

Report of the International Expert Meeting on the return of stolen assets – “ADDIS II”

7-9 May 2019

Venue: United Nations Conference Centre in Addis Ababa

I. Background

With the entry into force of the United Nations Convention against Corruption (the “Convention” or UNCAC), the international community has for the first time agreed on a comprehensive set of rules governing asset recovery. In particular, Chapter V of the Convention establishes the recovery and return of such assets as a “fundamental principle” of the Convention and stipulates that States parties shall afford one another the widest measure of cooperation and assistance in that regard (article 51). In its article 57, the Convention establishes for the first time that proceeds of embezzlement should be returned upon confiscation to the country of origin, whereas for the proceeds of other offences, a differentiating regime has been adopted taking into account damages, prior ownership and victims.¹

More recently, the UN General Assembly’s Second Committee adopted a resolution on “Promotion of international cooperation to combat illicit financial flows and strengthen good practices on assets return to foster sustainable development”² welcoming the ongoing efforts of Member States to enhance knowledge and broaden understanding of the challenges and opportunities involved in international cooperation to combat illicit financial flows and strengthen good practices on assets return consistent with UNCAC so as to foster sustainable development.

The Conference of the States Parties to the Convention (hereinafter, the Conference) adopted resolution 7/1 at its seventh session, encouraging States parties to make full use of the possibility of concluding agreements or mutually acceptable arrangements for the return and final disposal of confiscated property pursuant to article 57, paragraph 5, of UNCAC and to consider the Sustainable Development Goals (SDGs) in the use and management of recovered assets. Furthermore, the UNCAC Asset Recovery Working Group recommended that the Secretariat collect information on examples of how countries have worked together to ensure transparency and accountability in the return and disposal of confiscated proceeds of corruption.

The objective of the International Expert Meeting on the return of stolen assets was to build upon the progress made during the Addis I meeting held in February 2017³ with the aim of developing good practices on asset return, taking into account, inter alia, the Convention, the SDGs, and other processes and initiatives such as the Global Forum for Asset Recovery (GFAR) principles⁴. To this end, the expert meeting analysed successful cases and identified trends and developments, thereby

¹Different from UNCAC, the United Nations Convention against Transnational Organized Crime (UNTOC) establishes the principle of asset sharing and the restitution to victims. Based on UNTOC, UNODC developed a model agreement on international asset sharing which was endorsed by the UN Crime Commission in May 2005 and by the UN General Assembly in December 2005 (ECOSOC Resolution 2005/14: www.un.org/en/ecosoc/docs/2005/resolution%202005-14.pdf). This model on sharing confiscated proceeds of crime can be used by countries to strengthen international cooperation in the confiscation and disposal of the proceeds of crime covered by the UNTOC. However, it is not applicable to asset recovery under UNCAC.

² http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/222: paragraph 4

³ <https://www.unodc.org/unodc/en/corruption/addis-egm-2017.html>

⁴ <https://star.worldbank.org/about-us/global-forum-asset-recovery-gfar>

discerning common obstacles to international cooperation in the return of assets and innovative ways at overcoming them, including the available options for ensuring the return of assets in line with the Convention. The meeting also aimed at discussing ways to ensure transparency and accountability in the asset return process and developed general recommendations for States parties to the Convention to consider when dealing with cases of asset return and disposal (see below).

II. Opening

The meeting was opened by Mr. Wedo Atto, Deputy Commissioner of Ethiopia, H.E. Mr. Daniel Hunn, Ambassador of Switzerland to Ethiopia, and by UNDOC. In his opening remarks, Mr. Atto expressed his gratitude to Switzerland and to UNODC for their support in the organization of the meeting. Mr. Atto recalled that Ethiopia also hosted, in 2017, the International Expert Meeting on the Management and Disposal of Recovered and Returned Stolen Assets (Addis I), which demonstrates Ethiopia's commitment to combating corruption. In this regard, he highlighted that, since the transition of power, Ethiopia had enacted relevant anti-corruption laws. In addition, he noted that corruption inhibits economic growth and that it affects the entire society and underscored the importance of international cooperation and of asset recovery in combating corruption. He concluded by reaffirming Ethiopia's support for the successful conclusion of the meeting.

H.E. Mr. Daniel Hunn, Ambassador of Switzerland to Ethiopia, expressed his gratitude to Ethiopia for hosting the event and to UNODC for its support and welcomed the experts from capital and from Permanent Missions in New York and in Vienna. Mr. Hunn underscored the importance of asset recovery in the Addis Ababa Action Agenda. In addition, he highlighted the significant value of asset return to ensure that crime does not pay. In this regard, he noted that Switzerland has returned about CHF 1.7 billion to their countries of origin. Also, he stressed the need to learn from past asset return experiences and cited key principles and practices, namely, (a) case-by-case solutions; (b) partnerships between requested and requesting States and mutual ownership; and (c) monitoring and transparency. In his conclusion he noted that the meeting represents an excellent opportunity for the exchange of good practices and informal discussions and wished participants a fruitful discussion.

Brigitte Strobel-Shaw, Officer-in-Charge of the Corruption and Economic Crime Branch of UNODC welcomed participants to the expert meeting. She thanked the Governments of Ethiopia and Switzerland for their support and outlined how the expert meeting continued work on identifying good practices on asset return in line with the Convention, the Addis Ababa Action Agenda and SDG 16. She noted the progress that had been made since 2017, when such work had started, and noted further normative developments such as Conference resolution 7/1 and General Assembly resolution 73/222. Ms. Strobel-Shaw highlighted the importance of finding further ways to improve the return of stolen assets, making returns more timely and ensuring that assets are not stolen again. Noting that the partnership between requesting and requested countries must be based on sovereign equality and mutual respect, she drew experts' attention to the principles for disposition and transfer of confiscated stolen assets adopted at the Global Forum on Asset Recovery and the 10 Recommendations on Asset Recovery of the APEC Network of Anti-Corruption Authorities and Law Enforcement Agencies and expressed her hope that participants might find these products of previous discussions helpful in their deliberations.

