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**Review of the implementation of the United Nations
Convention against Corruption**

Implementation of chapter V (Asset recovery) of the United Nations Convention against Corruption

Thematic report prepared by the Secretariat

Summary

The present report contains a compilation of the information available as at 15 September 2023 on successes, good practices, challenges and observations identified during the second cycle of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption, with a focus on the implementation of articles 51, 53–57 and 59, under chapter V (Asset recovery), of the Convention. The implementation of articles 52 and 58 is assessed in the thematic report entitled “Implementation of provisions of a cross-cutting nature in chapter II (Preventive measures) and chapter V (Asset recovery) of the United Nations Convention against Corruption” ([CAC/COSP/2023/6](#)).

* [CAC/COSP/2023/1](#).



I. Scope and structure of the report

1. The present thematic report contains a compilation of the most relevant information on successes, good practices, challenges and observations contained in the executive summaries and country review reports, in accordance with paragraphs 35 and 44 of the terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption. It is based on the information included in the 82 executive summaries and country review reports that had been completed as at 15 September 2023.

2. The report builds upon the previous thematic reports covering the implementation of chapter V (Asset recovery), focuses on existing trends and examples of implementation, and includes tables and figures depicting the most common challenges and good practices.¹ The structure follows that of the executive summaries; specific articles and topics that are closely related are thus clustered together. An analysis of the regional differences and trends is provided in the regional supplement entitled “Implementation of chapter II (Preventive measures) and chapter V (Asset recovery) of the United Nations Convention against Corruption” (CAC/COSP/2023/7).

3. The report contains information on the implementation of articles 51, 53–57 and 59, under chapter V (Asset recovery), of the Convention by States under review in the second cycle of the Implementation Review Mechanism. As for articles 52 and 58, given their close thematic links with, in particular, article 14, their implementation is assessed in the thematic report entitled “Implementation of provisions of a cross-cutting nature in chapter II (Preventive measures) and chapter V (Asset recovery) of the United Nations Convention against Corruption” (CAC/COSP/2023/6).

II. General observations on challenges and good practices in the implementation of chapter V of the Convention

4. The figures and tables below provide an overview of the most prevalent challenges and good practices in the implementation of chapter V, articles 51, 53–57 and 59, organized by article of the Convention. The challenges and good practices reflected in this report take into account the diversity of States parties, as well as the evolving nature of priorities surrounding the practices identified.² In addition, where applicable, good practices and examples of specific measures drawn from the first 41 executive summaries approved under the second cycle that were reflected in previous thematic reports of the Implementation Review Group on the implementation of chapter V (CAC/COSP/IRG/2022/7 and CAC/COSP/IRG/2023/9) were replaced with those contained in executive summaries adopted since the last report on the topic (CAC/COSP/IRG/2023/9).

¹ In line with the outcome of the discussions of the Implementation Review Group, the thematic reports and the reports on implementation at the regional level are no longer anonymized; countries featured as illustrative examples of good practices have been identified throughout the present report. As in previous reports, the good practices drawn from older executive summaries have not been included in this report.

² This approach is in line with the terms of reference of the Implementation Review Mechanism (CAC/COSP/2009/15, res. 3/1, annex I), which in its section II, paragraph 8, states the following: “The Mechanism shall take into account the levels of development of States parties, as well as the diversity of judicial, legal, political, economic and social systems and differences in legal traditions.”

Figure I
**Challenges identified in the implementation of chapter V of the Convention,
 by article**

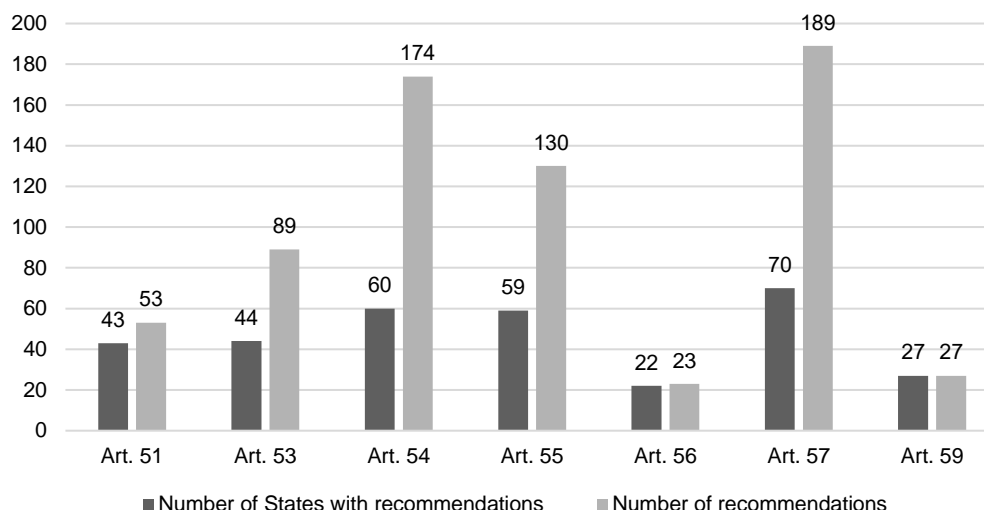


Table 1
Most prevalent challenges in the implementation of chapter V of the Convention

