



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

Distr.: General
6 October 2014

Original: English

Report on the meeting of the Open-ended Intergovernmental Working Group on Asset Recovery held in Vienna on 11 and 12 September 2014

I. Introduction

1. In its resolution 3/3, the Conference of the States Parties to the United Nations Convention against Corruption welcomed the conclusions and recommendations of the Open-ended Intergovernmental Working Group on Asset Recovery (CAC/COSP/WG.2/2009/3) and noted with interest the background paper prepared by the Secretariat on the progress made on the implementation of those recommendations (CAC/COSP/2009/7).
2. In its resolution 4/4, the Conference requested the Working Group to prepare the agenda for the multi-year workplan to be implemented until 2015.
3. In its resolution 5/3, the Conference decided that the Open-ended Intergovernmental Working Group on Asset Recovery should continue its work to advise and assist the Conference in the implementation of its mandate with respect to the return of the proceeds of corruption.

II. Organization of the meeting

A. Opening of the meeting

4. The Open-ended Intergovernmental Working Group on Asset Recovery held its eighth meeting in Vienna on 11 and 12 September 2014.
5. The meeting of the Working Group was chaired by Ion Galea (Romania). In opening the meeting, the Chair recalled the mandate of the Working Group and highlighted the need to take stock of the achievements and chart the future path of action towards successful asset recovery. He highlighted resolution 5/3, entitled "Facilitating international cooperation in asset recovery", adopted by the Conference of the States Parties to the United Nations Convention against Corruption at its fifth session, held in Panama City from 25 to 29 November 2013.



6. In his opening remarks, the Director of the Division for Treaty Affairs of the United Nations Office on Drugs and Crime (UNODC) underscored that, since the last meeting of the Working Group, the number of States parties had grown to 172. He noted that since the last meeting of the Group, several new studies had been published to capture good practices and enhance cumulative knowledge. Existing networks of practitioners had been strengthened and new ones had been formed with a view to building trust and confidence between requesting and requested States. Also, a number of new initiatives had been undertaken to further support and enhance international cooperation in asset recovery.

7. The Secretary of the Working Group recalled the multi-year workplan that the Working Group had adopted at its 6th meeting to prepare States parties for the review of implementation of chapter V of the Convention. For the first time since the Working Group had been convened, its deliberations would be enriched with a number of side events focusing on specific technical aspects and new initiatives. The Secretary expressed the hope that the Working Group would become a forum where practitioners could exchange views, experiences and good practices, and that it would gradually become a practical forum where parties would hold side meetings and case discussions and exchange operational information in a spirit of mutual trust.

8. The representative of the Philippines, speaking on behalf of the Group of 77 and China, emphasized that asset recovery was a fundamental principle of the Convention and called for the widest possible cooperation between countries to repatriate assets and end safe havens for the proceeds of corruption. Bureaucratic barriers to asset recovery should be overcome and simplified procedures created, with full respect for the rule of law. The speaker urged States to facilitate the return of assets and minimize the related procedural costs. International cooperation in asset recovery should be facilitated by affording the maximum possible assistance to requesting States, including in civil and administrative proceedings. It was important to identify the scope of assistance that could be provided in civil and administrative proceedings. The speaker welcomed the work done to systematize good practices and encouraged the further development of secure information-sharing tools.

9. The representative of the European Union highlighted recent institutional and legislative changes with regard to asset recovery. New directives had extended the confiscation regime and enhanced freezing and seizure measures. Non-conviction-based confiscation had been introduced for a limited number of circumstances. The European Commission had been tasked with analysing the application of non-conviction-based confiscation in general.

10. The speaker also referred to the requirement to establish asset recovery offices in all member States of the European Union and the importance of participation in networks of law enforcement practitioners such as the Camden Asset Recovery Inter-Agency Network.

11. Prior to the adoption of the agenda, some speakers expressed their concern about the issue of participation of non-governmental organizations as observers in the Working Group and stated that the issue fell within the competence of the Conference of the States Parties. Other delegations objected to the discussion,

considered it outside the agenda and the mandate of the Working Group, and objected to its inclusion in the report.

