICAR as a result of the Calabria workshop organized by UNODC. The study was based on semi-structured interviews with decision-makers in requested and requesting States. The objectives were to understand the motivations, considerations and processes in decision-making and dialogue about the end use of returned assets between requesting and requested States. The study confirmed that despite the technical/normative nature of asset recovery, the political dimension should not be underestimated and while different motivations may dominate in requesting and requested States, there was a common objective. Furthermore, the interviewees confirmed that guidance in the process would be useful as it could contribute to depoliticising, structuring and expediting the engagement between requesting and requested States. The interviews further confirmed that the local context in which these engagements take place was critical. Monitoring mechanisms were found to assist in mitigating risks for requesting and requested States.

PART 2: RELEVANCE OF ASSET RETURN TO IMPLEMENTING THE SDG'S

Moderator: Belachew Gutulo (Ethiopia)

Panellists: Peter Chowla (UNDESA Financing for Development Office); Mohamed Omar Gad (Egypt); Marianne Loe (Norway); Eugenio Maria Curia (Argentina)

Part 2 of the session placed the debate on recovered and returned assets in the wider development context. Panellists briefed participants on the relevance of asset return to the Sustainable Development Goals, and the Addis Ababa Action Agenda. The session discussed how SDG 16.4 can be translated into practice and what it means in terms of the management of seized and recovered assets.

Peter Chowla gave an overview of the Third International Conference on Financing for Development in Addis in 2015 and its outcome, the Addis Ababa Action Agenda, which set a new global framework for financing sustainable development. He noted that the comprehensive set of policy actions, was complemented by over 100 concrete measures to achieve the SDGs. Target 16.4 of the Agenda 2030 on Illicit Financial Flows (IFF) and Asset Recovery was further reflected in paragraphs 23-25 of the Addis Agenda. He further referred to the High Level Panel report on IFF from Africa. The panellist underlined that there was no universally agreed definition of IFF. The institutional follow-up to paragraph 25 of the Addis Agenda was done through an Inter-agency Task Force on FfD, which produces an annual report (in spring) on the status of the implementation of the Addis Agenda. The inter-governmental follow-up was through the annual ECOSOC Financing for Development Forum and he informed the group that the next meeting will be held in May 2017.

Marianne Loe summarized the process leading to the adoption of the SDGs and gave an overview of their content. She noted that the major differences to the Millennium Development Goals were their universal applicability (also to developed countries), the integration of the economic, social and environmental dimensions and the fact that the SDGs also address a "fourth dimension" – the importance of peaceful and safe societies including the rule of law, recognizing that fragile states and conflict-affected regions lagged furthest behind in reaching the MDGs and that conflict remained the biggest threat to development. She suggested three main reasons why asset return was relevant for SDG implementation: (1) The obvious: the SDGs include a target dedicated to reducing illicit financial flows and return stolen assets (SDG 16.4.), and hence cannot be achieved without addressing these issues; (2) The financial: Achieving the SDGs will require huge investments from public and private actors

(a move from millions to trillions is needed). Curbing illicit flows and returning stolen assets will be crucial to make this possible. She made reference to World Bank research which showed that up to 25 per cent of Africa's GNP disappears in corruption and estimates that IFF going out of Africa by far exceed the ODA into Africa. (3) The importance of accountability: to generate a long-term effect on SDG implementation asset recovery has to go hand in hand with fighting corruption, illicit financial flows, tax evasion, etc., all of which undermine the foundations of well-functioning societies. She highlighted the importance of transparency to hold political leaders accountable and build trust between government and the people.

Mohamed Omar Gad applauded the meeting for bringing together two communities, who had worked separately so far. He emphasized that the SDGs and the 2030 Agenda are not only related to developing countries but involve all countries and noted that the Agenda 2030, goes beyond the SDGs and includes the Addis Agenda and FfD. Implementing it means that official development assistance (ODA) alone cannot cover the cost and for this purpose fresh ideas and bringing in all possible funding mechanisms were key. In this context, he drew attention to Goal 17 (Strengthen the means of implementation and revitalize the global partnership for sustainable development) which has to be implemented, and in particular its target 17.3 "Mobilize additional financial resources for developing countries from multiple sources." Asset recovery could play a part in this effort and thus the work carried out on asset recovery by UNODC under the Conference of the States Parties to the UNCAC and the Asset Recovery Working Group now has a new stream of work with both SDG 16.4 and 17.3. In this regard, he informed the meeting of the first-ever IFF resolution of the Second Committee of the UN General Assembly and stressed that discussions were already happening at the UN in New York.

Eugenio Maria Curia stated that paragraphs 23-25 of the Addis Agenda are fluid and had to be advanced and specified. He noted that UNCTAD research showed a strong increase of IFF in the past few years, demonstrating that illicit financial flows (including proceeds of bribery) were increasing and harming development. He stressed that various intergovernmental bodies and other fora tackled corruption and underlined that it was crucial to also address other aspects of IFF, particularly tax evasion in order to point to what he described as the main source of IFF. He further informed the meeting on the work conducted by the Human Rights Council's independent expert on IFF, who had also produced an informative report on IFF, human rights and the Agenda 2030.

In his closing remarks the moderator underlined the discrepancy between the immense financial need to implement the ambitious SDGs and the increasing amount of IFF flowing out of developing countries. Any efforts to address this problem were to be led by international solidarity.

Session 2: Discussion

In the discussion on this item experts stressed that the process of asset recovery was very slow and long and had to be improved and expedited. Some experts suggested that the discussion on financing for development needed to be extended beyond asset recovery to cover the broader issue of IFF. In this context the role of the FfD Forum created in response to the Addis Agenda in 2015 was noted. In order to address the broad discussion on IFF and their role in undermining sustainable development, a component-by-component approach was needed, and in this respect this meeting could make an important contribution by providing substantive expertise in the area of asset recovery which could be considered by Member States when discussing policy recommendations. Some experts stressed that partnerships and bringing on board civil society and other actors would benefit sustainable development.

In the area of asset recovery, some experts expressed the view that the discussion should extend to proceeds of other crime, including organized criminal activities and in particular wildlife crime. There were still considerable shortcomings in the financial investigation process in many countries and countries should be supported

to improve their financial investigative skills which were at the core of the asset recover process.