Article of the Convention	Number of States receiving recommendations	Number of recommendations issued	Most prevalent challenges in implementation (in order of article of the Convention)
Article 51	43	53	Inadequate legislation and/or procedures for international cooperation; insufficient institutional arrangements; ineffective inter-agency coordination; complicated asset recovery procedures; lack of capacity and resources of competent authorities; lack of a case management system to measure the effectiveness of measures; lack of guidelines
Article 53	44	89	Lack of mechanisms or a legal basis for foreign States to establish title to or ownership of property, be awarded compensation or damages or be recognized as the legitimate owner of property in foreign confiscation proceedings; lack of a mechanism and appropriate monitoring for granting foreign States locus standi in civil proceedings
Article 54	60	174	No direct enforcement of foreign confiscation orders or exclusion of certain Convention offences or of non-designated countries; insufficient mechanisms for preservation of property for confiscation; limited non-conviction-based confiscation; limited measures to freeze or seize upon an order or request by a foreign State
Article 55	59	130	Insufficient, unclear or discretionary mechanisms to give effect to a foreign order or obtain a domestic order for search, seizure or confiscation; no obligation to give, before lifting any provisional measure, the requesting State party an opportunity to present its reasons in favour of continuing the measure; Convention could not be used as treaty basis; ineffective system for protecting the rights of bona fide third parties
Article 56	22	23	Insufficient measures and lack of authority for the spontaneous transmission of information; transmission of

Article of the Convention	Number of States receiving recommendations	Number of recommendations issued	Most prevalent challenges in implementation (in order of article of the Convention)
			information regarding proceeds of certain categories of offences to a limited range of authorities or countries; inadequate record-keeping, case information and statistics on asset recovery and spontaneous assistance
Article 57	70	189	Insufficient legislative or other measures for the return of proceeds to requesting States; no regulation of costs or means of deducting expenses; no protection of the rights of bona fide third parties in return proceedings; insufficient monitoring of the measures applied in asset recovery cases, in particular with regard to the return of embezzled public funds; lack of agreements for the final disposal of confiscated property
Article 59	27	27	Lack or shortage of bilateral or multilateral agreements or arrangements; insufficient ability to use the Convention as a legal basis; insufficient participation in asset recovery networks

Figure II
Good practices identified in the implementation of chapter V of the Convention, by article

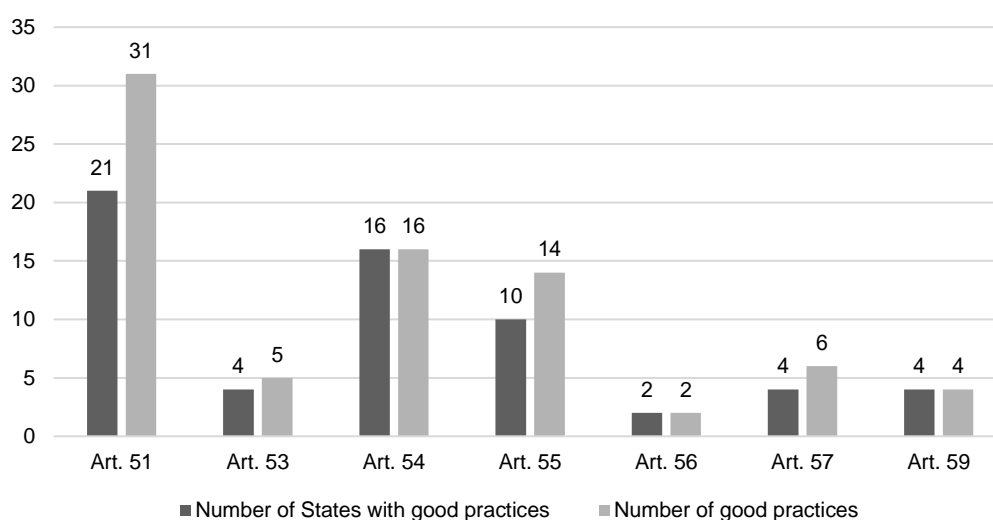


Table 2
Most prevalent good practices in the implementation of chapter V of the Convention

Article of the Convention	Number of States with good practices	Number of good practices	Most prevalent good practices (in order of article of the Convention)
Article 51	21	31	Active engagement in the development and promotion of international cooperation and asset recovery; adequate legal basis for asset recovery; robust institutional arrangements, including sound inter-agency coordination and deployment of specialists in other countries; issuance of guidance for asset recovery; multidisciplinary approach and extended operational mandates; successful use of the Convention as a legal basis

<i>Article of the Convention</i>	<i>Number of States with good practices</i>	<i>Number of good practices</i>	<i>Most prevalent good practices (in order of article of the Convention)</i>
Article 53	4	5	Foreign States treated like any other legal person when initiating civil action in courts of another jurisdiction to establish title to or ownership of property acquired through a corruption offence, or to claim compensation or damages when harm is caused by such an offence; explicit regulation of the participation of foreign States in civil proceedings
Article 54	16	16	Detailed and comprehensive legislation on the enforcement of foreign seizure and confiscation orders; establishment of non-conviction-based confiscation or ability to enforce foreign non-conviction-based confiscation orders; proactive issuance of freezing orders; establishment of specialized asset recovery units; measures to ensure voluntary preservation of property
Article 55	10	14	Infrastructure to facilitate successful asset recovery, such as guidance, specialized units or bank registers; close cooperation between requesting and requested States; use of the Convention as a legal basis; explicit protection of interests of bona fide third parties provided for by legislation
Article 56	2	2	Spontaneous sharing of information with a wide range of counterparts; placement of overseas liaison officers to facilitate information-sharing
Article 57	4	6	Return of property to bona fide third parties; establishment of a confiscated assets fund for victim compensation; clear recognition of the principle of asset return in legislation; possibility of compensation from public funds if an injured person cannot obtain full satisfaction of a claim through enforcement of a title
Article 59	4	4	Use of various networks and agreements to facilitate international cooperation; use of the Convention as a legal basis or direct application of its self-executing provisions

III. Implementation of chapter V of the Convention

A. General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

1. General provision (art. 51)

5. Almost all States had frameworks or arrangements for asset recovery (art. 51) in place, but relevant measures at the regulatory, institutional and operational levels varied significantly.