B. Adoption of the agenda and organization of work

12. On 11 September, the Working Group adopted the following agenda:
 1. Organizational matters:
 - (a) Opening of the meeting;
 - (b) Adoption of the agenda and organization of work.
 2. Overview of progress made in the implementation of asset recovery mandates.
 3. Forum for advancing practical aspects of asset recovery, including challenges and good practices.
 4. Forum for updates on and developments relating to thematic discussions at the previous session.
 5. Thematic discussions:
 - (a) Thematic discussion on article 52 (Prevention and detection of transfers of proceeds of crime) and other relevant articles of the Convention;
 - (b) Thematic discussion on article 53 (Measures for direct recovery of property) and other relevant articles of the Convention.
 6. Forum for discussions on capacity-building and technical assistance.
 7. Adoption of the report.

C. Attendance

13. The following States parties to the Convention were represented at the meeting of the Working Group: Afghanistan, Algeria, Angola, Argentina, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Benin, Bolivia (Plurinational State of), Bosnia and Herzegovina, Botswana, Brazil, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic Republic of the Congo, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Finland, France, Ghana, Guatemala, Guinea, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Latvia, Lebanon, Libya, Liechtenstein, Luxembourg, Madagascar, Malawi, Malaysia, Malta, Mauritania, Mexico, Mongolia, Montenegro, Morocco, Nepal, Netherlands, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Singapore, Slovakia, South Africa, Spain, State of Palestine, Sudan, Sweden, Switzerland, Thailand, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland,

United States of America, Uruguay, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia and Zimbabwe.

14. The European Union, a regional economic integration organization that is a party to the Convention, was represented at the meeting.

15. The following States signatories to the Convention were represented by observers: Bhutan, Germany, Japan and Syrian Arab Republic.

16. The following non-signatory States were also represented: Chad, Gambia and South Sudan.

17. The following United Nations Secretariat units, institutes of the United Nations crime prevention and criminal justice programme network and specialized agencies of the United Nations system were represented by observers: United Nations Interregional Crime and Justice Research Institute, Basel Institute on Governance and World Bank.

18. The following intergovernmental organizations were represented by observers: Asian-African Legal Consultative Organization, European Police Office (Europol), International Anti-Corruption Academy and International Criminal Police Organization (INTERPOL).

19. The Sovereign Military Order of Malta, an entity maintaining a permanent observer office at United Nations Headquarters, was also represented.

III. Overview of progress made in the implementation of asset recovery mandates

20. The Secretariat provided an overview of the progress made in the implementation of the asset recovery mandates as described in document CAC/COSP/WG.2/2014/3. The mandate of the Working Group covers three main themes (a) developing cumulative knowledge; (b) building confidence and trust between requesting and requested States; and (c) technical assistance, training and capacity-building. With regard to the development of cumulative knowledge, various databases existed that bundled knowledge about asset recovery, including the knowledge portal developed by UNODC called Tools and Resources for Anti-Corruption Knowledge (TRACK) (www.track.unodc.org) and Asset Recovery Watch, a project developed by the joint UNODC-World Bank Stolen Asset Recovery (StAR) Initiative. Several knowledge products had been finalized, including a study by the StAR Initiative on settlements in foreign bribery cases and their impact on asset recovery, and a digest of asset recovery cases developed by UNODC. A study on civil remedies and asset recovery was under development by the StAR Initiative. The Secretariat also gave an update on the work being done to strengthen confidence and trust between requesting and requested States through the use of practitioners' networks, and to provide country-specific technical assistance in the field of asset recovery.

21. A number of speakers emphasized the progress made in the implementation of relevant provisions of the Convention. They presented information on recent national reforms and initiatives and reported about their experience with institutional and legal reforms and the practical aspects of asset recovery. In

particular, they highlighted new legislation on seizure and confiscation, the establishment of central anti-corruption bodies and the designation of special agencies tasked with asset recovery. Some speakers highlighted the creation of inter-institutional teams for asset recovery; others shared their experiences with involving a broad range of stakeholders in their asset recovery efforts, in particular stakeholders from the private sector and civil society. They reported the creation of functional asset declaration systems and strong financial intelligence units. Sharing information in accordance with article 56 of the Convention was considered very important, and one speaker suggested the development of guidelines or a protocol for its application.