The need to share information and facilitate cooperation prior to making requests for international cooperation was highlighted. In addition to the cooperation between police, financial intelligence units and judicial authorities, a new scenario of “diplomacy cooperation” was introduced by one expert as playing an important role in asset recovery cases.

SESSION 3: MANAGEMENT OF SEIZED AND CONFISCATED ASSETS PENDING RETURN

Moderator: Jean-Michel Verelst (Belgium)

Panellists: Lucio Alves Angelo Junior (Brazil); Anatole Yezhov (Ukraine); Francesco Puleio and Giovanni Tartaglia (Italy); Engels Jiménez (Costa Rica)

The particular focus of this session was on the management, disposal/return of moveable (non-monetary) assets, as well as of real estate and corporate assets. Another aspect for consideration in this session was the recovery of costs of asset management, and interests and profits derived from the management of seized and confiscated assets.

The moderator presented an overview of the Belgian approach to asset recovery and asset management through the Central Office for Seizure and Confiscation (COSC), established in 2003 under the Public Prosecutor’s Office. The COSC is tasked with assisting public prosecutors, judges and law enforcement officers in criminal investigations and legal proceedings for asset seizures, prosecutions with a view to asset confiscation and execution of final confiscation orders, as well as asset management.

Lucio Alves Angelo Junior outlined the roles and mandates of the three authorities relevant to asset recovery in Brazil: the Federal Prosecution, the Attorney General’s office and the Secretariat for Transparency. He reported on the landmark “Carwash” case, which had been initiated in Brazil and held ramifications for several public officials. There had been cooperation in asset recovery with other jurisdictions such as Switzerland under the case. Referring to Brazil’s available legal avenues for action outside of the criminal framework, he noted that the Federal Accounting Court could produce extrajudicial civil titles to be executed on the basis of administrative decisions. He also highlighted in this respect that there was a need for more effective cooperation with other jurisdictions in non-criminal areas. One additional challenge in dealing with other jurisdictions was the high cost of hiring foreign legal counsel to enforce decisions or orders abroad.

Anatole Yezhov provided a detailed account of Ukraine’s experience in the seizure, confiscation and management of assets, and cooperation with other jurisdictions. Taking the Lazarenko case as an example, he laid out the different steps taken by Ukrainian authorities and their counterparts in the requested jurisdictions that had led to extensive negotiations, requests for mutual legal assistance and civil litigation spanning twenty years. New challenges had arisen with the cases related to the former President Yanukovich, where numerous assets had been frozen and both civil and criminal proceedings were ongoing in Ukraine and abroad. He reported that a new national agency for asset recovery had been established through a law enacted in October 2016. The agency was set to have a wide set of powers under the enabling law but it was yet to be fully operationalized.

Francesco Puleio and *Giovanni Tartaglia* delivered a joint presentation on the Italian framework for asset recovery and asset management, which was very comprehensive due to the country’s long standing fight against the mafia. The financial aspects of crime, in three main categories of mafia activities, corruption and tax evasion were referred to. Different types of offences were applicable and direct liability of legal persons was provided for. The legal framework for confiscation enabled temporary seizure of assets, and confiscation could cover tangible property, product, profits and

instrumentalities of crime. Different types of confiscation were also foreseen aside from the traditional criminal route, including value based confiscation and confiscation in cases where convicted persons could not justify the licit origin of assets. In addition, courts could order preventive confiscation through an administrative procedure in cases of offences considered to be socially dangerous. They reported that the Italian asset management system was in line with the G20 Anti-Corruption Working Group's plan and covered four main components: the legal framework, building institutions for asset management, confiscation and law enforcement actions, and, dissemination to society. In addition, Italy had provided technical assistance to other countries in the field of asset recovery and asset management, including support to agencies in Guatemala, Honduras and El Salvador.

Engels Jiménez presented the work of Costa Rica's Asset Recovery Unit which was established to support law enforcement and prosecutors and improve cooperation and coordination at the national level. The unit undertook patrimonial investigations in various areas that required technical expertise such as mortgages, real estate plans, financial products, and companies. The process for asset management could take three forms: loans under agreements, sales under delegation of administrative contracts or donation by decision of a collegial organ. He also noted that seized and confiscated assets could be used for preventive actions, including 10 per cent to ensure the management of assets and cover insurance costs. Several measures had been taken to simplify the management of assets: extending payment of taxes; anticipated sales of assets by delegation of administrative contracts; a procedural manual regulating transparency steps such as a website publishing results of the sales, as well as communication to the judiciary; and, the protection of the rights of bona fide third parties. He stressed the need for training for law enforcement, prosecutors and judges, as well as the need to increase coordination. Referring to technical assistance projects carried out by the OAS and its Inter-American Drug Abuse Control Commission (CICAD), he also mentioned the "Red de Recuperación de Activos de GAFILAT" (RRAG) platform and the need to share good practices at the regional and international levels.

The moderator noted the comprehensive legal frameworks that had been established for asset management and underlined the challenges that had arisen from the different country experiences and how responses had been tailored to overcome these legal and practical challenges.

Session 3: Discussion

In the discussion on this issue, experts highlighted the need to have in place a comprehensive legal framework and enabling regulations which included clear procedures for management of seized assets (e.g. for perishable assets and the use of interests accrued). The experts reported on their domestic institutions and stressed that institutions should have requisite expertise and should ensure effective coordination between different agencies, investigators and prosecutors. Some experts specifically stressed the symbolic value of the social reuse of confiscated assets, which had a positive impact on public trust in government institutions. Several experts noted the importance of technical assistance, international cooperation and the use of networks/platforms to exchange information and experiences. Many experts stressed the importance of international tools and best practices on the management of assets. Several experts emphasized that the return of assets was a fundamental principle of Chapter V of UNCAC and that priority should be given to the effective return of confiscated assets to the requesting State, with a view to returning such property to its prior legitimate owners and compensating the victims of corruption.