6. At the regulatory level, several States had enacted a dedicated legislative instrument, while others could apply various procedures prescribed in different sources of domestic legislation, such as the laws governing criminal procedure, mutual legal assistance, money-laundering, corruption or proceeds of crime. Where the procedures were governed by different legislation, some States could provide mutual legal assistance in relation to asset recovery to designated foreign States

only in relation to limited underlying offences, or subject to the strict application of dual criminality requirements, which was identified as a challenge. Other States had such limitations but made an exception for assistance with regard to money-laundering and related offences. In several States, the asset recovery regime was found to be in the early stages of development. Five States did not have specific provisions referring to the concept of asset recovery or return as a fundamental principle of cooperation. One State referred to a new law on mutual legal assistance that was being prepared at the time of review to strengthen cooperation, in particular with States that were not members of the European Union, including in asset recovery.

7. Most States did not make cooperation for the purposes of confiscation conditional on the existence of a treaty but could provide such assistance on the basis of reciprocity, domestic legislation, or both. In many States, the Convention or regional treaties were directly applicable, and some States had successful experiences with the direct application of the Convention, including with regard to asset return. Although several States explicitly confirmed their ability, in principle, to use the Convention as a legal basis for asset recovery, in practice, the number of cases in that regard was limited. Those States referred to the burdensome requirements of additionally having to designate States under domestic legislation for such cooperation or the difficulties of such application of the Convention in practice given the absence of clear domestic policy and procedure.

8. With regard to the scope of mutual legal assistance regimes and the use of other legal instruments, several States parties had acceded to regional or international conventions regulating mutual legal assistance in criminal matters as a way to overcome the obstacles that hampered the provision of assistance in asset recovery cases, in particular in cases involving States parties with different legal systems and traditions, and to improve the effective exchange of information.

9. At the institutional level, States differed in whether they used a centralized or a decentralized approach. The creation of dedicated agencies or units for international cooperation in the area of asset recovery was commended in several States parties as an enhancement of the State's capacity to conduct investigations and seizures, supported by the corresponding amendments to domestic law. A small number of States had designated or were in the process of establishing a dedicated entity for the recovery of assets, while others engaged multiple agencies for that purpose. However, lack of resources and inter-agency coordination were identified as posing practical challenges in many States.

10. At the operational level, States varied in their experiences of dealing with mutual legal assistance in relation to asset recovery. Several States reported a considerable number of successful cases. Some States indicated that they had never received a request in relation to asset recovery despite the fact that legal avenues were available in their jurisdictions (see section C, on article 57, below, for more information). A few States indicated that they had never formally refused an asset recovery-related request.

11. Closely related to measures to prioritize asset recovery are the availability of guidance materials on mutual legal assistance or asset recovery and the provision of sample forms to assist other countries in their requests. Several States had already formulated or were in the process of developing asset recovery guides or guidelines for the provision of mutual legal assistance. Some States had also developed model forms for mutual legal assistance requests.

12. Several States were found to apply flexibility in terms of international cooperation measures, such as a wide array of tools, including multilingual guidelines on asset recovery, the proactive freezing of assets in the absence of a foreign request and the proactive sharing of information, including ensuring consultations with requesting States to facilitate successful requests. One State party indicated its willingness to review draft requests for mutual legal assistance. The United States of America had established an asset recovery initiative to provide

dedicated resources making it possible to litigate more cases, including in rem proceedings in respect of property located in and outside the country if the property was traceable to criminal acts involving foreign or domestic corruption in, or partly in, the country, which had allowed for the restraint of more than \$2.6 billion in assets linked to foreign corruption; those assets were not limited to money but also included endangered species. In that country, the sharing of proceeds did not require a prior request.

Box 1

Good practices identified in the implementation of article 51 of the Convention

Regulatory level. The efforts by Slovakia to initiate reforms to enhance national capacity to conduct financial investigations and seizures, supported by corresponding legal amendments and structural resources, were recognized by reviewers.

Institutional level. The Plurinational State of Bolivia had established an inter-agency working group on asset recovery with the support of the Stolen Asset Recovery (StAR) Initiative to foster inter-institutional coordination for asset recovery purposes. In addition, France had established specialized offices to deal with the seizure, confiscation and management of criminal assets. An asset forfeiture unit tasked with handling asset forfeiture cases, coupled with a criminal asset recovery fund, had been established in Namibia. In South Africa, the existence of specialized structures in the National Prosecuting Authority facilitated the recovery and return of assets. The United States pursued recovery proceedings in cooperation with foreign competent authorities in which the Kleptocracy Asset Recovery Initiative of the Department of Justice litigated and made active use of the instrument of civil forfeiture.

Operational level. France and South Africa posted magistrates and prosecutors specialized in asset recovery, and who could act as liaison officers, to other countries to facilitate mutual legal assistance, improving the efficiency of the asset recovery system. In the Kingdom of the Netherlands and Romania, the multidisciplinary approach taken by domestic institutions, including the use of specialized teams in the context of an extended operational mandate, was praised, as were the functions of authorities in Norway specialized in the detection, seizure, confiscation and return of proceeds of crime. The high number of requests for mutual legal assistance from other States parties handled by the Bolivarian Republic of Venezuela was commended.

Guidance materials. The Bahamas had published a procedural manual on international cooperation on its government website to assist other States in determining how to best seek cooperation. The Plurinational State of Bolivia had drafted a guide on the preparation of requests for mutual legal assistance in criminal matters relating to corruption offences, with the aim of standardizing and improving the quality of active requests, including in the area of asset recovery. South Africa had developed an internal policy guide for its Asset Forfeiture Unit on handling asset recovery requests and managing requests received informally. In Sweden, all incoming requests for international legal assistance were recorded in a publicly accessible register.