22. Many speakers considered that progress had been made on asset recovery. Speakers also stressed that significant challenges remained and only limited recoveries had been achieved so far. They noted the lack of trust between requesting and requested countries, the lack of political will, challenges in timely information exchange and the lack of familiarity with each other's legal requirements. Some speakers highlighted the complexity of asset recovery cases, difficulties in tracing illicitly moved assets, and the privileges and immunities of corrupt officials as additional obstacles.

23. One speaker referred to the lack of standardized procedures and the modest resources available to States for asset recovery. Laws had to be updated in the context of the upcoming second cycle of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption. The need to share good practices and enhance capacity-building activities was also emphasized.

24. In addition to international legal cooperation in its traditional form as a means of obtaining both criminal and non-conviction-based forfeiture, speakers referred to alternative avenues for asset recovery. These included compensation, disgorgement of profits (a civil remedy) and criminal fines, although experience with some of these was still limited. One speaker highlighted that the Convention defined the term "proceeds of crime" very broadly, and suggested the development of guidelines on various non-traditional avenues for asset recovery, such as enabling affected States to bring civil action in other States in accordance with article 53 of the Convention, and using disgorgement of profits as a legal tool. However, another speaker indicated that such an interpretation of the definition of "proceeds of crime" was not supported by the Convention and that such guidelines would not be fruitful. Speakers highlighted the important role of civil and administrative cooperation in asset recovery. One speaker made reference to the need to systematically collect experiences in this area. The speaker also referred to the notes verbales sent by the Secretariat and the progress report it had prepared (CAC/COSP/EG.1/2014/2) on this subject in accordance with resolutions 5/1 and 5/3.

25. One speaker made reference to the practice of negotiating out-of-court settlements in foreign bribery cases and highlighted that, according to the study by the StAR Initiative, only 3 per cent of the amounts covered by such settlements were returned to the affected States. The fact that many States were not aware of settlements while they were being negotiated highlighted the importance of timely information-sharing.

26. A number of speakers made reference to events such as those that have occurred in the Arab countries in transition and Ukraine, and to international

initiatives such as the Arab Forum on Asset Recovery and the Ukraine Forum on Asset Recovery. Such events offered an opportunity to identify needs for capacity-building and establish trust through direct contacts and discussions on concrete cases. Speakers underlined that no progress would be made without perseverance and a strong political will, and that good cooperation between authorities could lead to good results. The third meeting of the Arab Forum on Asset Recovery was to be held in Geneva from 1 to 3 November 2014.

27. One speaker made reference to the draft guidelines for the efficient recovery of stolen assets developed by a group of practitioners from requesting and requested States under the auspices of the Government of Switzerland, the International Centre for Asset Recovery and the StAR Initiative.

28. One speaker emphasized the importance of having a robust asset declaration system. States should cooperate in civil and administrative procedures and share information on companies, bank assets, real estate and other assets held by officials. He referred to ad hoc arrangements under existing administrative procedures, since formal mutual legal assistance in criminal matters might not always lead to immediate results. The speaker gave examples to show that differences in legal systems could raise obstacles, particularly where similar procedures are qualified as criminal in one jurisdiction and as administrative in another. He emphasized the importance of resolution 5/1 in that regard.

29. Some speakers spoke about supporting asset recovery forums and networks, and providing technical assistance by organizing capacity-building events for practitioners from other jurisdictions. One speaker referred to the Deauville Partnership with Arab Countries in Transition.