SESSION 4: PRACTICAL MODALITIES FOR THE RETURN AND DISPOSAL OF ASSETS

In three parts, this session discussed modalities used to facilitate the return of assets to the countries of origin, taking into account past experiences. The session considered what systems of accountability and transparency could facilitate the return

of embezzled funds to the country of origin, both from the perspectives of the requesting and the requested States. It further explored the use of settlements and their implications on the recovery and return of stolen assets.

PART 1: CASE-SPECIFIC AGREEMENTS OR MUTUALLY ACCEPTABLE ARRANGEMENTS FOR THE FINAL DISPOSAL OF CONFISCATED PROPERTY, ART. 57 (5) UNCAC

Moderator: H.E. Eugenio Maria Curia (Argentina)

Panellists: Stephen Campbell (US); Ibrahim Magu (Nigeria); H.E. Thelma Aldana (Guatemala); Daniela Hänggi (Switzerland)

Part one of the session looked at past case-specific agreements and arrangements for asset recovery. Specific topics for consideration were the rationale and the content of such agreements, particularly based on examples of existing agreements and their execution.

Stephen Campbell briefed the group on the work of the United States on so-called “kleptocracy cases”, i.e. cases involving foreign PEPs. He noted that these were investigated and prosecuted by the Department of Justice’s specialized Kleptocracy Unit which consisted of 23 attorneys. The unit worked closely with the FBI’s international corruption unit and at the time of the meeting 30 cases were under investigation and 11 cases in open court, ranging from USD 1 million to USD 1 billion in terms of assets concerned. Typically these investigations were dealt with under the United States legal provisions for civil forfeiture, although the United States also has provisions for criminal forfeiture. He noted that typically in civil forfeiture cases the Government of the “victim State” was not party to the legal proceedings in the US. Therefore discussions with these Governments started only once a final confiscation order had been issued in the United States court. The modalities for returning assets differed from case to case. He particularly referred to the establishment of the BOTA foundation which was created to return assets to Kazakhstan as a potential model for similar situations in the future.

Ibrahim Magu stressed Nigeria’s considerable experience in entering into bilateral agreements on the return of stolen assets, including with Switzerland, the UK, the UAE, the United States and others. In the context of defining the end use of returned stolen assets, the panellist noted the explicit desire of his Government that returned assets must benefit the people of Nigeria and that decisions on the end use should take into account the expectations of all concerned States and potentially other interested parties. As such, regular consultation between States parties was seen as a key success factor for swift and meaningful asset return as it allowed all parties to clearly understand issues involved on both sides and for them to jointly identify common objectives to be implemented through agreements. In the experience of Nigeria, flexibility on both sides was considered helpful to ensure that such agreements could facilitate a prompt return and to ensure transparency and accountability. He noted that in Nigeria, civil society was consulted both in the context of decision-making for the end use and in the monitoring of the end use. He also mentioned that in a number of cases the World Bank had played a key role in monitoring the end use.

H.E. Thelma Aldana described Guatemala’s “extensión de dominio” legislation, which assigns the management of stolen assets to an asset management agency (SENABED). In one of the country’s most emblematic cases from 2015, the “La Linea” case involving a former President and Vice-President and other former senior members of government, cash and non-cash assets of approximately USD 25 million were recovered. She underlined that these assets were partially invested in the creation of an academy for penitentiary management and partially put to re-use by government agencies. As an example she cited the case where confiscated helicopters were given to the rescue air force for use.

Daniela Hänggi presented Switzerland’s experience of entering into bilateral agreements with requesting States to guide the end use of returned stolen assets based

on cases with Peru, Nigeria, Angola and Kazakhstan. She noted that discussions about such agreements had become more efficient over time, especially in cases where previous agreements had been in place between the same States. The panellist stressed that this highlighted that partnership in asset recovery was a long-term investment. Transparency and development oriented use of funds was a key topic in the context of the negotiations of these agreements, and the involvement of third parties such as civil society organizations or the World Bank were frequently discussed and made part of the agreements. In one case (Angola II), the discussions resulted in the establishment of a joint mechanism to decide on and manage the end use of funds, which was considered by the parties as creating a strong mutual sense of ownership. In terms of monitoring, the case examples had shown that if appropriate, the use of existing monitoring or expenditure review mechanisms, be it of the requesting State or of bilateral aid agencies or international organizations could help ensure integrity of the use of funds while saving administrative costs.

PART 2: ACCOUNTABILITY AND TRANSPARENCY IN THE MANAGEMENT OF RETURNED ASSETS

Moderator: H.E. Abubakar Malami (Nigeria)

Panellists: Hans-Jürgen Gruss (Independent expert); Maris Urbans (Latvia), Cecilia Garcia Diaz (Peru)

Part 2 of the session considered systems of accountability and transparency which would facilitate the return of embezzled funds, particularly when returned assets were being channelled back into the general state budget of the country from which they were stolen. These could include “enhanced” country systems building on existing systems and mechanisms with additional control systems to ensure enhanced accountability and transparency. The possibility of creating autonomous funds and similar arrangements with distinct governance structures were also considered. A further issue for discussion during this session was the role of state and non-state actors in the management and disposal of returned assets.

H.E. Abubakar Malami highlighted that the new Nigerian Government was setting high standards in transparency and accountability for the management of returned assets, including among other measures the creation of a separate account where all returned proceeds are held prior to going into the state budget. In order to underline Nigeria’s seriousness on this issue, he reported that the country’s constitution contained a section related to returned assets. He also referred to Nigeria’s participation in the Open Government Partnership and the implications of this for returned assets. A national action plan was approved in December 2016 aimed at stemming IFFs. The plan contained 14 commitments, including fiscal transparency and the establishment of registers for beneficial ownership in line with UNCAC and FATF recommendation 24. The Minister stressed Nigeria’s commitment to transparent management of returned assets, including through civil society participation in monitoring.

Maris Urbans referred to Latvia’s experience in the recovery of assets. He explained that civil society organizations were interested in high profile cases, therefore prosecutors often dealt with transparency and accountability issues of asset maintenance and return. He emphasized that there was a requirement to keep track of every decision related to stolen assets. Despite difficulties to do so, he stressed the importance of this with a view to ensuring accountability. He noted that in Latvia returned assets were either returned to the victims or to the state treasury. The authorities would then work together to determine how funds will be used and/or returned to other requesting countries.