13. Several States provided information regarding their experience with cooperation and assistance in the area of asset recovery; however, comprehensive statistics on incoming and outgoing requests and case examples, including what measures were afforded, were mostly not available owing to the lack of case management systems for tracking international cooperation requests. One State referred to its ongoing efforts to adopt a mechanism for the systematic evaluation of the effectiveness of decisions on asset seizure and the enforcement of confiscation orders in criminal cases, including through the systematic collection of statistical

data, as provided for in its action plan against money-laundering and terrorism financing.

2. Spontaneous transmission of information (art. 56)

14. Almost all States allowed for the spontaneous transmission of information, although some required prior approval for such transmission or limited it to certain institutions, such as judicial authorities or financial intelligence units, through specific channels. A number of States stipulated the respective legal basis in their anti-money-laundering, mutual legal assistance or anti-corruption legislation, while several others provided for such transmission pursuant to bilateral or multilateral treaties, including the Convention. Several States also referred to memorandums of understanding between their financial intelligence units or other supervisory authorities and foreign counterparts on the matter. One State party reported that, if such a formal agreement had not been concluded, it could still disclose information on the basis of an ad hoc agreement. In many cases, transmission was subject to confidentiality requirements or to prior requests. States without specific legislation either had existing practices regarding the spontaneous transmission of information or indicated that there was no legal prohibition of the practice. Nevertheless, in three States, spontaneous information-sharing was not possible. Recommendations were issued where legislative and other measures for the spontaneous transmission of information were not adequate, for example, where the transmission of information was limited to certain institutions, to the proceeds of certain categories of offences or to a certain group of countries.

15. Another trend identified was the spontaneous transmission of information through practitioners' networks or platforms. Most States empowered their financial intelligence units to exchange financial intelligence without a prior request by virtue of their membership in the Egmont Group of Financial Intelligence Units. Furthermore, more than half of States could proactively share information through law enforcement channels or asset recovery networks, the International Criminal Police Organization (INTERPOL), the European Union Agency for Law Enforcement Cooperation (Europol), the Camden Asset Recovery Inter-Agency Network and other regional asset recovery inter-agency networks.

Box 2

Good practices identified in the implementation of article 56 of the Convention

In Norway, law enforcement agencies, the prosecution services and the financial intelligence unit could disseminate information spontaneously and upon request. Specific legislation regulated the transfer of data to other countries.

3. Bilateral and multilateral agreements and arrangements (art. 59)

16. Almost all States had agreements or arrangements to enhance international cooperation undertaken pursuant to chapter V. States parties also referred to participation in asset recovery networks, as mentioned above. With regard to bilateral or multilateral arrangements, States referred to dedicated agreements on asset recovery and to mutual legal assistance agreements with specific asset recovery provisions.

Box 3

Good practices identified in the implementation of article 59 of the Convention

Mongolia participated regularly in a regional network's activities to promote international cooperation in asset recovery and effectively used the network in asset recovery cases.

17. Some States parties reported that they collected statistical data on cases in order to assess and strengthen the implementation of the Convention, in particular chapter V.

B. Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

1. Direct recovery of property (art. 53)

18. In most States, foreign States could initiate civil action to establish title to or ownership of property acquired through the commission of a Convention offence (art. 53, para. (a)) or claim compensation or damages for harm caused by such an offence (art. 53, para. (b)) on the basis of domestic procedural law. However, few States cited experience with foreign States initiating civil litigation in their jurisdictions, and in the vast majority of States, no such precedents existed.

19. Only seven States had incorporated explicit locus standi for foreign States in their legislation. In three of those States, legal standing for foreign States was conditional upon the recognition of the foreign State, and in one State the procedure required for recognition remained unclear.

20. In most States, legal standing for States was implicit. Many States reported that domestic laws granting locus standi to natural and legal persons also covered foreign States. Moreover, some States in which locus standi was granted to “persons” asserted that the term included legal persons and foreign States. A few States explicitly regulated the capacity of States to be a party in civil proceedings and explained that that would also include foreign States. In addition, in the courts of Slovakia, foreign States could initiate civil proceedings in their capacity as foreign legal persons. Nevertheless, in nearly half of the States, the lack of a clear legal basis or relevant jurisprudence resulted in recommendations being issued to ensure full compliance with the requirements of the Convention.

21. In States where no explicit procedural laws existed, primarily common-law countries, foreign States were usually entitled to initiate civil action under the general principles of civil litigation, having the same rights and obligations as private litigants. Several States referred to the need to observe specific procedures, including, among others, hiring local counsel, demonstrating legitimate interest or paying a deposit before a lawsuit is heard.

22. Most States reported that their domestic civil laws provided for the payment of compensation or damages to injured parties, which could, in theory, include foreign States, in the absence of explicit regulations (art. 53, para. (b)). In addition to civil litigation, prior legitimate ownership could often be determined and compensation ordered in criminal proceedings. Compensation could usually be granted to victims of a crime. In addition, in many States, affected persons could file civil claims in criminal court or join civil suits with pending criminal proceedings. In only eight States, foreign States could not sue for compensation or damages; in two of those, there was also no way to recognize another State’s claim of legitimate ownership. Three of those States limited locus standi to foreign individuals, organizations or entities but excluded States from filing a civil suit. Five States instead referred to the rights of foreign States as victims in criminal proceedings.

23. Many States referred to the general rights of victims or bona fide third parties in criminal proceedings as constituting sufficient measures to permit courts or competent authorities to recognize another State party’s claim as a legitimate owner of property when deciding on confiscation (art. 53, para. (c)). That was considered consistent with the trend of not differentiating between States and other legal persons. Means in that regard included the possibility of filing civil claims in

criminal proceedings or initiating ancillary proceedings over confiscated assets, the possibility for the court to award the property to a prior legitimate owner by way of exempting their property from confiscation or ordering its return upon confiscation, and providing prior legitimate owners with the right to appeal confiscation orders.