30. The coordinator of the StAR Initiative gave an update on the work of the Initiative. He mentioned that it had recently been extended. He emphasized that asset recovery efforts must be consistent to enhance their effectiveness, and highlighted that the StAR Initiative placed high emphasis on continued country engagement. By using its power to convene multi-jurisdictional case discussions, the StAR Initiative had been able to rally support around specific cases, such as in the context of the Arab Forum on Asset Recovery and the Ukraine Forum on Asset Recovery, and progress had been made. Development of knowledge products and guides in areas such as beneficial ownership had been taken forward. The fifth annual general meeting of the Global Focal Point Initiative, established by the StAR Initiative and INTERPOL, provided participants with opportunities to continue building relationships so as to enhance international cooperation in asset recovery, and allowed them to discuss the implementation of recommendations adopted in previous meetings and conduct confidential bilateral or multilateral operational discussions on specific asset recovery cases. A new joint publication by the StAR Initiative and the Organization for Economic Cooperation and Development (OECD) entitled *Few and Far: The Hard Facts on Stolen Asset Recovery* took stock of the progress made by 34 OECD members with respect to their international commitments on asset recovery. It cited good practices and gave recommendations, particularly for development agencies. Some of the lessons learned were that asset recovery needed to be a policy priority and that non-traditional approaches to asset recovery, such as administrative freezing or plea bargaining, were particularly useful.

31. Several speakers commended the role of the StAR Initiative in providing technical assistance to States and facilitating their asset recovery efforts. They called for further activities in support of States' efforts in asset recovery.

IV. Forum for advancing practical aspects of asset recovery, including challenges and good practices

32. The Secretariat recalled resolution 5/3 of the Conference and indicated that note verbale CU 2014/101 had been circulated in May 2014. The note verbale called on States parties to share best practices for the efficient resolution of corruption offences and practical experience for the return of assets consistent with article 57 of the Convention. The responses to this note verbale were made available to the Working Group on the UNODC website.

33. The Secretariat also referred to note verbale CU 2014/192 circulated on 29 August 2014, encouraging States parties and signatories to make available information about their legal frameworks and procedures in a practical guide. The note verbale contained a list of questions that such documents could address.

34. A representative of the Russian Federation presented a step-by-step guide to requesting mutual legal assistance in the recovery of stolen assets. The guide included a comprehensive and detailed explanation of all the relevant procedures and requirements when submitting a request for mutual legal assistance to the Russian Federation and gave contact information for the relevant national authorities. It covered mutual legal assistance both on the basis of a treaty and on the basis of reciprocity. The speaker highlighted the practice of prior consultations and cited the elements requests should include. The authorities of the Russian Federation advised using the guide, which was available in Arabic, English and Russian.

35. Other speakers shared the view that tools and guides could be useful. One speaker highlighted that the guide containing his country's framework for asset recovery had been translated into the six official languages of the United Nations and made available online. The same speaker stressed the need for a proactive approach to information sharing and following up, in addition to political will from both requesting and requested States. Organizing forums on specific situations that required intensive case collaboration was also a useful approach. Another speaker from the same State described recent cases that had led to the successful seizure of assets.

36. One speaker highlighted challenges associated with the prosecution of corruption offences and the recovery of assets. He informed the Working Group of the launch of a designated asset recovery centre. He highlighted the usefulness of an integrated approach to asset recovery cases, and the importance of proper management and disposal of confiscated assets, and membership of networks of asset recovery practitioners such as the Camden Asset Recovery Inter-Agency Network and the Asset Recovery Inter-Agency Network for Asia and the Pacific. Another speaker reported that experience had shown that direct recovery on the basis of the Convention can be more efficient than criminal procedures.

37. One speaker raised the concept of social damage and the importance of asset recovery and compensation for such damage. She outlined the measures to be taken, including criminalization of corruption offences, establishing the right to claim reparation and compensation, evidentiary means to estimate the amount of damage caused and the use of compensation and recovered assets to benefit society.

38. The representative of Italy presented the joint project carried out by UNODC and the Regione Calabria aimed at exchanging good practices on the administration of seized and confiscated assets. An expert group meeting had been held in April 2014 in Calabria and the outcome was described in conference room papers before the Working Group. The speaker outlined the approach adopted by Italy, in particular the use of non-conviction-based forfeiture. She also highlighted the Deauville Partnership and work undertaken in the context of the Group of Twenty (G-20).