Hans-Jürgen Gruss stressed that the return of assets had to be done in an open and participatory process that would ensure accountability and transparency. He considered this to be a generic point which should be applied to all situations, irrespective of the amounts involved. He elaborated on different stakeholders and their interest. For the country that had lost the assets he stressed their sovereignty and

their desire to control what happened to the assets once returned. He was also cognizant of the efforts of the judicial authorities of the country where the assets were found and underlined their interest in accountability and transparency with respect to the use of funds. Also local civil society organizations in the requesting country would argue that they should be involved because they represent the people, especially in fragile environments where the relationship to government was undermined by mutual mistrust. With respect to international NGOs he saw their role in providing support to the global system of asset recovery through an advocacy function in countries of the financial centres and through bringing in global best practice. Finally, he also foresaw a role for international organizations as providers of technical assistance and capacity-building. Based on his practical experience he proposed that if requesting Governments created systems and procedures taking into account all these groups and their vested interests, it could be a win-win situation for all stakeholders. He expressed the view that close collaboration between Government and civil society would contribute to the appropriate use of the returned assets and increase the legitimacy of the Government vis-à-vis civil society. He also underlined the “public relations” aspect of transparency and openness. He stressed that the process of engaging all constituencies should start early and not after decisions were made. Finally, he advocated for the use of at least part of the returned assets to strengthen the legal and judicial sectors and countries’ enforcement capacities in line with SDG 16.

Cecilia Garcia Diaz, explained the asset management system in place under Peru’s National Commission of Seized Assets. The Commission did not participate in the process of asset recovery which was the task of different agencies. In Peru, 25 per cent of the assets confiscated was used to support the Commission. The Commission had the ability to temporarily assign assets to institutions and NGOs, but not all assets could be assigned in this way.

PART 3: USE OF SETTLEMENTS AND THEIR IMPLICATIONS ON THE RECOVERY AND RETURN OF STOLEN ASSETS

Moderator: Hans-Jürgen Gruss (Independent expert)

Panellists: Kimani Muthoni (Kenya); Stephen Campbell (US); Simon Maembe and Christopher Misigwa (Tanzania) ; Aaron Bornstein (Independent expert); Elsa Gopala Krishnan (StAR)

The purpose of this session was to discuss existing practices in involving affected countries in settlements and other alternative legal mechanisms. Specific points of consideration of this session was the impact these practices had by using funds received as a result of settlements for the compensation of victims.

Kimani Muthoni presented the institutional framework in Kenya, where the use of settlements was recognized and the Constitution set out alternative dispute resolution mechanisms as one of the principles to be applied in the exercise of judicial authority. She stressed that the use of alternative dispute resolution was not limited but subject to the non-contravention of the Bill of Rights and the Constitution. Since 2015, Kenya had adopted a multi-agency approach comprising of law enforcement agencies in investigations and prosecution of corruption and economic crimes, with more focus on financial investigations for money-laundering to enhance recovery of proceeds of crime. The Proceeds of Crime and Anti-money Laundering Act (POCAMLA) provides for recovery of proceeds of crime through the use of Kenya’s Civil Procedure Rules. The panellist noted that repatriated public funds in Kenya had to be captured in the national budget by the National Treasury and public procurement laws had to be applied. She reported that challenges were encountered in negotiating civil settlements involving grand corruption cases as the Kenyan public was critical of settlements and preferred prosecution and conviction based forfeiture. She stressed that the use of settlements as a mode of recovery of proceeds of crime was important and had a potential to fast-track repatriation and resolution of recovery proceedings.

Aaron Bornstein reported on the BOTA Foundation, which he represented, and which was established as a result of a settlement over \$84 million, plus interest, between the

U.S., Kazakhstan and Switzerland and brokered by the World Bank. A Memorandum of Understanding was concluded among all three countries setting up the BOTA foundation in 2008 by the three Parties and five local founders, overseen by the World Bank. Operations of the foundation began in 2009 with \$115 million. The objective of BOTA was to assist impoverished children, youth and others through three programmes: Conditional Cash Transfer (CCT); Social Protection NGO grants (SSP); and TAP scholarships for vocational/higher education. As accomplishments of the foundation he pointed to four areas: children attending preschool, pregnant and lactating women receiving regular medical checks and programme training and support; young people receiving employment and entrepreneurship skills; volunteers recruited and trained to assist with monitoring and training beneficiaries. He highlighted some key lessons that could be learnt from BOTA: the process was transparent and accountable; the role of an honest broker (in this case the World Bank) for the collaboration between the three countries was seen as important; the clear mission of BOTA to support the Government in its development efforts strengthened government ownership; the involvement of civil society was seen as adding legitimacy; while there was a need for strict oversight of how the funds were spent, overly bureaucratic processes could slow down delivery; and finally setting up of a separate account for these funds was important.

Elsa Gopala Krishnan presented the research conducted by StAR on the issue of settlements which was contained in the publication “Left Out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery” of 2013. The objective of the study was to increase knowledge and provide recommendations on the use of settlements in foreign corruption cases. The study was based on an analysis of 395 cases using settlements, available in a database. The analysis found that only 3 per cent of stolen assets were returned. The study made the following recommendations: The development of clear legal frameworks regulating settlements; improved transparency in the process; the proactive transmission of information to affected countries; and making provisions to recognize claims from other countries. The Conference of States Parties in its resolutions 6/2 and 6/3 referred to the study and called upon StAR to further collect and analyse information on the use of settlements with a view to developing guidelines. The Conference further urged States to implement the recommendations of the study. In this context, she further informed the meeting that a follow up to the study had been conducted in order to determine where recommendations had been implemented and its results were presented in a background document to the UNCAC Asset Recovery Working Group held in August 2017.