Box 4

Examples of implementation of article 53 (c)

In Slovakia, foreign States could initiate civil proceedings in domestic courts to determine property rights on the basis of the Civil Procedure Code in their capacity as foreign legal persons. In addition, according to the Code of Criminal Procedure, a foreign State could claim its interest in property during criminal confiscation proceedings as an injured person (victim) or a participating party, or during civil proceedings as a third party declaring property rights.

In the United States, a criminal forfeiture order remained preliminary if a third party, which could be a State, filed a petition asserting an interest in the property to be forfeited. The court had to then conduct an ancillary proceeding in which all potential third-party claimants could challenge the forfeiture by asserting a superior interest in the property and could seek the return of the property or compensation (Federal Rules of Criminal Procedure).

24. Owing to the absence of explicit legislation, cases and practical experience, it usually remained unclear what was required domestically to establish a State's good faith or prior legitimate ownership in criminal or restitution proceedings. Procedures sometimes differed according to the crimes triggering confiscation where States had regulated procedural aspects in newer laws, for example, in one State where third-party rights depended on whether forfeiture was based on the anti-money-laundering act, the anti-corruption act or criminal procedure law for all other offences. For several States, there were no domestic means at all for foreign States to have their legitimate ownership recognized in confiscation proceedings, with two States stating that legislative reform in that regard was ongoing.

25. Only a few States described specific ways of giving notice to prospective victims or legitimate owners of property to allow them to demonstrate their ownership during asset recovery proceedings. In the United States, notice and claim procedures existed in both civil and criminal forfeiture proceedings, and all notices to prospective legitimate owners of property were published on a government website, as well as in any foreign State in which there were prospective claimants that could bring a claim of legitimate ownership.

2. Recovery of property through international cooperation in confiscation (arts. 54 and 55)

(i) *Confiscation through adjudication of money-laundering offences (art. 54, para. 1 (b))*

26. The legislation of the vast majority of States provided for the confiscation of property of foreign origin through criminal proceedings and convictions for money-laundering in accordance with domestic law. Generally, States parties did not formally distinguish between proceeds of local and foreign origin that could be the subject of a confiscation order. Only six States were found to be unable to confiscate property of foreign origin by adjudication of an offence of money-laundering or similar offences, while an additional State had jurisdiction only over predicate offences committed by its citizens. One State was able to order confiscation as a mandatory punishment only for qualified money-laundering offences.

(ii) *Confiscation without a criminal conviction (art. 54, para. 1 (c))*

27. The majority of States had taken measures to allow for confiscation without a criminal conviction, either through confiscation in rem during criminal proceedings

or through civil forfeiture, with the latter providing the advantage of requiring a lower burden of proof. Several States had the options of non-conviction-based confiscation in cases where a person absconded or died and of civil forfeiture in cases of serious crime or property considered tainted. At least one State did not allow confiscation without a criminal conviction and could not execute foreign decisions in that regard. Another State reported that, despite the absence of domestic non-conviction-based confiscation, it could enforce foreign non-conviction-based confiscation orders.

28. The scenarios allowing for non-conviction-based confiscation ranged from the death or flight, and sometimes the mere absence or unknown identity, of the accused, to the indefinite descriptions of “other appropriate cases”, “any other reason whatsoever”, “in cases where there is a legal impediment to prosecution” and where there were “adequate grounds” for confiscation or forfeiture. In one State, while the object or instrumentalities used to commit an offence could be confiscated without conviction in the case of the death of an offender, similar measures were not foreseen in relation to the proceeds of crime, to property, equipment or other instrumentalities destined for use in offences, or to the flight or absence of an offender.

Box 5

Examples of confiscation of property acquired through or involved in the commission of a Convention offence

In Antigua and Barbuda, under limited circumstances, the criminal forfeiture provisions of the Proceeds of Crime Act could be applied in the absence of a conviction, namely, in cases where, before a court had passed sentence, a person absconded in connection with an offence specified in the schedule to the Act. In such cases, the Office of the Director of Public Prosecutions could apply to the court for a forfeiture order in respect of any tainted property (Proceeds of Crime Act).

In Malawi, authorities could order the confiscation of property of foreign origin through provisions on civil forfeiture and confiscation that covered proceeds of crime, tainted property and instrumentalities of crime, whether located in Malawi or elsewhere (Financial Crimes Act). Those measures could also be taken at the request of another country. The Financial Crimes Act dealt with non-conviction-based asset forfeiture, and also provided for confiscation where a person had died or absconded. The law allowed Malawi to provide assistance in response to requests for cooperation made on the basis of non-conviction-based proceedings.

29. Approximately a quarter of States had not established non-conviction-based confiscation or forfeiture, while six States limited it to proceeds or instrumentalities of “serious crime-related activity”, money-laundering, illicit enrichment or non-corruption offences. In one State, a detailed anti-money-laundering act provided for civil forfeiture and interim measures. However, in the absence of a mutual legal assistance act, assistance was limited to money-laundering cases. Whether the anti-money-laundering act also applied to predicate or stand-alone corruption offences could not be clarified. Two States reported that they had considered but rejected the introduction of non-conviction-based confiscation. Four States could not order confiscation in the absence of a domestic criminal conviction but could, in some instances, execute foreign non-conviction-based confiscation orders.