V. Forum for updates on and developments relating to thematic discussions of the previous session

39. One speaker welcomed the successful seizure and confiscation of assets in a case involving a former leader of his country that had been referred to by another speaker. He underlined the increased efforts of his jurisdiction's financial intelligence unit to identify and prevent suspicious transactions, which would serve to prevent and combat corruption, tax evasion and other relevant offences. He reiterated his country's commitment to sharing information and cooperating with other States.

VI. Thematic discussions

(a) Thematic discussion on article 52 (Prevention and detection of transfers of proceeds of crime) and other relevant articles of the Convention

40. A representative of the Secretariat provided an overview of the relevant part of the discussion guide contained in document CAC/COSP/WG.2/2014/2.

41. The panellist from Lebanon presented the framework his country had established to prevent money-laundering. The Lebanese financial intelligence unit, the Special Investigation Commission, was the regulatory and supervisory authority for ensuring compliance with the framework. The mere fact of having a robust regime in place to combat money-laundering could already constitute a deterrent. The regime in a State's financial sector should be used to its full extent to support asset recovery efforts. The speaker advocated a risk-based approach and explained how banks and other financial institutions in Lebanon classified customers and operations according to their risk profiles (low, medium or high). The panellist highlighted the importance of, inter alia, the following:

- (a) Verifying customer and beneficial owner identification;
- (b) Identifying high-risk cases, including business relationships with politically exposed persons and their family members and associates, and applying enhanced due diligence measures to them;

- (c) Record keeping;
- (d) Obligatory reporting of suspicious transactions to the national financial intelligence unit;
- (e) Preventing the establishment of new shell banks and keeping other banks from maintaining correspondent relations with existing ones.

42. The panellist stressed the need to apply those measures in both the originating and the receiving country and the importance of showing the political will to cooperate in the fight against corruption and money-laundering.

43. The panellist from Romania presented his country's asset and interest disclosure system for public officials and explained the experience and role of the National Integrity Agency, which was established in 2007. Every year more than 300,000 officials submitted declarations to it, and in electoral years the number could rise to one million. Public officials should submit their declarations yearly, and also when running for, taking up or leaving public office. Those making declarations must submit one form on asset disclosure (real estate, financial assets, debts, incomes, movable property, gifts) and one on interest disclosure (positions held in public or private entities, contracts signed with the State). The Agency can initiate investigations ex officio, which they may do on the basis of media reports and without notification. The speaker presented related statistics such as the rate of successful cases and the number of persons investigated, and discussed a sample case involving a corrupt official who had been sentenced to six years in prison for issuing false driving licences following an ex-officio investigation.

44. The panellist from Chile gave an overview of the work of the brigade for the investigation of money-laundering of the investigative police. He explained the national legal framework in place to combat money-laundering and described the mission of the brigade in the context of the national strategy to combat money-laundering. He explained the procedural steps a money-laundering investigation had to follow under Chilean law and underlined the importance of using all available sources of information concerning a suspect's wealth, whether public or restricted. The national strategy against money-laundering was put into practice by 20 public institutions through an action plan for the period 2014-2017. To achieve the proposed objectives, work was being done to build credibility and trust in those institutions. The panellist also addressed the issue of politically exposed persons and underlined the importance of customer due diligence and registers of transactions. Finally he gave an overview of recent cases that involved cooperation with several other States in the Americas and Europe.

45. The panellist from Belgium detailed the legal framework applicable to politically exposed persons in his country. He explained that, in Belgium, a politically exposed person is defined as somebody who holds one of a number of high-level national and international public functions included in a specific list and who does not reside in Belgium. The role of government authorities was to establish, for each country, a list of functions whose incumbents were to be regarded as politically exposed persons, while the banks had to identify these incumbents by name and check whether they were customers. Politically exposed persons continued to be classified as such up to one year after leaving their function, and the status extended to their immediate family members and close associates. Statistics for the period 2009-2013 showed that 167 cases of embezzlement and corruption

had been reported to the judicial authorities for a total of 132.2 million euros. These included 15 cases related to politically exposed persons where the predicate offences were corruption, embezzlement by public officials, misuse of corporate funds and trafficking in human beings for illegal labour. The majority of those Belgium defined as politically exposed persons lived outside the European Union. Money-laundering operations were mostly conducted through the banking system.