Christopher Misigwa presented the legal framework in Tanzania where the main institution responsible for asset recovery was the Asset Forfeiture and Recovery Section in the office of Director of Public Prosecutions. The Prevention and Combating of Corruption Bureau (PCCB) established under the Prevention and Combating of Corruption Act, as well as other investigative bodies are working hand with hand with the Asset Forfeiture and Recovery Section. The main legislation for asset recovery was the Proceeds of Crime Act (POCA), although there are other laws providing for forfeitures of properties connected with the offences committed, such as the Wildlife Act and the Drugs Enforcement Act. Under these acts, two funds were established: The Wildlife fund, where confiscated and forfeited assets were used to build health and other services; and the Drug fund where funds were used for activities targeting drug trafficking. Although the domestic legal framework in Tanzania did not foresee settlements, he mentioned two cases where the United Kingdom had returned assets to Tanzania through settlements. One settlement agreement foresaw the use of the returned funds to purchase books for schools. Another case in 2016 also concerned a United Kingdom company and USD 7million was returned to Tanzania to be used for enhancing the capacity of judicial and law enforcement authorities. He highlighted the role of mutual legal assistance and cooperation between the two States in achieving these returns.

Stephen Campbell presented two settlement agreements. The BOTA case, which was discussed previously and the Obiang case in Equatorial Guinea. The latter case involved the Vice president of Equatorial Guinea and the funds confiscated in the United States concerned money obtained from fraudulent schemes such as extortion in the timber industry. The ill-gotten profits were invested in properties and other assets in the United States. The case was concluded with a settlement agreement which included the selection of an organization which would use the funds for the benefit of the people of Equatorial Guinea.

Session 4: Discussion

In the discussion on this item, speakers expressed their appreciation for the work carried out in the field of asset recovery and for countries' readiness to return assets.

The session aimed to look at and learn from past case-specific agreements and arrangements as a means to facilitate the return of stolen assets, both with respect to the rationale of such agreements as well as their content. One point made repeatedly during the discussion was that asset recovery was a lengthy process, but that it can be sped up considerably if concerned jurisdictions work closely together. Flexibility on both sides and a constructive approach in this dialogue was encouraged and has helped in the past to ensure a successful outcome of such cooperation on end-use agreements, a matter which according to some speakers was relevant not only to the final stage of asset recovery, which is the return and disposal of assets, but to all stages of asset recovery.

Further, some participants noted that each case was different and that case-specific solutions for the end use of returned assets needed to be found, taking into account needs of the requesting States as well as expectations of both the requesting and requested States. Existing country case examples could be used as inspiration. However, participants also stated that domestic laws as well as domestic political, legal, financial, economic and social regimes should be taken into account and respected in this context. There is a need to have common sense and establish common trust among the stakeholders and to avoid discussions of a political nature. There was general agreement that it was good practice to use returned stolen assets to support SDG goals. However, it was also noted that returned funds could not substitute ODA.

Some participants stressed the advantages of involving civil society in the discussions around the end use of assets and in monitoring, as this could help manage expectations in the population and therefore was seen as creating a win-win situation between Governments and their citizens. In this context, some participants expressed appreciation for the letter submitted by the UNCAC coalition which was entitled "Recommendations to the International Expert Meeting on the management and disposal of stolen assets". Some experts also reported that they had seen an increase in trust by citizens in the commitment of Governments to anti-corruption as a result of Governments' entering into special agreements that defined the end use of returned stolen assets.

Several experts informed the group of their asset recovery practices. These included systems that only allowed for assets to be returned through their countries' regular public financial management systems (e.g. treasury). In this context, some experts highlighted issues of sovereignty and that they would not be in a position to discuss conditions for the return or how the returned assets would be used. Some experts mentioned special arrangements related to specific assets (e.g. company shares where an ad hoc committee for the management was formed). The moderator highlighted 4 relevant issues: (1) Legal process; (2) Involvement of CSOs; (3) Budget process; (4) Having in place a specialized institutions (involving police, defence, finance, AGO, MOJ, etc.).

Further emphasis was given to the need for technical assistance and training as there seems to be a lack of understanding of international guides available.

SESSION 5: USE OF RETURNED ASSETS TO COMPENSATE VICTIMS AND SUPPORT THE SUSTAINABLE DEVELOPMENT GOALS AND THE ADDIS ABABA ACTION AGENDA?

Moderator: Phil Mason (UK)

Panellists: Nicole Ruder (Switzerland); Rodrigo Garza (Mexico); Angela Ponce (Philippines); Bolaji Owasanoye (Nigeria); Wellington Cabral Saravia (Brazil)

This session considered the development aspects of asset recovery and specifically how returned assets can contribute to supporting the Sustainable Development Goals and the Addis Ababa Action Agenda. It furthermore considered measures to identify and compensate victims. The session further discussed the role that 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 other ministries.

Nicole Ruder highlighted that the explicit use of funds returned for public good in an accountable and transparent way can be a “win-win” situation for both requested and requested States. The funds recovered can be used to compensate victims, for social development activities and set a good example against impunity. She emphasized that mutual trust was key and that there needed to be mutually agreed mechanisms. With respect to the role for development agencies in this process, she highlighted their efforts in supporting preventive interventions and development cooperation. Development agencies had a role to play in strengthening the normative framework and international debate. Specifically, the Swiss Development Agency placed great importance on the issue of asset recovery which was also manifested in its support for capacity-building, training, and case work through ICAR and StAR. She referred to the concluded restitution cases mentioned in previous panels and made reference to an ongoing case with Nigeria and noted that the discussions in the group demonstrated that there was a need for more work on good practices. In this context she emphasized that the experiences made by some countries may be useful for other countries and should be shared.

