



## Tool 4.6 International cooperation for the purposes of confiscation

### Overview

*This tool describes the provisions of the Organized Crime Convention relating to the confiscation and seizure of proceeds of crime and introduces resources which can assist in the process.*

When criminals are involved in human trafficking, the assets they used to commit the crime, as well as the proceeds gained from the trafficking activities, can often be found in a State other than the one in which the offence is prosecuted.

Criminalizing trafficking in persons and related offences is insufficient to deter organized criminal groups. Even if arrested and convicted, some of these offenders will be able to enjoy their illegal gains for their personal use and for maintaining the operations of their criminal enterprises. Despite some sanctions, the perception would still remain that “crime pays” in such circumstances and that Governments have been ineffective in removing the means for criminal groups to continue their activities.

Practical measures to keep offenders from profiting from their crimes must be put into effect. One of the most important ways of doing this is to ensure that States have strong confiscation regimes that provide for the identification, freezing, seizure and confiscation of illicitly acquired funds and property (see Tool 5.7, “Seizure of assets and confiscation of proceeds of crime”). Specific international cooperation mechanisms are also necessary to enable States to give effect to foreign freezing and confiscation orders and to provide for the most appropriate use of confiscated proceeds and property.

## Confiscation and asset seizure under Article 13 of the Organized Crime Convention

Articles 12, 13 and 14 of the Organized Crime Convention are devoted to the domestic and international aspects of identifying, freezing and confiscating the proceeds and instrumentalities of crime. The terms “property”, “proceeds of crime”, “freezing”, “seizure”, “confiscation” and “predicate offence” are defined in article 2 of the Convention.

As discussed in Tool 5.7, without effective implementation of article 12 of the Organized Crime Convention, States will be unable to respond effectively to international requests. Article 12 requires States parties to adopt measures, to the greatest extent possible within their legal systems, to enable confiscation of the proceeds, or property whose value is equivalent to the value of proceeds, and the instrumentalities of offences covered by the Convention. It also obligates States parties to adopt measures to enable the identification, tracing, freezing and seizing of such items for the purpose of eventual confiscation. In addition, it obligates each State party to empower its courts or other competent authorities to order that bank or other records be made available for the purposes of facilitating such identification, freezing and confiscation. Please refer to Tool 5.7 for more information about article 12.

Article 13 sets forth procedures for international cooperation in confiscation matters. These are important procedures, as criminals frequently seek to hide proceeds and instrumentalities of crime abroad, as well as evidence relating thereto, in order to thwart law enforcement efforts to locate and gain control over them. A State party that receives a request from another State party is required by this article to take specific measures to identify, trace, and freeze or seize proceeds of crime for the purpose of eventual confiscation. Article 13 also describes the manner in which such requests are to be executed.

The two options provided for by article 13 are:

*Indirect method:*

(Art. 13, para. 1 (a)) A State which receives a request from another State to confiscate, or a preliminary request to identify, trace and freeze proceeds of crime can submit such request to its competent authorities and obtain an order of confiscation or order to identify, trace and freeze, and then give effect to it.

*Direct method:*

(Art. 13, para. 1 (b)) A State which receives a request to confiscate, or a preliminary request to identify, trace and freeze may treat such foreign request as though it were a domestic order and submit it to its competent authorities to be put into effect. This is the cost- and time-saving, and therefore most efficient, method.

### ***Treaty and other agreements or arrangements for confiscation***

By virtue of article 13, paragraph 9, States are also to consider entering into bilateral and multilateral agreements to enhance the effectiveness of international cooperation with respect to confiscation.

Where a Party makes international cooperation for the purposes of confiscation conditional on the existence of a relevant treaty, article 13, paragraph 6, requires such party to consider the Convention as the necessary and sufficient treaty basis for cooperation for purposes of confiscation.

### ***Notification of the Secretary-General of the United Nations***

**Article 13, paragraph 5**, requires that States shall notify the Secretary-General of the United Nations of any changes to laws and regulations that give effect to the implementation of article 13.

### ***Disposal of confiscated assets: article 14***

**Article 14** of the Organized Crime Convention addresses the final stage of the confiscation process: the disposal of confiscated assets.

While such disposal is to be carried out in accordance with domestic law, **article 14, paragraph 2**, calls upon States parties requested to carry out confiscation to give priority consideration to returning the confiscated assets to the requesting State for use as compensation

to crime victims or for restoration to legitimate owners. For more information on restitution of assets and compensation of victims, please see **Tool 8.17**.

Alternatively, **article 14, paragraph 3**, encourages States to consider concluding agreements or arrangements on:

- (a) Contributing the value of such proceeds of crime to the United Nations account designated for the provision of assistance to countries in implementing the Convention, or to intergovernmental bodies specializing in the fight against organized crime, or
- (b) Sharing the proceeds with other States parties on a regular or case-by-case basis.

See below, under *Recommended resources*, the UNODC model bilateral agreement on the sharing of confiscated proceeds of crime or property covered by the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

## Recommended resources

***Legislative guides of the United Nations Office on Drugs and Crime for the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto***



The UNODC legislative guides are available at:  
[www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html](http://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html)

***Model bilateral agreement on the sharing of confiscated proceeds of crime or property covered by the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988***

***(Economic and Social Council resolution 2005/14, annex)***



The model bilateral agreement is available at:  
[www.unodc.org/pdf/ECOSOC\\_resolution\\_2005-14.pdf](http://www.unodc.org/pdf/ECOSOC_resolution_2005-14.pdf)

***Stolen Asset Recovery initiative: Challenges, Opportunities and Action Plan  
(United Nations Office on Drugs and Crime and the World Bank, June 2007)***

The Stolen Asset Recovery (StAR) initiative has been launched jointly by UNODC and the World Bank Group to respond to the problem of stolen assets in a context of corruption. The initiative prioritizes building and strengthening partnerships among developed and developing countries, as well as other bilateral and multilateral agencies with an interest in the problem.