III. Session II - State of knowledge

Session II was moderated by Brigitte Strobel-Shaw, Officer-in-Charge of the Corruption and Economic Crime Branch of UNODC. This session aimed at providing an overview of the Convention and the progress made since the Addis I meeting held in 2017.

The United Nations Convention against Corruption as framework for asset recovery asset recovery related information emanating from the Implementation Review Mechanism; Conference of the States Parties to the Convention; Asset Recovery Working Group

Felipe Falconi from UNODC provided an overview of the Convention and highlighted that the Convention was the only universal legally binding anti-corruption instrument, with 186 States parties. In addition, he noted that the Convention took a broad approach to the problem of corruption and did not only address criminalization and law enforcement (Chapter III), but also encompassed prevention (Chapter II), international cooperation (Chapter IV) and asset recovery (Chapter V). The representative of the secretariat noted that chapter V of the Convention provided a comprehensive legal framework for asset recovery. It established, among others, specific rules and mechanisms for cooperation with a view to facilitating the recovery proceeds of corruption offences and their return to the requesting States. Moreover, he reminded the experts that article 51 of the Convention established the return of proceeds of corruption as a “fundamental principle” of the Convention and recalled articles 53 and 57, which represented important tools for the return of stolen assets. Furthermore, the work of the Conference and its subsidiary bodies, such as the Open-ended Intergovernmental Working Group on Asset Recovery, was discussed.

These remarks were followed by a presentation of Sophie Meingast, also from UNODC, who gave an overview of the Mechanism for the Review of Implementation of the Convention (“Review Mechanism”) and its results in connection with Chapter V. It was explained that the Review Mechanism was established at the third session of the Conference through its resolution 3/1. In this regard, the representative of the secretariat summarized the most prevalent findings emerging from the second cycle reviews, focusing on articles 53 and 57. Since the second review cycle started in 2016, considering the 20 executives summaries adopted, 27 recommendation were made under article 53 of the Convention and 55 recommendation were made under article 57 of the Convention. On the other hand, two good practices were identified with regard to article 53 of the Convention, and only one good practice was identified under article 57 of the Convention. She finalized her intervention by reiterating the importance and usefulness of the information emanating from the reviews and encouraged the experts to take advantage of this information.

Addis Ababa Action Agenda, Financing for Development, Sustainable Development Goals and Progress made since the Addis I Expert Meeting

Elsa Gopala-Krishnan of the Stolen Asset Recovery (StAR) Initiative briefly presented the StAR Initiative, a joint UNODC-World Bank Initiative. She highlighted that, through the Implementation Review Mechanism for the Convention and other information-gathering exercises led by StAR and UNODC, it was becoming clear that there was rather little experience and little information available about asset returns. She noted the gap that existed between assets frozen and assets returned and indicated the need to discuss what could be done to narrow that gap and ensure that returns are taking place.

With regard to the Addis Ababa Action Agenda, which had been adopted at the 3rd international Conference on Financing for Development in July 2015, the panellist noted how the Agenda identified integrity and the prevention of corruption and economic crime in line with international standards as crucial elements for domestic resource mobilization. She also noted that the Agenda urged countries to ratify and accede to the Convention and make the Convention an effective instrument to recover and return assets to their country of origin. In addition, the panellist underscored that the Agenda, in its paragraph 25, encouraged the international community to develop good practices on asset return.

The panellist also recalled the commitment made by States at the United Nations Sustainable Development Summit in September 2015 to significantly reduce, by 2030, illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime (Sustainable Development Goal (“SDG”) 16.4). States also obliged themselves to strengthen domestic resource mobilization, including through international support to developing countries, and to improve domestic capacity for tax and other revenue collection (SDG 17.1).

She further informed the experts that, at the Addis I Expert Meeting, which took place in February 2017, three work streams requiring further work had been identified, namely:

- a) the management of seized and confiscated assets pending return;
- b) the use/final disposal of returned assets, including in support of the SDGs; and
- c) the modalities and negotiation of agreements for returning the assets.

In this regard, she indicated that, for workstreams a) and b), UNODC had prepared a study on the effective management and disposal of seized and confiscated assets⁵, and on that basis, had created “Draft non-binding guidelines on the management of frozen, seized and confiscated assets”, which were to be presented to the subsequent meeting of the Open-ended Intergovernmental Working Group on Asset Recovery. In addition, an Expert Meeting had been organized in Antigua Guatemala, Guatemala, in May 2018 to, inter alia, present the study and gather input and feedback from experts on the first draft of the guidelines.

She highlighted that the Addis II expert meeting aimed at discussing the modalities for asset return, including through the negotiation of return agreements, as identified in workstream c).

Global Forum of Asset Recovery (GFAR)

Kellen McClure, Anti-Corruption Advisor of the Bureau of International Narcotics and Law enforcement of the Department of State of the United States of America briefed the group on the Global Forum for Asset Recovery (GFAR) which had been established following the Anti-Corruption Summit held in London in December 2016, in response to emerging needs from four focus countries: Nigeria, Sri Lanka, Tunisia and Ukraine. The objective of the Forum was to (a) reaffirm collective political will to strengthen international cooperation on asset recovery cases; (b) build capacity among practitioners; (c) make progress on actual ongoing asset recovery cases; and (d) contribute to global thinking on returning or disposing of recovered assets back to the people harmed by corruption.

Among the many outcomes of GFAR, he highlighted the signing of a memorandum of understanding between the World Bank, Nigeria and Switzerland for the return of USD 321 million to Nigeria and

⁵ https://www.unodc.org/documents/corruption/Publications/2017/17-07000_ebook_sr.pdf

the adoption of the GFAR principles for disposition and transfer of confiscated stolen assets in corruption cases.