Rodrigo Garza presented the work of the Asset Management and Disposition Agency (SAE). The SAE, due to its strategic planning had aligned itself to the public finance sector, as well as to national and international goals. The Agency’s corporate governance, as well as the adoption of Federal Government standards of accountability and transparency, serve to enhance the public trust in the recovery of the stolen assets. He noted that the activities performed by the SAE to dispose of the assets (sell, destroy and donate), support the implementation of the SDGs; for example: Goal 1 on poverty and creating resilience of the poor and those in vulnerable situations - through donations to highly marginalized communities; Goal 7 providing access to affordable, reliable and modern energy services - through the liquidation of the former State owned electricity company for central Mexico; Goal 9 on infrastructure development - through the liquidation strategy of the former State owned railroads company by creating urban development projects on the former grounds of the company; and Goal 16 to promote the rule of the law and equal access to justice for all, strengthen the recovery and return of stolen assets and reduce corruption - through the administration of seized and forfeited assets. According to Mexican legislation, indicted citizens might recover their seized assets if a federal criminal process concludes they are innocent. If they are found guilty, their assets are sold and used to compensate victims. The remaining resources are earmarked to support the judicial system, the procurement of justice and the health sector. He noted that lengthy judicial processes increased the costs for managing the assets, which can lead to decreased compensation to victims. This was in his view a trade-off between the protection of citizens’ rights and the value of the seized assets and the impact this had on public finances. To address this trade off, Mexico introduced a system allowing the early monetization of seized assets, which in his view constituted an international best practice, as it protected the rights of citizens, and at the same time reduced the

pressure on public finances. The SAE participates in international fora in order to share its experience and knowledge with other countries, while also benefiting from good practices from around the world. The panellist further highlighted that there was the need for coordination with other institutions in the recovery of assets.

Angela Ponce underlined that it may seem difficult to find the connection between stolen assets and the SDGs, in particular 16.4. But considering that trillions of dollars are needed to achieve the 2030 Agenda and the SDGs, the question where do these funds come from needed to be on everyone's mind. While it becomes crucially important to recover the funds it is at least equally important to not lose them again to corruption, but rather put them to good use enhancing development. In the experience of the Philippines, national priorities were centred around social justice, human rights and compensation to victims. In relation to the SDGs, a challenge remained to making the 2030 Agenda and SDGs known to crucial stakeholders such as parliamentarians, as their role was to determine how the budget was being allocated. In the Philippines, the new draft Philippine Development Plan for 2018-2022 identified the weakness of the criminal justice system and foresees a strategy to strengthen civil forfeiture and recovery mechanisms especially in relation to corruption cases, among others.

The panellist further presented the Marcos case, which was the result of stolen assets and ill-gotten wealth from a former president of the Philippines who was removed from his position through a peaceful revolution in 1986. A Presidential Commission on Good Government (PCGG) was created and mandated to recover the ill-gotten wealth of President Marcos, his family and cronies and ensure that these practices were not to be repeated again. After 30 years had passed, of the \$10 billion that Marcos and his cronies are estimated to have amassed and stolen, to date, only \$3.7 billion have been recovered. There are still 282 pending cases involving assets with an estimated worth of \$711.5 million. A process of 10 years allowed for the Philippines to recover \$700 million from Switzerland and this was a pioneering and landmark case through mutual legal assistance. The recovered funds were used for comprehensive agrarian reform programmes; reparations to human rights victims and developing the coconut industry.

Bolaji Owasanoye presented Nigeria's social development programmes which focus on populations affected by poverty or vulnerable to poverty. He further highlighted different examples of previous social welfare development programmes in Nigeria, such as the National Poverty Eradication Programme (NAPEP) which focused on poverty reduction, unemployment and cash transfers. As a specific example he mentioned the Fadama development which was a donor assisted project focused on creating economic infrastructure for income generation for groups in agriculture and related activities.

The present Nigerian Government had designed a robust social safety net and development framework that would benefit from returned assets and contribute to the SDG and development agenda of the government. This framework was centralized and coordinated in a way that guaranteed transparency and accountability. The new social investment and development policy focused generally on the poor, unemployed youths, the marginalised and the socially excluded. Examples were given such as the N-Power programme designed to train unemployed graduates and artisans; a home grown school feeding programme targeting children; direct cash transfers; enterprise and empowerment programmes for financial inclusion and access to credit; and bursary programmes for tertiary students in education, science, technology and engineering.

By including a line item for asset recovery in the budget, the Government opened the process to scrutiny and monitoring by the legislature, public procurement process, auditor-general of the federation, civil society and the general public. In spite of these efforts, the Government still welcomed monitoring by international development partners and civil society as demonstration of its determination for transparency and accountability in the management of national resources including returned stolen

assets. The government opened a single account into which recovered stolen assets are paid before transfer into the constitutionally recognized federal budget. He reported that these budget appropriations were open to legislative scrutiny, public monitoring and audit by the Auditor-General.

Wellington Saravia presented the “Carwash” operation which was currently the largest case in Brazil. The case included a series of criminal and civil proceedings concerning multiple crimes against Petrobras, a Brazilian state-owned oil company and other administrative bodies. The case, which was still ongoing, resulted in various cooperation agreements, criminal and civil law suits, convictions and sentences. He emphasized Brazil’s new legal framework which facilitated international cooperation and in particular, easier and faster collection of evidence; faster criminal proceedings and more efficient location and repatriation of assets.

The panellist highlighted some good practices which resulted from the case. These included: considering asset investigation and recovery as essential and that prison sentences were not sufficient to fight economic and other serious crimes. Therefore he emphasized that investigation into the assets needed to be carried out in parallel to the criminal investigation. The wide use of cooperation agreements and the use of computer tools to analyze data were seen as having contributed to the success in the “Carwash” case. A further good practice included strong inter-agency cooperation. The international cooperation unit was well established and permitted frequent and direct contact with foreign counterparts and other relevant officials, as well as effective mutual legal assistance proceedings.

He emphasized the importance of the informal cooperation prior to formal MLA requests which permitted to gather the required information before a formal request for MLA. The role of international networks was also important such as CARIN, GAFILAT, RRAG, the Egmont Group and others. This initiated a change in the criminal justice system bringing about the ability to investigate and prosecute corruption at the highest level in Brazil.

Session 5: Discussion

In the discussion on this matter, experts reported on other practices such as finding a solution to use the funds or assets seized and confiscated without waiting for the outcome of the case which was a particularly important issue for perishable assets. Legislation which allowed the early monetization of seized assets, which would also reduce administrative costs, was seen as an important tool for the effective disposal. Some experts stressed the need for legal frameworks which foresaw the compensation of victims. Experts noted that establishing a line item for recovered assets in the national budget had the advantage that funds coming into the budget through asset recovery were subject to the same level of scrutiny and monitoring by the legislature, the auditor-general, civil society and the general public as the general government budget. Experts also mentioned examples of using recovered assets for social development programmes, including conditional cash transfer programmes and schooling programmes. One expert reported on the use of the returned assets for compensation of victims of human rights violations committed by the government which had embezzled the assets.