- (iii) *Enforcement of foreign confiscation orders and foreign requests for confiscation (art. 54, para. 1 (a), and art. 55, para. 1)*

30. While several States had never received requests for the execution of a foreign confiscation order, confiscation orders issued by a court of another State could be enforced or given effect in most States. Varying admissibility requirements existed for the recognition of such orders. For instance, one State could enforce only those

orders issued by competent authorities of “designated countries”, but not all States parties were designated countries. Another State could give effect to foreign confiscation orders only in cases where the convicted person is a national of that State or a foreigner or stateless person resident in its jurisdiction. Other conditions, such as dual criminality, the finality of the order and the observance of due process in rendering the order, also had to be met.

31. To render an order enforceable as or like a domestic order, the vast majority of States required exequatur proceedings in the form of registration, review and validation of enforceability by domestic authorities – usually the court, or sometimes the central authority or attorney general. The extent of exequatur proceedings varied greatly. While in some countries, a simple review of an order against established requirements for recognition was sufficient, in the Kingdom of the Netherlands and the Russian Federation, for example, in addition to procedural requirements, an open hearing was held with the participation of a public prosecutor and a defendant, with notice of the hearing being given to other interested parties, including the competent foreign authority. There was also the possibility of appeal.

32. In common-law countries in particular, the exequatur or enforcement, as well as the taking of interim measures or the return of assets, were often at the discretion of the attorney general. That frequently resulted in recommendations to monitor whether the requirements of the Convention were taken into account when such discretion was exercised, particularly where no guidelines existed on the possible course of action for the attorney general, such as in cases covered by article 57 of the Convention.

33. Five States could enforce foreign confiscation orders only when they related to cases of money-laundering (and sometimes the financing of terrorism) and, in one State, related predicate offences. Moreover, in another State, the legal basis for enforcing foreign confiscation orders extended only to some States parties to the Convention. Similarly, two States limited enforceable confiscation orders to those issued on the basis of an underlying “serious offence” according to the receiving State’s domestic legislation.

34. Eight States could not enforce foreign confiscation orders, and a domestic confiscation order had to be obtained. In several States, it remained unclear whether the possibility of a domestic order existed in lieu of giving effect to foreign orders or what the required procedure would entail, often owing to a lack of experience or any requests being received. In turn, several States had the option of either directly enforcing a foreign order or obtaining a domestic one on the basis of a foreign confiscation request.

Box 6

Examples of measures to give effect to foreign confiscation orders

In Romania, authorities had the power to freeze or seize property upon a request or order issued by a foreign court or competent authority by means of a letter rogatory. The enforcement of seizure and freezing orders issued by European Union member States was regulated by regulation 2018/1805 of the European Parliament and of the Council on the mutual recognition of freezing orders and confiscation orders and Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders.

In Honduras, authorities could apply provisional measures on their own initiative or upon the request of another State, with or without a foreign freezing or seizure order.

- (iv) *Enforcement of foreign freezing or seizure orders or interim measures based on foreign requests (art. 54, para. 2, and art. 55, para. 2)*

35. Most States could execute freezing or seizure orders issued by a foreign court or sometimes even by another competent authority, could freeze or seize assets upon

the request of another State, or could do both. The execution of search or seizure orders or requests was possible either directly, sometimes after a domestic exequatur decision based on domestic evidentiary standards, or indirectly through the issuance of a corresponding domestic order. The legal bases for cooperation included treaties, bilateral agreements, domestic legislation, reciprocity or any combination thereof. However, one State could rely only on mutual legal assistance treaties for assistance, as it had no laws governing mutual legal assistance.

36. As with confiscation orders, many States indicated that they had little experience with foreign orders or requests for interim measures. Six States limited the ability to give effect to search and seizure orders to only those involving certain underlying offences, such as money-laundering and bribery, or those considered “serious” under the requested State’s domestic legislation; one of those States could, in addition, give effect to search and seizure orders only from specified States.

37. More than half of the States parties analysed in the present report received recommendations in relation to article 54, paragraph 2, while one quarter received recommendations in relation to article 55, paragraph 2, of the Convention. That disparity resulted from the lack of relevant legislation, which prevented States parties from developing any practices regarding the enforcement of foreign freezing or seizure orders. Recommendations varied from ensuring that legislation was in place to allow for the enforcement of foreign orders to ensuring, in the case of States where an authority had the discretion to enforce them, that such discretion was exercised in accordance with the Convention.

Box 7

Examples of measures available for the identification, tracing, seizure and freezing of assets

Angola could trace, freeze or seize property upon a foreign request or order in accordance with its Law No. 13/15. Such requests should take the form of letters rogatory transmitted directly between the competent judicial authorities. In urgent cases, foreign judicial authorities could communicate directly with their counterparts in Angola, including by electronic means, to request the adoption of a provisional measure. At the request of a public prosecutor, courts could order any provisional measures needed for the preservation and maintenance of seized assets.

38. Four States were able to obtain and execute a domestic search or seizure order on the basis of a foreign order but had no mechanism in place to freeze or seize property on the basis of a request from another State. In Slovakia, a court could revoke a preliminary seizure decision when a foreign State failed to request within a reasonable period the execution of a decision that the foreign State had made concerning seized assets.

(v) *Additional measures for preservation of property (art. 54, para. 2 (c))*³

39. Twenty-four States could issue domestic freezing or preservation orders proactively, without a request or a foreign court order, on the basis of media reports or a foreign arrest, criminal investigation or charge. In Angola, courts could, at the request of a public prosecutor, order any provisional measures needed for the preservation and maintenance of seized assets. The authorities in the Kingdom of the Netherlands could initiate their own investigation on the basis of a foreign arrest or criminal charge that involved a substantial suspicion of criminal offences without asking for a foreign request. However, in at least two States, there were no mechanisms to preserve property for confiscation in the absence of foreign requests and domestic criminal proceedings.