As explained by the panellist, the GFAR principles sought to capture lesson learned and good practices from previous returns and may serve as a tool for practitioners. According to him, the ten principles could be divided in three categories. The first category relates to the early stages of the asset return process and is comprised by principle 1 (Partnership), principle 2 (Mutual interests) and principle 3 (Early dialogue). The second category related to the mechanisms of return was comprised by principle 7 (case-specific treatment) and principle 8 (Consider using an agreement under UNCAC Article 57(5)), having as a cornerstone principle 4 (Transparency and accountability) and considering principle 10 (Inclusion of non-government stakeholders). The last category related to how assets could support victims and consisted of principles 5 (Beneficiaries), principle 6 (Strengthening anti-corruption and development) and principle 9 (Preclusion of benefit to offenders).

IV. Session II: Asset recovery and international cooperation: obstacles and innovative ways of overcoming them

Session II was moderated by Walter Reithebuch, Senior Policy Advisor - Anti-Corruption and Asset Recovery of the Federal Department of Foreign Affairs of Switzerland. The session aimed at addressing the main challenges encountered when recovering assets, in particular through international cooperation, including the need to commence open dialogue on issues related to asset recovery and international cooperation at the earliest opportunity and establish strong partnerships between transferring and receiving countries.

Laure du Castillon, Prosecutor at the Ministry of Foreign Affairs of Belgium described the difficulties encountered on a regular basis when investigating kleptocracy cases. She noted the lengthy proceedings often required in such cases and highlighted the need for close international cooperation to facilitate asset recovery and asset return, starting even prior to the sending of any formal request for mutual legal assistance. Through such close cooperation, the requesting and the requested State could not only discuss the requirements for the request and how to best proceed but also established channels of communication and trust that were often crucial in obtaining results. Furthermore, the panellist emphasized the need for quickly opening parallel money-laundering investigations in the requested State to facilitate identifying, tracing, freezing and seizing assets while the requesting State is working to provide the required confiscation orders. This allowed the requested State to take action even prior to receiving any requests for mutual legal assistance. She also highlighted the interest of the requested State in ensuring that money-laundering offences did not occur in that jurisdiction.

Jeffrey Simser, Legal Director at the Ministry of the Attorney-General in Toronto, Canada gave an overview of non-conviction based forfeiture (“NCB”). He noted the civil, *in rem* nature of such proceedings aimed at forfeiting the proceeds and instrumentalities of unlawful activities and highlighted their importance also in cases in which a criminal process is not feasible, e.g. in cases in which the alleged offender has dies or absconded. With regard to NCB forfeiture and international cooperation, the panellist noted the need to understand whether any evidence obtained through mutual legal assistance could be used in NCB proceedings given their civil nature and the fact that many MLA treaties were limited to criminal matters. He also highlighted the importance of clarifying whether and how any NCB forfeiture orders could be enforced abroad.

Furthermore, the panellist presented a case study of cross-border asset flows that involved “cuckoo smurfing” as a money-laundering technique. In that case, money that was to be legitimately

transferred from Indonesia to Australia was instead used for illicit payments in Indonesia, while proceeds of crime in Australia were deposited in the account of the intended recipient in Australia. By doing so, proceeds of crime were laundered. By using this example, he highlighted the importance of gathering information and understanding the social network of criminals to discern potential transactions of interest. In this respect, he noted how open sources and government databases, but also confidential sources, wiretaps and other intelligence tools could be helpful.

Shervin Majlessi, Deputy Coordinator of the Stolen Asset Recovery Initiative (StAR Initiative) shared the findings of the StAR publication entitled “Barriers to Asset Recovery – An Analysis of the Key Barriers and Recommendations for Action”⁶ with the experts. He emphasized how the issues of communication, trust and coordination mentioned by the previous panellists had emerged as key challenges in the study. The panellist informed the experts that finding solutions to these challenges to asset recovery was the main goal of the so-called “Lausanne process”, at the end of which the “Guidelines for the Efficient Recovery of Stolen Assets” (Lausanne guidelines) were developed. He noted that the Lausanne Guidelines aimed at assisting practitioners, policymakers and legislators in better planning each step of the asset recovery process and concluded his intervention by presenting the Guidelines to the experts.

Experts shared the practical challenges they had encountered in international cooperation relating to asset recovery. In this regard, several experts informed the meeting that NCB forfeiture had not yet been introduced in their countries and expressed their regret over its absence given the excellent results achieved in other countries. However, the experts also highlighted the need for strong judicial oversight of NCB forfeiture to ensure that the tool was not being abused and due process was being respected. Some experts also noted the absence of anti-money-laundering expertise in their countries and called for increased technical assistance to fight corruption.

V. Session III: Options available for asset return

- Presentation of different options available for asset return

Elsa Gopala-Krishnan (StAR) gave a brief overview of articles 53 and 57 of the Convention. She noted that article 53 dealt with measures for the direct recovery of assets through civil litigation. In particular, she underscored that it required States parties to ensure that other State parties had legal standing in their jurisdiction to (a) claim ownership of misappropriated assets; and (b) claim compensation for damages caused by corruption offences. In this regard, she recalled the StAR study “Public Wrongs, Private Actions, Civil Lawsuits to Recover Stolen Assets”⁷, which analysed how civil lawsuits could provide an effective complement to other approaches using criminal law to recover stolen assets.

Regarding article 57, she mentioned that, under paragraph 3, States are obliged to return confiscated property to the requesting State, provided that certain conditions are satisfied. She observed that paragraph 5 of article 57 provided an opportunity to requested and requesting States to conclude ad-hoc agreements on a case-by-case basis regarding the final disposal of assets should States wish to avail themselves of this option. In spite the possibility of concluding mutually acceptable agreements, she stressed that article 57 does not allow for asset sharing agreements, as paragraph 4 of article 57 only allows for the deduction of reasonable expenses. In this regard, she reminded the experts of

⁶ <https://star.worldbank.org/sites/star/files/Barriers%20to%20Asset%20Recovery.pdf>

⁷ <https://star.worldbank.org/publication/public-wrongs-private-actions>

resolution 7/1 of the Conference, in which the Conference urged States to waive or reduce such expenses to the barest minimum.⁸

- Analysis of trends in the asset return process

Richard Messick, consultant, UNODC, discussed article 53 and article, 57 paragraphs 3 and 5 of the Convention, focusing on concrete examples regarding their implementation, and the advantages and challenges of each. Under article 53, he recalled a recovery made by Macao SAR through a civil action in Hong Kong SAR and a recovery made by Zambia through a civil suit in the United Kingdom. In addition, he stated that the number of examples of asset recovery in connection with article 53 (a) of the Convention remained relatively low. He cited some possible reasons for this, namely, (a) the high costs of civil litigation, which was also due to the need to retain private counsel; and (b) the fact that a number of States had not explicitly granted standing to foreign States. Regarding article 53 (b) of the Convention, the panellist shared information on cases in which Haiti and Thailand received compensation for damages under the United States Mandatory Victim Restitution Act, Section 3663A of Title 18 of the United States Code.