Having in place well established units dealing with international cooperation in criminal matters was seen as a crucial pre-requisite for successful asset recovery. At the same time, some experts also stressed the importance of contacts prior to submitting the official requests for mutual legal assistance.

The potential of cooperation agreements in order to speed up the asset recovery process was noted by some experts. More information sharing and transparency on these agreements for the benefit of other countries was requested.

Some experts noted that transparency in the process was important to ensure public trust in the use of recovered assets. In this context, several experts noted the role civil

society can have in the process. Equally important was to collaborate in international fora addressing the issue of asset recovery.

Session 6: Towards good practices for the management and return of stolen assets

Moderator: Brigitte Strobel-Shaw (UNODC)

Moderators for breakout sessions: Shervin Majlessi (StAR)/Salome Steib (Switzerland); Phil Mason (UK), Eugenio Curia (Argentina) and Mohamed Habib (Egypt); and Akinremi Bolaji (Nigeria) and Gretta Fenner (ICAR) In three breakout sessions the experts reviewed the panel presentations and discussions of the previous days and focused on identifying current practices and approaches with a view to determining emerging good practice. Three substantive areas on the management and return of stolen assets in support of sustainable development had emerged in the discussions as requiring further work: (1) Management of seized and confiscated assets pending return; (2) The end use/disposal of returned assets, including in support of the SDGs; and (3) Modalities and negotiation of agreements for returning the assets. The discussion revealed that, while these areas were distinct, good practices and guidance in each of them would be mutually reinforcing for the other areas. In particular, domestic mechanisms put in place for the management of seized and confiscated assets would to a certain degree also be applicable for returned assets. At the same time, progress made on good practices for the use of returned assets could influence the timeframe and negotiations of agreements for returning the assets in cases where such agreements have been envisaged.

1. Management of seized and confiscated assets pending return

In terms of identifying good practices and making recommendations on the management of seized and confiscated assets pending return, the meeting noted the following areas which could be further considered:

Ensure clear procedures for the management of seized assets;

Establish a coordinating/specialized authority for the management of seized and confiscated assets. These institutions should have specialized staff in place who have the technical knowledge necessary for managing assets (and include training for staff and technical assistance where required);

Engage with various sectors, such as the private sector, to draw on their existing knowledge in managing different types of assets, including shares and companies;

Where appropriate, use assets in a manner which sends a signal to society and strengthens the rule of law. This can include the use of seized and confiscated vehicles by law enforcement agencies, the use of agricultural land, hotels etc. to provide employment and income for victims and disadvantaged communities, etc.;

When deciding on the disposal of the assets, where relevant, priority should be given to determining ownership of the assets and compensating victims.

Use UNCAC as a legal basis to ensure transparency in all stages of asset management;

In order to avoid high costs during lengthy proceedings, establish a framework to enable selling seized and confiscated assets as soon as possible (where appropriate even prior to a final judgment) to avoid any additional expenses for management and avoid the loss of value in the case of perishable items.

With regard to assets pending return, consultations with the requesting State should be sought prior to taking decisions in those cases where domestic asset management regulations foresee different options for management (for example the early monetization of assets). Additionally, it could be useful in certain cases to consider anticipated return of assets, as well as authorizing the requesting State to use the assets while legal proceedings were still pending, e.g. against bonds and securities.

The need to differentiate between management of assets while they were frozen under on-going legal proceedings, and management (and disposal) of assets once they had

been confiscated and returned. In this context, the need for separate guidelines or good practices for each of these distinct issues was noted.

Experts further emphasized areas where good practices and sharing of experience and guidance could assist countries in the effective management of seized and confiscated assets. These included: examples/models of institutions responsible for the management of seized and confiscated assets; examples of domestic legal frameworks, including legislation which allows the early monetization of assets; good practices in how to limit the costs related to managing assets; how to best utilize expertise that may exist in other Government agencies for the management of assets; the importance of the preservation of asset value, including the ongoing operation of restrained assets; the rights of third parties and related concerns of society; managing assets in ways which add social value; increasing transparency in the management of assets; finding the best asset managers; increased accountability in managing assets; when and how to consult with the requesting State; and the importance of timelines for return.

2. *The end use/disposal of returned assets, including in support of the SDGs*

In the context of the second item on the use and disposal of returned assets and supporting the SDGs, there was general agreement that, while the symbolic value of asset recovery was high, returned assets could only provide for a small portion of the funds needed to support the SDGs. Returned assets are not a substitute for ODA.

Several experts emphasized that as the legitimate owners of the recovered and returned assets, requesting states should have the right to decide on the disposal of those assets.

The participants raised the following issues for further consideration: transparency in the return of assets; use of assets for social gain; return of assets as part of settlements; the added value of assigning assets to a specific use; identification of victims; consideration of national development priorities; use of money to prevent future corruption, including by strengthening anti-corruption institutions; and the sustainability of the programmes funded through returned assets and in this context the need for ownership.

Apart from a general agreement that proper budget planning and allocation processes were essential, the following practices were considered by the experts as being effective, bearing in mind the local context:

Allocate a budget at the national level to carry out specific projects with the returned assets;

Use of assets for social projects with high visibility. In this context specific projects which have a direct benefit for the population should be considered. States may consider whether and to what extent civil society organizations can play a role in the identification and implementation of these projects.

Use confiscated funds for the protection of and reparation to victims and witnesses. In the context of ensuring that the returned assets were given back for the benefit of the poor and victims when applicable, it was considered to be beneficial to consult the citizens, as part of the accountability of States toward their citizens.

Protection of the rights of third parties.

Develop a transparency framework and informing the public how funds are used would serve also the purpose of ensuring trust in government institutions;

Bearing in mind the size and nature of the assets, consider alternative solutions, including establishing a separate fund/account for specific assets;

Establish a timeline and workplan for the use of the returned assets;

3. *Modalities and negotiation of agreements for returning the assets*

The third item on the practical modalities and negotiation of agreements for returning the assets concluded with the following findings:

The efficient and prompt return of assets was the priority. The group emphasized that the negotiation of agreements for returning assets was a voluntary option and must not be a condition for the return. In this respect, the sovereignty of States needed to be respected and returning assets was a State-to-State process. Therefore different countries' domestic laws and institutions must be respected.