³ The management of seized or confiscated assets was reviewed under the first cycle and is not covered by the scope of second cycle reviews. Therefore, a more in-depth analysis of the topic can be found in thematic reports related to the first review cycle.

40. In connection with the management of seized or confiscated assets, which was reviewed under the first cycle, under article 54, paragraph 2 (c), some States reported on measures regarding the management of seized assets. Approaches varied from law enforcement, tax or finance authorities handling the management, preservation and sale or usage of seized and confiscated assets to the use of dedicated asset management agencies or units. In the Kingdom of the Netherlands, the administration of assets was the responsibility of the Asset Management Office and other relevant agencies. In Slovakia, the office for the administration of seized property was tasked with the management of seized, but not confiscated, assets. In Antigua and Barbuda, in the case of money-laundering offences, the Office of National Drug and Money-Laundering Control Policy maintained the assets that were subject to a freezing order. Some States had the option of appointing a trustee, asset manager or *curator bonis* in charge of preserving or protecting the property and its value, including by becoming a party to any civil proceedings affecting the property, providing for proper insurance or taking care of a seized or confiscated trade or business, including its employees. Other States had regulations in place for the sale or disposal of perishable property, including in cases where maintenance costs exceeded the assets' value. Nepal instituted a proceeds management department in 2021 with a view to, inter alia, preserving property for confiscation in the absence of a request from another State.

(vi) *Prerequisites and content required for mutual legal assistance requests (art. 55, paras. 3, 4 and 6)*

41. All but four States regulated the required content of requests for mutual legal assistance (art. 55, para. 3) domestically, and the rendering of assistance was subject to domestic procedural law or bilateral or multilateral agreements or arrangements (art. 55, para. 4). In one State, requirements on the format and content of mutual legal assistance requests found in the legislation governing extradition were deemed insufficient and a recommendation was issued in that regard. In at least three States, requirements contained in guidance on mutual legal assistance were deemed sufficient. The required content of requests included information to satisfy the dual criminality requirement, or a proportionality review in practice, as well as information about the non-appealability of an order or the time limit for carrying out the request. Reviewers issued recommendations to specify the required content of mutual legal assistance requests in order to provide more guidance to requesting States, going as far as recommending that States transpose into domestic law the information that requesting States should provide in accordance with article 55, paragraph 3, as mandatory requirements.

(vii) *Grounds for refusal of mutual legal assistance requests (art. 55, para. 7)*

42. Almost all States listed grounds for the refusal of incoming mutual legal assistance requests. Many States could provide assistance regardless of the value of the property, while some States listed or took into account a de minimis value or the imposition of an excessive burden on the requested State's resources as possible reasons for refusal. The de minimis values included amounts such as \$800 and \$25,000. Some States implemented flexible approaches. In one State, although the domestic legislation allowed for the refusal of a request if the property concerned was of a de minimis value, authorities of that State confirmed that, in practice, assistance was provided irrespective of the value. In the Philippines, the executing authority would coordinate with the requesting State on whether to pursue forfeiture where the costs and expenses of processing requests exceeded the value of the assets involved.

43. Sufficient evidence was needed by most States in order to execute requests for mutual legal assistance, but States would generally ask the requesting State to present such evidence prior to refusing assistance. Malaysia would provisionally close a case if it did not receive the requested additional information within a reasonable period of time, but would reopen it upon receipt of the information,

which was commended as a good practice. In Antigua and Barbuda, if requested additional information was not furnished within a reasonable period, the central authority could consider the request to have been withdrawn.

44. Other reasons cited by States for the refusal of requests included an inability to prosecute the underlying offence in the requested State, whether because of lack of dual criminality, a conflict with a domestic investigation, prosecution or judicial proceeding, an undue delay by the requesting State, the expiration of the statute of limitations in the requesting or requested States, or the failure of the offence to meet the definition of “serious offence” as set out in the receiving State’s domestic legislation. In addition, several States could refuse a request for assistance if it was not justified, given the “limited significance of the offence”, where the request would require the commitment of resources substantially greater than the amount sought, or could refuse a request if it imposed an excessive burden on the requested State. Problems with dual criminality requirements arose in States that had not adequately criminalized basic offences such as bribery or had not established liability for participation in criminal offences or liability of legal persons, which would lead to a denial of mutual legal assistance requests given the domestic non-criminalization of underlying offences. Additional grounds for refusing requests were potential prejudice or a threat to the requested State’s public order, sovereignty, security or fundamental principles of law, the possible risk to the safety of any person or to human rights, and the prosecution of offences of a political character or prosecution considered discriminatory against a person’s race, gender, religion, nationality or political views. Moreover, violation of the *ne bis in idem* principle was grounds for refusal where asset recovery proceedings were considered punitive in nature. One State could refuse assistance if the underlying evidence had been acquired through a criminal offence, or if the proceedings had violated basic human rights or the rule of law.

(viii) *Consultation with requesting party (art. 55, para. 8)*

45. Except for 13 States that had no specific legal framework on the matter, all States indicated that consultations with a requesting State would be held before the lifting of any provisional measure and that the requesting State would be allowed to present its reasons in favour of continuing the measure. With regard to such consultation, States either had specific legislation, applied the Convention directly, included relevant provisions in all their bilateral treaties or, in the case of roughly one third of States, could consult as a matter of practice, such as on the basis of a policy of providing the widest measure of assistance possible. The majority of States consulting as a matter of practice received the recommendation to make statutory amendments in that regard. In one State, it was noted that the legislation on mutual legal assistance did not prevent the State from inviting a requesting State to present its reasons in favour of continuing provisional measures before lifting them. Of the 13 States where no specific laws with regard to consultation with requesting States existed, several had never received a request, so they could not refer to any practice regarding consultations.

46. Consultations were considered mandatory in States where the Convention was self-executing. Where consultations were not mandatory or common, at the very minimum, notice was given to the requesting State before lifting any provisional measures.