In addition, the panellist provided a summary of a return of assets to Nigeria from Cyprus, where Cypriot courts recognized a decision rendered in the United Kingdom and ordered the repatriation of USD 1.3 million to Nigeria, as provided under article 57(3) of the Convention. One of the biggest challenges in connection with article 57(3) cited by the panellist was the need to secure a final decision in the requesting State and having the decision be recognized in the requested State.

Agreements under 57(5) were also discussed. According to the panellist, the data reviewed revealed that most of the returns examined that involved large sums of money included the execution of an agreement. However, it was also stressed that this conclusion was subject to revision as more data on returns was made available.

- Transparency and accountability in the asset return process

Paul Kadushi, Principal State Attorney from the United Republic of Tanzania started by stating that illicit financial flows (IFFs) out of Africa, including Tanzania, represented a major problem. To illustrate this, he cited the loss of millions of US dollars due to the embezzlement of public funds, particularly in connection with public contracts and the trafficking of natural resources. In addition, he summarized the legal and institutional framework in Tanzania to combat this problem, mainly in connection with asset forfeiture, which included: (a) the Mutual assistance in Criminal Matters Act, n. 24 of 1991; (b) the Proceeds of Crime Act, n.25 of 1991; (c) the establishment of a Financial Intelligence Unit; (d) the revamping of Tanzania's Revenue Authority' and the Establishment of the Prevention and Combating of Corruption Bureau.

The expert pointed out that efforts were being made to reform the existing laws in order to promote more transparency and accountability due to the country's zero tolerance policy against corruption. The British Aerospace case was cited as a good example of the importance given to transparency and accountability. In a pre-trial settlement in the United Kingdom, British Aerospace agreed to pay GBP 29.5 million to Tanzania. It was agreed that this amount would be used to purchase books for primary school students. To inform the public about the use of the funds, a website was created providing

⁸ <https://www.unodc.org/unodc/en/corruption/COSP/session7-resolutions.html>, Resolution 7/1 paragraph 16.

information on how the books had been distributed, allowing to filter the information by region, district, wards or schools. Other successful cases in the fight against corruption were also cited, such as the seizure of 319.59 kilograms of gold in January 2019.

Ladidi Bara'atu Mohammed, Assistant Director at the Ministry of Justice of Nigeria and Simon Kuersener of the Task Force Asset Recovery of Switzerland delivered a joint presentation focusing mainly on the "Abacha II case". Following a return made by Switzerland to Nigeria of funds confiscated from former Nigerian President Sani Abacha, Swiss prosecutors initiated criminal proceedings against Abba Abacha, Sani Abacha's son. In December 2014, because of a settlement agreement executed between the Federal Government of Nigeria and the Abacha family, the Attorney General of the Canton of Geneva ordered the confiscation of USD 321 million. The settlement agreement terms included the return of the funds to the Nigerian State provided the criminal charges in Nigeria against Abba Abacha were dropped.

According to the panellists, after extensive negotiations a mutually beneficial agreement was reached. As a result, on 4 December 2017, a legally binding tripartite memorandum of understanding ("MoU") between the Government of the Federal Republic of Nigeria, the Federal Council of the Swiss Confederation and the World Bank was signed. The panellists noted that the MoU was the result of a close collaboration between Nigeria and Switzerland based on trust and partnership and that the guiding principles of the negotiations, which were reflected in the MoU, were transparency and accountability. To conclude, it was mentioned that the MoU referred to the Addis Ababa Action Agenda and to the Sustainable Development Goals and reflected the GFAR Principles.

Further to the previous presentation, Indira Konjhodzic, Country Program Coordinator for Nigeria for the World Bank focused her intervention on the role of the World Bank in the "Abacha II return". Further to the signature of the MoU, Switzerland transferred the agreed funds to a designated account of the Federal Government of Nigeria at the Bank for International Settlements. As agreed in the MoU, these funds were to be used for financing Nigeria's National Social Safety Nets Project, which was already being implemented before the return. The objective of this project was to provide access to targeted cash transfers to poor and vulnerable households. The panellist explained that each household received a base transfer of NGN 5,000 per month, which amounted to approximately USD\$ 16. In addition, the panellist informed the experts that 302.676 households had received cash transfer payments and that USD 50 million had been disbursed, of which USD 37 million stemmed from the Abacha II return.

The panellist noted that the responsibility for the use of the funds laid with the Federal Government of Nigeria. The main mandate of the World Bank was monitoring. It was highlighted that, in carrying out the monitoring, the World Bank followed applicable existing policies, procedures and practices and exercised the same level of care that it exercised in supervising its own investment project financing. In addition to the World Bank, the Network of Asset Recovery, a coalition of civil society organizations, was invited to monitor the use of the returned funds. Thus, the World Bank also shared its monitoring reports with the Network of Asset Recovery and invited the Network to join its monitoring mission.

Complementing the previous presentation, David Ugolor, Executive Director of the Africa Network for Environment and Economic Justice analysed the "Abacha II return" through the lens of civil society. He started by stressing that without the political will of Nigeria, the return of the stolen assets to the people of Nigeria would not had been possible and that civil society could only participate in

the monitoring because they had been invited to do so. In this regard, he informed the experts that the first monitoring report had recently been submitted to the Nigerian Government and that the results had been positive. He concluded by highlighting the role of civil society in the returns as a key stakeholder and reiterated GfAR principle number 10 which encouraged the participation of civil society in the return process.