Any agreements between requested and requesting States were not to contain any conditions on the return, but were to reflect an agreed process for returning assets, which needed to be cognizant of the power imbalance between requesting and requested States.

Agreements were a result of partnerships between requesting and requested States and were based on ongoing dialogue to help frame and understand respective interests and work towards a constructive solution that satisfied all parties.

Consideration needed be given to the different political, economic, judicial, financial and social systems of States. Therefore, there were no universally applicable modalities and the uniqueness of each case needed to be taken into account.

Agreements for return and specifically settlements (meaning any procedure short of a full trial) were often seen as a way to accelerate the return of assets. In this context, the need for speed and agreeing on a clear timetable which would ensure the predictability of the flows was important.

Transparency in the process was regarded as an important aspect. This also included transparency with respect to expenses that were deducted. In general, there was the need for more clarity of what was considered "reasonable" expenses.

Monitoring mechanisms and controls on funds transfers could be mutually beneficial components of agreements, as both States had an obligation vis-à-vis their citizens to ensure that the returned assets are safeguarded. Particular measures for a transparent and accountable use of the returned assets in line with the general principles of accountability and transparency in the management of public finances under UNCAC were seen as important elements.

Ensuring trust between the parties was crucial for the outcome of the negotiations. This was also confirmed by the fact that agreements between countries which already had agreements in earlier cases were often concluded faster. In order to establish trust, participation in networks and platforms for informal cooperation had proven to be useful in several cases. Enhancing cooperation during the investigation phase, as well as elaborating mechanisms of information sharing prior to and during the international cooperation proceedings also had a positive impact on the level of trust which could facilitate the negotiation of future agreements.

In some cases, the use of an honest broker could be considered as a possible way to facilitate the dialogue and the negotiation of the agreement.

When deciding on the modalities for the return, consideration should be given to the value of returned assets. Normally funds would be channelled through the public financial management system. However, in certain cases, consideration could also be given for example to setting up enhanced country systems; autonomous funds; or management by third parties.

When negotiating bilateral agreements containing provisions on the end use of the returned funds (such as for development), reference to the SDGs which contained agreed targets applicable to all States could lead to faster completion of agreements.

The early identification of projects and programmes for which the returned funds could be used can also have an impact on the speed of finalizing an agreement. Early consideration should also be given to which stakeholders should be involved in which

processes. This includes consideration of the different government departments that have expertise and an interest in these negotiations, as well as a decision whether any non-governmental stakeholders should be involved. Some countries advocated for setting up special committees.

Finally it was regarded as crucial to ensure effective communication with respect to the process and to manage expectations.

This was regarded as an area where more work was needed, in order to share experiences and provide countries with guidance and past practices which would allow for a faster and more informed process for negotiating agreements on the return of stolen assets, where such agreements were applicable and deemed appropriate.

SESSION 7: CONCLUSIONS AND THE WAY FORWARD

Moderator: Brigitte Strobel-Shaw (UNODC)

The moderators of sessions 2 to 5 each provided a summing up of their sessions with salient points.

While providing a forum for summarizing the discussions during the previous days, the session also took stock of areas that required further knowledge and capacity-building and made proposals for next steps. In this respect, the meeting determined that in order to develop good practices on asset return, as requested by the Addis Ababa Action Agenda, more work was required in the three work-streams identified by the international expert meeting: (1) Management of seized and confiscated assets pending return; (2) The end use/disposal of returned assets, including in support of the SDGs; and (3) modalities and negotiation of agreements for returning the assets.

Furthermore, the meeting discussed that the outcomes were intended to feed into the Forum on Financing for Development to be held in May 2017, as well as the Asset Recovery Working Group scheduled for August 2017 and the Conference of the States Parties to the United Nations Convention against Corruption in November 2017.

In this context, meetings in New York were envisaged by Switzerland and Ethiopia (on this process), as well as by Nigeria and Norway (on the broader IFF agenda) to continue to inform and brief Member State representatives in New York missions and those experts from capital dealing with the financing for development agenda. The report of the meeting will be forwarded to the Forum on Financing for Development and the Conference of States Parties to the UNCAC.

SESSION 8: CLOSING

Moderator: Brigitte Strobel-Shaw (UNODC)

H.E. Ambassador Andrea Semadeni thanked UNODC and the Host Country for organizing the meeting and highlighted the importance of bringing together asset recovery experts with development practitioners. The Ambassador welcomed the two different communities of practitioners to work towards a shared understanding and develop good practices on asset return. He further emphasized the importance of the common obligation of fully implementing the Addis Ababa Action Agenda, the Sustainable Development Goals and the global anti-corruption agenda and encouraged participants to work together for the implementation of these joint goals.

The meeting was closed by *H.E. Mr. Ali Suleiman*, Commissioner of the Federal Ethics and Anti-Corruption Commission of Ethiopia. In his remarks, he remarked on the large number of participants with a thorough knowledge on the subject the meeting had attracted. Good practices and knowledge had been shared during the meeting in relation to the return, management, and use of recovered assets and this had been an important forum for dialogue between asset recovery experts and development practitioners. Accountability and transparency in the management of returned assets alongside the relevance of asset return to the Sustainable Development Goals was the key message of the meeting.

The Conference of States Parties to the United Nations Convention Against Corruption and the Asset Recovery Working Group would receive valuable input from this meeting. There was no doubt that asset recovery and the management of returned assets required more efforts and cooperation among various countries and institutions. Partnership and shared responsibility were vital to make asset recovery work.

Ethiopia was very much delighted to be a co-organizer of this highly significant meeting and was keen to host other similar fora in this regard. He thanked UNODC and the Swiss Agency for Development and Cooperation for exerting relentless efforts to make this vitally important meeting a reality and expressed his gratitude to ICAR, StAR and other stakeholders for their part in the organization of the meeting.