The StAR initiative is an integral part of the World Bank Group's Governance and Anti-Corruption Strategy, which recognizes the need to help developing countries recover stolen assets. The international legal framework underpinning the StAR initiative is provided by the United Nations Convention against Corruption, which entered into force in December 2005. UNODC is both the custodian and the lead agency supporting the implementation of the Convention against Corruption and is the secretariat for the Conference of the State Parties to that Convention.



*Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities and Action Plan* is available at:

[www.unodc.org/pdf/Star\\_Report.pdf](http://www.unodc.org/pdf/Star_Report.pdf)

***Group of Eight best practice principles on tracing, freezing and confiscation of assets***

The Group of Eight (G8) has identified best practices for domestic measures and international cooperation with regard to the tracing, freezing and confiscation of assets. In addition, it has identified the general principles that all States should review and revise their laws and procedures with a view to enhancing their cooperative capacities, and should undertake joint investigation and prosecution to facilitate a stronger law enforcement response.



The G8 best practice principles on tracing, freezing and confiscation of assets can be referred to at:

[www.usdoj.gov/ag/events/g82004/G8\\_Best\\_Practices\\_on\\_Tracing.pdf](http://www.usdoj.gov/ag/events/g82004/G8_Best_Practices_on_Tracing.pdf)

**Promising practice**

***Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime***

***(Strasbourg, 1990, European Treaty Series No. 141, entered into force on 9 January 1993)***



<http://conventions.coe.int/Treaty/EN/Treaties/Html/198.htm>

### ***Memorandum of understanding on regional cooperation and exchange of information related to identification, seizure and confiscation of proceeds of crime***

Heads of police from South-Eastern Europe (Albania, Bosnia and Herzegovina, Croatia, Montenegro, Serbia, the former Yugoslav Republic of Macedonia and UNMIK) met in Belgrade on 20 June 2007 to sign a memorandum of understanding on regional cooperation and exchange of information. The informal agreement—part of a Council of Europe/European Commission regional project against serious crime in South-Eastern Europe—is intended to facilitate effective, easy and prompt exchange of information for the purpose of identifying, tracing, seizing and confiscating proceeds of crime. The heads of police will meet again in 2008 to evaluate the effectiveness of cooperation and strengthen capacities to combat organized and economic crime.



More information about the workshop which gave rise to this memorandum of understanding is available at:

[www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/combating\\_economic\\_crime/3\\_technical\\_cooperation/carpo/Output\\_2\\_-\\_Special\\_investigations/Belgrade19-20.2007\\_main.asp](http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/3_technical_cooperation/carpo/Output_2_-_Special_investigations/Belgrade19-20.2007_main.asp)

### ***Assets Recovery Agency, United Kingdom***

The Assets Recovery Agency was established under the Proceeds of Crime Act 2002 and is intended to:

- Disrupt organized criminal enterprises through the recovery of criminal assets, thereby alleviating the effects of crime on communities
- Promote the use of financial investigation as an integral part of criminal investigation, within and outside the Agency, domestically and internationally, through training and continuing professional development

The Agency comprises a team of financial investigators and lawyers who act to prevent criminals from benefiting from the proceeds of their crime, thereby sending out the message that crime does not pay. In addition, the Agency performs civil recovery and criminal confiscation roles in England, Wales and Northern Ireland and has financial investigators based at various locations throughout these countries. The Agency also conducts tax investigations throughout the United Kingdom.

On 11 January 2007, the Parliamentary Under-Secretary of State for the Home Department announced in a written ministerial statement that the Government would be bringing forward proposals to merge the Assets Recovery Agency with the Serious Organised Crime Agency. Thereby, it was felt, understanding of organized crime would be increased and the tools used to tackle it would be broadened and strengthened.



More information about the Assets Recovery Agency is available at:  
[www.assetsrecovery.gov.uk](http://www.assetsrecovery.gov.uk)

### ***Camden Assets Recovery Inter-Agency Network***

The Camden Assets Recovery Inter-Agency Network, an informal network of expert practitioners from the law enforcement and judicial sectors on criminal assets tracing, freezing, seizure and confiscation, was established in 2004. The initiative was reinforced by decision 2007/845/JHA adopted on 6 December 2007, in which the Council of the European Union decided that each State member of the European Union shall set up or designate a national asset recovery office in order to facilitate the tracing and identification of proceeds of crime. The aim of the Network is to enhance the effectiveness of efforts to deprive criminals of their profits and it is now a major law enforcement tool in targeting organized crime groups. The Network also enhances cross-border and inter-agency cooperation, as well as information exchange.

### ***Nigeria***

In response to a request from Nigeria, UNODC launched a project aimed at assisting Nigeria in recovering stolen assets stored in foreign countries and in preventing and combating the transfer of funds deriving from acts of corruption, including the laundering of funds, and in returning such funds. Under the project, first the institutional and legal control weaknesses that have made possible the massive looting of funds will be assessed and then the shortcomings of current efforts to recover these funds. The assessment will focus on institutional, organizational and coordination weaknesses and identify needs for training and other capacity-building measures.



More information about this initiative is available at:  
[www.unodc.org/nigeria/en/judicialintegrity.html](http://www.unodc.org/nigeria/en/judicialintegrity.html)