In the ensuing debate, speakers asked about (a) the need to conclude a settlement agreement with the Abacha family; and (b) the main lessons learned from the Abacha II return. In response, the panellist from Nigeria explained that the settlement agreement executed with the Abacha family was important due to the difficulty faced by practitioners to demonstrate the illicit nature of the funds deposited in Switzerland and the amount of time it would have taken for the Nigerian courts to reach a final decision. Regarding the Abacha II return, she highlighted that mutual interest and trust between requesting and requested States was key. In addition, the panellist from the World Bank affirmed that including an institution such as the World Bank may assist in building trust among the involved parties. In addition, she underscored that communication and transparency were essential and that citizens ought to know the amount of money returned and how the money was going to be spent.

VI. Session IV: Asset recovery – innovative tools and possible contributions towards the Sustainable Development Goals

Session IV was chaired by Mohammed Moneer Wahba, Counsellor at the Ministry of Foreign Affairs of Egypt. The session was dedicated to discussing how innovative tools can facilitate asset recovery, and how asset recovery and asset return can contribute to work towards the achievement of the Sustainable Development Goals (SDGs).

Allan Edward Hernández Portillo, Deputy Attorney-General of El Salvador presented El Salvador's legal framework on non-conviction based asset forfeiture. He highlighted the importance of non-conviction based forfeiture in particular for cases in which traditional conviction-based confiscation was not possible in El Salvador, such as when the accused died, was acquitted or absent; the assets belonged to a person different from the accused or the asset belonged to a legal person. As such, and underscoring the in rem character of such asset forfeiture, the panellist noted how non-conviction based forfeiture had greatly contributed to the success of asset recovery in El Salvador. To illustrate this point, he indicated that, since 2014, a total of 1.196 assets worth over USD 180 million had been seized and handed over to the asset management authority.

Shan Ao, Deputy Director of the Department of Treaty and Law in the Ministry of Foreign Affairs of China presented the rules and procedure pertaining to China's special confiscation procedure. He informed the experts that, taking into account the obligation established in article 54, subparagraph 1 (c) of the Convention, and considering the need to combat crimes related to corruption and terrorism, the Chinese Criminal Procedure Law had established a special procedure for confiscating illegal gains in cases where the suspect or defendant had escaped or died. He outlined the scope of offences, persons and assets to which the special confiscation procedure was applicable and shared information on the authorities competent to request such confiscation as well as on the safeguards established to protect defendants' rights in special confiscation proceedings. To conclude, the panellist highlighted how special confiscation contributed to asset recovery and asset return by presenting a case example in which the special confiscation procedure had been applied, a request made to another country on the basis of article 57, paragraph 3 of the Convention, and assets returned to China in accordance with the request.

Hazel Stevens, Illicit Finance Policy Lead at the United Kingdom’s SOCnet presented the unexplained wealth orders (UWOs), a recently introduced investigative tool which can be used to compel individuals to explain the sources of their wealth. She outlined that UWOs are not a final asset recovery tool but rather designed as a complement to other existing financial investigation powers. In this regard, UWOs require the respondent to provide specific information on their lawful ownership of any identified property and the means by which it had been obtained. The panellist also indicated that a corresponding freezing power for relevant property had been established, the so-called interim freezing order. She underscored that, given the nature of the tool, only specifically designated “enforcement authorities” were able to apply for UWOs. Any other law enforcement and prosecution authorities would need to refer cases to these designated authorities should they wish to obtain an UWO. The panellist outlined the conditions for obtaining an UWO and indicated that, while the UWO was designed for domestic proceedings, it may also be of use when responding to an MLA request given that the UK authorities would determine the most suitable powers to be used in responding to such a request. In addition, the panellist also described the consent regime established under the Proceeds of Crime Act, which required reporting entities not only to report suspicious transactions or activity, but also to desist from completing such transactions until a specific consent was received from the Financial Intelligence Unit or the National Crime Agency. In this regard, she highlighted the preventive value of the consent regime in relation to asset recovery: By avoiding that suspicious transactions are being carried out, the risk that money transferred through such transactions would subsequently need to be recovered was being reduced.

Shane Nainappan, Senior Asset Recovery Specialist at the International Centre for Asset Recovery presented the links between asset recovery and the SDGs. In his presentation, the panellist outlined how asset recovery had changed over time, moving from the traditional conviction-based recovery scheme to a more flexible, case-specific scheme that included measures such as non-conviction based forfeiture, UWOs and other special measures to ensure that assets can be recovered and returned. He highlighted the importance of developing institutional capacity and establishing a robust legal system for asset recovery and underscored the need for political will to ensure asset recovery and asset return and noted how returned assets could in turn be used to facilitate capacity and institution-building.

In the ensuing discussion, experts provided information on how tools such as non-conviction based confiscation had been established in their own legal systems and shared challenges and successes related to such tools. In addition, they requested additional information on specific aspects related to the above-mentioned tools and their use in MLA proceedings. Throughout the discussion, experts noted the increasing expectation from society to recover assets and underscored how it encouraged practitioners to develop and test innovative tools. In this regard, experts reiterated the usefulness of having a wide range of tools available for asset recovery, thus enabling practitioners to choose the most suitable tool for each individual case. In addition, experts encouraged practitioners to keep an open mind when considering avenues for investigation and cooperation, referring among others to the usefulness of opening a parallel money-laundering investigation in the requested State to enable law enforcement authorities to make use of all domestic investigative tools when responding to an MLA request.

V. Session V – Case examples and practical experiences

Session II was chaired by Shervin Majlessi, Deputy Coordinator of the StAR Initiative and focused on presenting the different avenues used for asset return in specific cases, highlighting how recovered assets were used for the benefit of the public harmed by the underlying corrupt conduct, combating corruption, repairing the damage done by corruption, and achieving the SDGs. In addition, the session

aimed at examining the methods used to ensuring that recovered assets did not benefit persons involved in the commission of the underlying offence and promoted the participation of individuals and groups outside the public sector, as appropriate.