46. In the ensuing debate, speakers highlighted the importance of strict enforcement of customer due diligence, know-your-customer rules and the crucial role of financial intelligence units in the framework for combating corruption. Some speakers mentioned the challenges that financial intelligence units faced in international cooperation, including bank secrecy, the use of offshore companies and difficulties in the exchange of information with other financial intelligence units. One speaker highlighted that in his country banks were not allowed to open anonymous or numbered accounts and that bank secrecy did not apply in the relationship between banks and the financial intelligence unit. Another speaker stressed that, while political will in the recipient countries was crucial, requesting States had to use all means at their disposal and initiate legal action.

47. Speakers also mentioned dual criminality as an obstacle to the effective enforcement of national criminal legislation in cases where the cooperation of foreign authorities was needed. Another problem was the identification of politically exposed persons and ways to establish lists of politically exposed persons, particularly with regard to foreign citizens.

(b) Thematic discussion on article 53 (Measures for direct recovery of property) and other relevant articles of the Convention

48. A representative of the Secretariat provided an overview of the relevant part of the discussion guide contained in document CAC/COSP/WG.2/2014/2.

49. The panellist from the United Kingdom pointed out that what individuals convicted of corruption often feared most was not a prison term or a fine, but the loss of assets obtained through corruption. He stated that the United Kingdom had a robust framework for combating corruption that provided not only for criminal confiscation, but also for non-conviction-based confiscation and civil proceedings. The wide extraterritorial application of the Bribery Act arose from the fact that courts were competent to hear any case involving corporate entities incorporated in the United Kingdom, irrespective of where the corrupt act had taken place and the nationality of the persons involved. Finally, as of the present year, deferred prosecution agreements were possible in the United Kingdom. In practice it was common for foreign authorities to seek a restraining order in the United Kingdom under the Proceeds of Crime Act. The panellist illustrated this with four recent cases brought before the English courts. In all of these, English courts had assumed jurisdiction because assets were located in the United Kingdom. In conclusion, the panellist emphasized the importance of training judges in these areas of the law.

50. The panellists from Argentina and Colombia presented a non-criminal asset recovery case as a practical example of administrative cooperation between the two countries. After explaining the functioning and structure of the office for combating corruption in Argentina, the first panellist outlined the stages of the investigation. The case began with informal contacts between the authorities. This

led to an exchange of information based on article 43 (1), article 46 (1), (13) and (20), article 48 (1) and (2), and article 17 of the Convention. An official assistance request was then made in the margins of the fifth session of the Conference of the States Parties to the Convention in Panama. Even though this was not a criminal case, the authorities observed the same constitutional and due process standards as in criminal cases throughout the proceedings.

51. According to the panellist from Colombia this case demonstrated that, while the Convention concentrated on cooperation in criminal matters, it did not close the door on other forms of cooperation. He explained in detail how the authorities in Colombia responsible for countering corruption, in particular the Comptroller-General's Office, had worked together with their Argentinian counterparts. This form of cooperation had been endorsed by the country's constitutional court on the condition that the procedural rights of the persons involved be observed. This form of cooperation had been successful not only with Argentina, as in the case presented to the Working Group, but equally with other countries in the region.

52. The panellist from Brazil gave an overview of the practical problems countries faced when bringing corruption cases to foreign courts. In many cases it was not possible to lay criminal charges, or if it was, doing so was not effective. To circumvent such issues, Brazil had brought civil actions in foreign States, it had appeared as a civil plaintiff in criminal proceedings, and had appeared as a third party in foreign confiscation procedures. Which of these three options was the most appropriate depended on the circumstances of the case. An important aspect were the high fees charged by experienced international law firms, which might conflict with procurement rules that obliged a country to choose the least expensive offer. One way to overcome this problem could be States agreeing to represent each other in court through State counsel on the basis of reciprocity.