C. Return and disposal of assets (art. 57)

47. As observed in previous thematic reports, the regulation of asset return varies considerably among States parties. Some provisions on the return or disposal of assets were in place in most States. Few States had practical experience with the return of sizeable amounts of assets and most States indicated that no return had taken place so far or no requests had been received or made. In that connection, a lack of agreements was noted. In the reviews analysed, most States parties had gaps

in the implementation of article 57 of the Convention, in particular in relation to the first three paragraphs of the article. Recommendations were issued for those States parties in that regard.

48. In most States, assets became the property of the State when confiscated, but could subsequently be returned to or shared with the requesting State (art. 57, paras. 2 and 3), although some States required an ad hoc agreement with the requesting State to allow for the sharing of property or its value. In one State, the money obtained following the execution of a confiscation order accrued to the State budget if its value was less than the equivalent of 10,000 euros. If the value was higher, 50 per cent of the amount was transferred to the requesting State. In cases where a relevant treaty, including the Convention, provided otherwise, the treaty prevailed. However, in such cases, for the Convention to prevail, requesting States would have to explicitly base their request on it. In one State where no such ad hoc agreement had been entered into, it remained unclear how the responsible authority would exercise its discretion. Confiscated money or proceeds of the disposal of other assets usually flowed into the treasury, or sometimes into dedicated funds.

Box 8

Examples of measures available for the return of assets

In Nepal, confiscated assets were transferred to the Proceeds of Crime Management Fund, which could, inter alia, allocate to a foreign country the amount received from auctioning off property confiscated pursuant to a foreign order or judgment. It could also return property to a prior legitimate owner if so ordered by the court or if so stipulated in an asset-sharing agreement.

Afghanistan provided for the establishment of a fund for asset recovery and asset sharing to serve as a repository for all monies derived from the fulfilment of confiscation, recovery and forfeiture orders.

The Confiscated Assets Fund of the Bahamas allowed for, inter alia, the compensation of victims or payment of third parties for interests in property, as appropriate, if so decided by the Confiscated Assets Committee.

Despite the absence of specific provisions, Pakistan returned the proceeds of embezzlement of private funds to a financial institution in a foreign jurisdiction. Furthermore, the National Accountability Bureau could facilitate the “indirect recovery” of assets through voluntary return and plea bargaining, and had done so in two cases.

49. Some provisions on the return or disposal of assets were in place in most States, although mandatory and unconditional return in cases of embezzlement of public funds or the laundering of those embezzled funds (art. 57, para. 3 (a)) was not provided for under domestic legislation in any State. In several States, confiscated property could be returned through direct application of the Convention. In all other States, return was usually at the discretion of the competent authorities, while those States in which the Convention was applicable directly indicated that discretion must be exercised taking into account article 57, paragraph 3 (a). One State party reported that, even where there was no victim having suffered a pecuniary loss, the authorities encouraged asset sharing and could initiate processes to transfer forfeited assets, for the benefit of those harmed by corruption, even in the absence of a request from another State or the assistance of that State in the forfeiture proceedings. One State, where no guidance on the Attorney General’s discretion was available, was recommended to consider preparing detailed guidelines on handling incoming asset recovery-related assistance requests.

50. In some States, asset return was foreseen only for certain offences, under narrowly defined procedural circumstances or at the discretion of the relevant minister. Four States had a legal basis for returning seized assets but none for the return of confiscated assets. One of those States relied on asset-sharing agreements to

transfer confiscated property, one State refrained from confiscation for the return of seized objects, and no procedure for the return of confiscated assets could be clarified for the other two States. The States members of the European Union applied a differentiated European Union internal framework for the return of confiscated assets, which foresaw 50/50 sharing by default over a certain threshold. However, as reported by one State, in the case of States that are not members of the European Union, the domestic law provided only for the permissive transfer of seized property. One State had bilateral treaties with four other States according to which recovered property would be shared in equal parts. Four States reported that amendment bills were being prepared to allow for the return of assets to a requesting State and ensure the implementation of article 57.

51. In all but five States, the applicable legislation provided for the protection of the interests of bona fide third parties in recovery and return proceedings (art. 55, para. 9, and art. 57, para. 2).

52. Most States could deduct reasonable expenses incurred (art. 57, para. 4), including in direct application of the Convention. Several States would usually return assets in full without any deductions, and three States reported deducting expenses only in exceptional cases or sharing them on the basis of reciprocity. Four States requested coverage of all costs associated with mutual legal assistance requests by the requesting State. The legislation in Nepal stipulated the same, but in practice Nepal had never requested that expenses incurred in delivering assistance be borne by a requesting State. With regard to a case in which assistance had been refused owing to extraordinary expenses, as reported by one State party, a recommendation was issued.

53. Most States could conclude, on a case-by-case basis, agreements or arrangements for the final disposal of confiscated property, and a few States had concluded such agreements or arrangements, leading to the successful or partial return of assets to the requesting State (art. 57, para. 5). Some States reported that they had not entered into any agreements or arrangements for the final disposal of confiscated property in specific cases.

IV. Outlook

54. The present report reflects the analysis of 82 completed executive summaries and more detailed information provided in the country review reports. The secretariat will continue the analysis as more data become available from completed country reviews. The completion of further country reviews will enable the conduct of a more comprehensive analysis of trends in the implementation of the Convention, with a view to preparing a study on the state of implementation of the provisions under review during the second cycle, to complement the study developed on the provisions under review during the first cycle.⁴

⁴ United Nations Office on Drugs and Crime, *State of Implementation of the United Nations Convention against Corruption: Criminalization, Law Enforcement and International Cooperation*, 2nd ed. (Vienna, 2017).