Oleksandr Skomarov, Deputy chief of the Detectives department of the National Anti-Corruption Bureau of Ukraine (“NABU”) initiated his presentation by giving an overview of NABU, which had been created in 2014 with the purpose of fighting governmental corruption. He noted that NABU conducted pretrial investigations of corruption cases which involved high level politicians or high-value assets.

The panellist added that most of the corruption cases investigated involved the use of shell companies worldwide, reinforcing the need to properly use the available international instruments. In addition, he listed the methods and activates used for detecting assets abroad, including (a) the use of confidential cooperation with informants; (b) open source investigation; (c) cooperation with the National Agency of Ukraine for Finding, Tracing and Management of assets derived from Corruption and Other Crimes (ARMA); and (d) cooperation with international organizations, institution and networks mandated to assisting States in tracing stolen assets, in particular with the StAR Initiative. In conclusion, he stressed the need to improve NABU’s cooperation with its international partners.

Priscila de Castro Busnello, Head of the Division for Fight Against Corruption of the Federal Police of Brazil introduced the Brazilian framework on asset recovery. She informed the experts that the department of asset recovery and international cooperation of the Ministry of Justice acted as Brazil’s central authority for international cooperation. The panellist noted that mutual legal assistance in Brazil was based either on treaties or on reciprocity. Excluding extradition requests, from January 2019 to March 2019, 56 per cent of the mutual legal assistance in criminal matters provided by Brazil was based on reciprocity, while 44 per cent used a treaty basis.

The panellist also shared some good practices related to asset recovery in Brazil such as the establishment of specialized units to deal with financial crimes and corruption and the increase of international negotiations in order to conclude more agreements. To illustrate this, she referred to the framework agreement concluded within Mercosur regarding the seizure of assets. The panellist also underscored some of the challenges faced when dealing with asset recovery, which included the lack of legislation concerning asset recovery in the requested jurisdiction and the different national approaches to the confiscation of assets. In addition, she highlighted the need for a final conviction as the main challenge. To conclude, she shared information on some returns of stolen assets to Brazil and indicated that from 2014 to 2019, approximately USD 166 million had been returned to Brazil.

Maryann Njau-Kimany, Senior Deputy Solicitor General at the Office of the Attorney-General of Kenya and Tom LeFeuvre of the Ministry of Foreign Affairs of Jersey gave a joint presentation focusing on the Framework for Return of Assets from Corruption and Crime in Kenya (“FRACCK agreement”). The panellists started their presentations by giving an overview of the main institutions and legal framework in their countries in connection with asset recovery. In Kenya, for example, the Asset recovery Agency and the Ethics and Anti-Corruption Commission, the Proceeds of Crime and Anti-Money Laundering Act, the Anti-Corruption and Economic Crimes Act, were cited, among others. The panellist from Jersey referred to, inter alia, the Jersey Financial Crime Strategy Group, the Criminal Offences Confiscation Fund, the Proceeds of Crime law 1999, the Proceed of Crime (Enforcement of Confiscation Orders) Regulations 2008.

As explained by the panellists, the FRACCK is the result of a multilateral initiative led by the Government of Kenya which culminated in the signing of a framework non-binding agreement between the Governments of Kenya, Jersey, Switzerland and the United Kingdom. In addition, it was stated that FRACCK reflected existing anticorruption norms and good practices, including the Convention and the GFAR principles. The panellists noted that FRACCK provided that recovered assets deriving from corruption (a) should be returned to Kenya whenever possible following a final judgement; (b) should be used to undertake identified development programmes in Kenya, which would be agreed by the parties. Furthermore, the return should be made in a transparent and accountable manner, subject to an appropriate and ongoing monitoring. In addition, the panellist explained the return process described in the FRACCK, noting that the process started with the identification of potential assets to be recovered and included (a) the identification of potential implementing organizations, (b) the monitoring of the return process, (c) reporting, and that it concluded with an analysis of the lessons learned. The parties highlighted that the decision on how to use the funds was to be taken unanimously.

Ana Teresa Revilla Vergara, Head of the General Office of Legal Affairs of the Ministry of Foreign Affairs of Peru presented cases of assets returned to Peru from Switzerland and the United States of America. In addition, she also shared information on the “Car Wash” case in Peru. The panellist underscored the importance of the 22 bilateral cooperation agreements in criminal matters that Peru had entered into and shared information on additional bilateral Memoranda of Understanding that the country had concluded with counterparts for the exchange of information and for the transfer of assets. In the case of the return from Switzerland, assets were frozen in Switzerland in relation to the Fujimori/Montesinos case and returns started less than two years after the case was opened. In the case of the return from the United States of America, an agreement on the transfer of confiscated assets was signed and a dedicated fund (FEDADOI) established into which the money was paid. The resources disbursed into FEDADOI were used for a variety of purposes, including for increasing the budget of the national universities, purchasing police uniforms and compensating victims of human rights violations. In conclusion, the panellist highlighted the need for close cooperation at the international level, in particular relating to information exchange, technical assistance and strengthening of institutions. Furthermore, she noted the role that civil society could play in overseeing returns and underscored the need to prevent assets being siphoned off.

Damirzhan Dauken, Prosecutor at the Prosecutor-General’s Office of Kazakhstan noted that USD 10 billion, equivalent to one sixth of the national fund of Kazakhstan, had been stolen and transferred outside of the country. Due to this, Kazakhstan decided to join networks for the exchange of information and asset recovery and develop a methodology for working on returning proceeds of crime that had been transferred abroad. To this end, and based on existing guidelines, Kazakhstan developed standardized samples of MLA requests through information exchange networks and channels of the Egmont Group and developed guidelines for investigators and prosecutors. As a result, USD 60 million were frozen abroad. The panellist indicated that Kazakhstan was working on their return at the time of the presentation. With support from the US Embassy and UNODC, 169 investigators and 10 national trainers had been trained. To illustrate the methodology, the panellist outlined a case study on the biggest fraud in the history of Kazakhstan, in which more than 270.000 citizens and legal person suffered damages of over USD 7.5 billion in total, and which led to the Government having to rescue a bank using public funds. The panellist informed the experts that, as a result of over 400 MLA requests, over USD 1 billion had been recovered abroad.