53. The panellist from Kenya presented the legal framework for direct asset recovery in his country and discussed a sample case. He noted that, under the Constitution, treaties and conventions ratified by Kenya become part of domestic law. However, they were subservient to domestic legislation, and related jurisprudence was still in the early stages of development. The panellist explained that there were different avenues for civil recovery in Kenya. The first one was the enforcement of foreign judgements, on the basis on reciprocity. The second avenue was direct action brought by States. The State in question must be recognized by Kenya and bring the action to enforce private rights vested in its head of State or an officer performing a public function. The panellist concluded his presentation by providing a case example in which a lawsuit had been filed by an affected State and, eventually, a Kenyan court allowed the recovery action.

54. The panellist from the StAR Initiative presented the new publication *Public Wrongs, Private Actions: Civil Lawsuits to Recover Stolen Assets*, which would be published in early November 2014. It aimed at providing guidance to practitioners and policymakers on using civil remedies and private lawsuits to recover assets stolen as part of corruption offences. The panellist explained the rationale of civil actions and highlighted the limitations of other avenues. For instance, for criminal confiscation, the State must obtain a criminal conviction, which required the highest standard of proof, and prove a link between the assets and the crime. This was not the case in civil proceedings. While non-conviction-based confiscation was not

always available, not all foreign jurisdictions recognized administrative confiscation as a legal tool. The amount of the assets recovered using criminal confiscation was almost the same as that recovered through private lawsuits. The panellist then spoke about the advantages of direct civil action, including, in some jurisdictions, a lower standard of proof (often preponderance of evidence) and the possibility of claiming damages, which was useful when the link between the asset and the misconduct was difficult to prove.

55. In the ensuing debate, speakers discussed several obstacles to successful direct recovery of assets and ways to overcome them. In many civil law jurisdictions it was not possible to pursue criminal and civil proceedings in parallel if the facts of the case and the persons involved were identical. In such jurisdictions, if a criminal case was brought, any pending civil proceedings would be suspended for the duration of the criminal case, although in most such jurisdictions it was possible to obtain the status of civil plaintiff in the criminal proceedings.

56. Differences in legal systems, for example with regard to evidentiary requirements, posed an obstacle to pursuing direct recovery through civil actions in foreign States. Law firms hired to mitigate this problem charged very high fees, which might be a problem, especially for developing countries. However, criminal proceedings were also costly. Ways to overcome the problem included success-based fees or fees based on a percentage of the assets to be recovered. Countries might also agree to provide one another free legal advice, or make available their State counsel for the representation of other States free of charge.

57. Some speakers raised questions on extraterritorial jurisdiction and State immunity as possible issues in civil proceedings. While the legal framework of the United Kingdom was far-reaching in this respect, it nevertheless required the corporate entities involved to be incorporated in the United Kingdom or the assets concerned to be located there. Since in direct recovery cases States assume the role of plaintiff, not defendant, issues of State immunity should generally not arise.

58. Speakers requested the Secretariat to provide technical assistance in support of asset recovery through civil proceedings.

VII. Forum for discussions on capacity-building and technical assistance

59. Speakers underscored the importance of capacity-building and technical assistance to the implementation of chapter V of the Convention, given the complex and multifaceted nature of asset recovery. One speaker recalled the need to ensure that such activities were demand-driven and based on a precise needs assessment. He pointed out the important role the UNODC field office network could play in assisting national authorities to conduct assessments in this regard. Another speaker called for additional funds and capacity to be provided to UNODC to assist States.

60. One speaker reported on the efforts his country had made, which included the establishment of a corruption commission and the development of a comprehensive corruption bill to be submitted to the council of ministers and parliament for enactment. He welcomed the involvement of UNODC and the StAR Initiative in his country.