Teresa Turner-Jones, Senior Trial Attorney at the Department of Justice of the United States of America presented case examples of assets frozen and confiscated in the United States and returned to Brazil, Nigeria and Peru. In outlining the cases and the different modalities used for returning assets, such as returns through a dedicated fund in the case of Peru (FEDADOI), direct returns of the assets to Brazil or returns through a specially established foundation (BOTA foundation) in Kazakhstan, she highlighted the challenges encountered in facilitating successful asset recovery. In this regard, the panellist explained the difficulties that may be faced when proving the underlying crime, which can also be exacerbated by differences in legal systems of the requesting and requested States. She also noted the resource intensive nature of pursuing such assets and underscored the importance of close and early cooperation among the requesting and requested States to facilitate successful asset recovery and asset return. Furthermore, the panellist called for increased transparency and accountability in asset recovery and asset return and for making use of the wide array of tools available under the Convention to ensure that the best solution for each individual case can be found.

In the ensuing discussion, experts agreed that no “one size fits all” approach to asset return existed and underscored the need to make use of all modalities available under the Convention to ensure successful asset return. Furthermore, reference was made to the need to strengthen the capacity of local institutions to prevent corruption from reoccurring but also to ensure that the authorities had the capacity required to handle the return of large quantities of assets. Experts also indicated that some difficulties continued to exist in international cooperation, in particular when related to differences in legal systems and delayed responses to requests for mutual legal assistance or with regard to executing non-conviction based forfeiture orders from abroad. To address these challenges, the experts reiterated the importance of early and continued dialogue between requesting and requested States, from the identification to the freezing or seizure and confiscation to the return of assets. The experts also emphasized the value of spontaneous sharing of information and the establishment of informal channels of communication with regard to asset recovery and asset return.

Following a set of questions, the panellists from Kenya and Jersey responded that the FRACCK was not legally binding and that it introduced principles. It created a joint objective for the partners to work together. The panellists also indicated that the FRACCK could allow for the participation of other States which are aimed at returning assets to Kenya, provided that all parties were in agreement. One speaker expressed her concern regarding the need for the negotiation of an agreement for every return. It was highlighted that even though case-by-case agreements could be negotiated, such agreements were not a pre-requisite for asset return in accordance with the Convention.

VI. Discussion in break-out groups – towards good practices on asset return

Basing their discussions on the previous sessions, the experts split into three break-out groups to discuss general recommendations for States parties to consider when dealing with cases of asset return and disposal. Following the break-out sessions, the experts reconvened in the plenary to share and conclude their general recommendations.

The secretariat circulated the draft outcome document subsequently to the meeting and consolidated additional comments received on the first draft. The finalized general recommendations are attached to the present report.

VII. Closing and way forward

In closing the meeting, UNODC thanked the experts for their contributions to the productive discussions and explained the next steps to be taken as follow-up to the meeting.

UNODC noted that Asset Recovery Working Group would be briefed on the meeting at its next session, to be held in Vienna in May 2019, and indicated that the general recommendations, once finalized, would be shared with States parties. A narrative report of the meeting would also be drafted and circulated for comments.⁹

⁹ Subsequent to the meeting, a website containing the most relevant information related to the meeting was created: <https://www.unodc.org/unodc/en/corruption/meetings/addis-egm-2019.html>

Annex I

The experts identified the following general recommendations for States parties to the United Nations Convention against Corruption to consider when dealing with cases of asset return and disposal:

1. Make use of all of the modalities provided for within the United Nations Convention against Corruption to their full potential, in particular in view of the comprehensive nature of the Convention.
2. Bear in mind the need to demonstrate corruption does not pay, prevent corruption from reoccurring and uphold the rule of law.
3. Strengthen good practices on asset return consistent with UNCAC so as to foster sustainable development.
4. Bear in mind the need for timely returns while respecting due process.
5. Develop legislation aimed at enabling the return of stolen assets and consider innovative tools for asset recovery such as non-conviction based forfeiture/unexplained wealth orders.
6. Commit to ensuring the widest possible measures of international cooperation, including in the area of asset recovery.
7. Recognize the importance of political commitment and technical capacity for successful asset return.
8. Recognize that asset return needs requesting and requested States to cooperate and needs to be based on mutual respect and sovereign equality.
9. Recognize further that requesting and requested countries have a shared interest and responsibility to facilitate asset return without unilateral imposition of terms.
10. Highlight the need for domestic coordination on both sides, including the need for effective inter-agency communication. The establishment of inter-agency taskforces, ideally with one interlocutor, was seen as a good practice.
11. Stress the voluntary nature of bilateral agreements for asset return which should be in line with the Convention.
12. Note that communication is critical for international cooperation. Therefore, have early and sustained dialogue between requesting and requested States, including prior to starting formal international cooperation (MLA) processes, while respecting the confidentiality of the information exchanged.
13. Provide technical assistance and capacity-building in asset recovery and management of assets, including returned assets, as well as for establishing preventive measures.
14. Be cognizant of the possible need to support the requesting State even before a request for mutual legal assistance is made (by providing legal expertise, institutional capacity-building etc.).
15. Stress the importance of building relationships between requesting and requested States based on trust. Technical assistance, training and advice offered to the requesting State could contribute to establishing a partnership among requested and requesting States.
16. Make use of regional asset recovery networks.