61. Another speaker noted the need to build capacity for mutual legal assistance, asset recovery, financial investigation and prosecution in his country, and mentioned the inadequate legal framework and the need for training. Despite the efforts made to enhance prosecutions, there had been several cases of unfavourable jurisprudence where judges had declared sections of the law unconstitutional, even though they were in compliance with the Convention. The speaker called for training to be provided to the judiciary to ensure they understood the concepts and fundamental principles of asset tracing and recovery.

62. A representative of the UNODC Global Programme against Money-Laundering, Proceeds of Crime and the Financing of Terrorism briefed the Working Group on the support the Programme provided to the creation of inter-agency networks such as the Asset Recovery Inter-Agency Network of Southern Africa, the Asset Recovery Network of the Financial Action Task Force of Latin America against Money-Laundering, and the Asset Recovery Inter-Agency Network for Asia and the Pacific. The Programme was conducting a feasibility study with a view to setting up a similar network in West Africa. He also pointed out the training courses developed in the area of financial investigation, which focused on cash couriers and money and value transfer services and made use of mock trials as a training method, and the special courses developed for financial intelligence units analysts. He highlighted the Anti-Corruption Mentor Programme, which had been in place since 2000 and aimed to provide more sustainable in-depth assistance to States in the fight against money-laundering and the financing of terrorism. The Programme seconds senior experts to requesting States to train personnel and advise in the conduct of cases and in the establishment of institutions, such as financial intelligence units. He discussed the *Model Provisions on Money Laundering, Terrorist Financing, Preventive Measures and Proceeds of Crime (for Common Law Legal Systems)* developed by UNODC in collaboration with the Commonwealth Secretariat and the International Monetary Fund, which included a part on criminal and one on civil forfeiture. He informed the Working Group that UNODC was preparing an update in collaboration with the Commonwealth Secretariat and the International Monetary Fund.

VIII. Conclusions and recommendations

63. Further information should be collected regarding international cooperation in civil and administrative proceedings for the identification, freezing and confiscation of assets, including through mutual legal assistance in accordance with resolution 5/3 of the Conference of the States Parties, in order to identify the scope of assistance that could be provided in relation to such proceedings.

64. Procedures for the compensation of victims should be further studied as a possible avenue for asset recovery in accordance with article 57 of the Convention with a view to identifying opportunities and requirements.

65. Non-binding guidelines on asset recovery should be further developed with a view to enhancing effective approaches to asset recovery.

66. The Working Group called upon States parties that had not already done so to designate a central authority responsible for mutual legal assistance in accordance with article 46 (13), of the Convention. The Working Group also encouraged States

parties that had not already done so to register their focal points with the Global Focal Point Initiative established by StAR Initiative and INTERPOL.

67. The Working Group made the following observations with regard to successful asset recovery procedures:

(a) Money-laundering regimes should be used to support asset recovery efforts, and be applied to their full extent in both the country in which the transaction originated and that in which it terminated;

(b) Banks and other financial institutions should apply risk profiles to customers and transactions;

(c) Administrative freezing of assets, where in line with domestic law, was considered a helpful tool in securing assets in the short term;

(d) States parties may wish to consider allowing parallel criminal and civil proceedings or strengthening, as appropriate, the position of civil plaintiffs in criminal proceedings;

(e) States parties are encouraged to consider providing one another free legal advice in civil proceedings or assisting each other in legal representation.

68. The Working Group encouraged States parties to prepare practical guides or other documents with a view to making widely available information on their legal frameworks and procedures for asset recovery.

69. The Working Group considered that further good practices and tools relevant to the implementation of article 53 of the Convention should be collected in consultation with Member States, and recommended States parties to consider providing information about this issue in future meetings.

70. Capacity-building and technical assistance should be further strengthened and UNODC and other relevant assistance providers granted adequate resources to support States in implementing chapter V, including by training financial investigators, prosecutors and judges.

IX. Adoption of the report

71. On 12 September 2014, the Working Group adopted the report on its meeting (CAC/COSP/WG.2/2014/L.1 and Add.1-3).