17. Determine an asset recovery strategy at an early stage to avoid conflict between different methods, including by exploring all options and associated costs and risks. In particular, gather information on the jurisdiction in which assets are located, which may include considerations such as:
 - a. Does it allow for direct recovery (art. 53)?
 - b. Which other avenues are available?
 - c. Can any of these avenues be combined to facilitate faster returns?
 - d. Which foreign judgements can be enforced (e.g., can non-conviction based forfeiture orders be enforced)?
 - e. What are the requirements for enforcement of foreign orders (e.g. in relation to due process etc)?
18. Be aware of the differences in legal systems, and endeavour to understand the requested State's domestic asset recovery processes.
19. Publish, keep up to date and make use of other countries' asset recovery guides or other information describing domestic requirements.
20. Make use of the executive summary and, when published, the final report produced in the framework of the Implementation Review Mechanism of the UNCAC.
21. Disseminate legislation, and, whenever possible, concluded cases and agreements related to asset return.
22. Consider innovative approaches for multijurisdictional cooperation.
23. To the extent possible, process requests for assistance in a timely manner and without delay, in accordance with the fundamental principles of due process of law in criminal proceedings and in civil or administrative proceedings to adjudicate property rights. Measures that facilitate the litigation process, when possible, or remove barriers to asset recovery could present a good practice.
24. Ensure transparency in the return process, in accordance with the Convention and following domestic law.
25. Manage the expectations of citizens. Be aware that engagement with the media can avoid or reduce speculation. Consider appropriate communication after return, including joint statements.
26. Find solutions, including legislation, for disposal of assets in cases in which there is no request for return received, but there is a national obligation to return assets in accordance with the Convention.
27. Highlight that returned stolen assets are not development aid or part of official development assistance (ODA).
28. Strengthen national institutions for data gathering for benchmarking to measure progress in asset recovery, including progress in asset return once the process is concluded.
29. Recognize the need for more discussion on asset return in the Asset Recovery Working Group, based on more information provided by States parties on returns.
30. Provide more case examples to carry-out a comprehensive assessment of asset return cases, as well as analysis of assets returned, vis-à-vis assets confiscated.

The experts identified the following challenges and good practices with regard to the implementation of article 53 of the Convention:

1. Challenges:
 - a. Engaging private counsel can entail considerable costs (including on a contingency basis) and have associated risks. There was a need for more training/sharing of knowledge and expertise in this regard.
 - b. In some cases, quantifying the damage to the State (including social damage) was difficult. More knowledge was needed in this area.
2. Good practices:
 - a. For donor countries/requested States to consider defraying costs of private counsel.
 - b. For requested States to take on cases without involvement of private counsel and to assist requesting States in such cases. The importance of having well documented evidence by the requesting State was particularly emphasized in this regard, as this could influence the decision of the requested State to take on the case.
 - c. Legislation enacted by some States identifying that the bribe paid to a public official is property of the State.
3. Depending on the context, using Article 53 of the Convention can be a more viable option if other processes present barriers, such as the requirement for final judgement; In addition, article 53 (b) when successful led to a mandatory recognition of damages.

The experts identified the following challenges and good practices with regard to the implementation of article 57/3 of the Convention:

1. Challenges:
 - a. Obtaining a final judgement can be difficult and a lengthy process.
2. Good practices:
 - a. Application of the requirements of Art. 57 (3) of the Convention with the greatest degree of flexibility, in particular, explore using the exception foreseen in Art. 57 (3)(a) and (b) to waive the requirement of a final judgement.
 - b. Opening parallel investigations on money-laundering in the requested State.
 - c. Direct mutual recognition and enforcement of confiscation orders in the EU context was seen as a good practice that could be replicated in other regions or by groups of countries.
3. Take advantage of applying article 54 of the Convention to facilitate obtaining the judgement for application of article 57/3.

The experts identified the following challenges and good practices with regard to the implementation of article 57/5 of the Convention:

1. Consider benefits of entering into case specific agreements and importance of treating each case individually.

2. Ensure that agreements are in compliance with national legislation and requirements of the Convention.
3. Mutual respect and sovereign equality are key principles to be particularly respected when negotiating agreements.
4. Agreements are voluntary, all content needs to be mutually agreed, without unilateral imposition of terms.
5. Agreements, when chosen, can be a good way to publicly demonstrate both countries' commitment to the disposal of stolen assets, and manifest the mutual interest of requesting and requested State to return the stolen funds.
6. Early dialogue and previous contact can create a relationship of confidence that facilitates asset return.
7. Agreements can bring enhanced transparency to the final disposal of returned assets, which enhances accountability both on the side of requested and requesting State.
8. Non-binding framework arrangements such as the Framework for Return of Assets from Corruption and Crime in Kenya (FRACCK) could be considered by States parties as such framework arrangements provide a forum for discussing and coordinating returns from multiple jurisdictions.
9. Reiterating that the Convention did not require States parties to establish a dedicated mechanism for monitoring the use of returned funds, various options were available for such monitoring if States decided to establish such a mechanism. It was important not to prioritize among those options as there was not one size that fits all. There was for example the option for funds to be returned to the national treasury/national budget, which would then be monitored in line with the country's general systems for managing its public finances, while in other circumstances specific mechanisms for the final disposal and monitoring of the final disposal could be mutually arranged.
 - a. Should States decide to conclude an agreement, depending on the case-specific arrangements, monitoring the final disposal of the returned funds could be the responsibility of the requesting State, or States could agree on a joint responsibility, including the possibility for the requesting and the requested State to agree on a joint implementation of a monitoring mechanism. Innovative approaches of involving civil society and audit institutions in the monitoring of the disposal can be given consideration, together with the possibility of external monitoring by the World Bank or other existing institutions, bearing in mind the principles of sovereignty, as well as costs involved.
 - b. The requested State should strive to waive or reduce expenses that may be deducted under article 57, paragraph 4 of the Convention to the barest minimum and, whenever possible and considering this on a case-by-case basis, not to take costs for additionally agreed monitoring arrangements out of the returned assets.

The experts noted that more information on concluded agreements was needed to draw more concrete lessons and learn from past practice. In this regard, it would be useful to allocate time for further discussion of this matter, including in the Asset Recovery Working Group.