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(CiFAR), a non-governmental organization not in
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The following document is being circulated in accordance with paragraph 1 (i) of resolution 4/6 of the Conference of the States Parties to the United Nations Convention against Corruption and rule 17, paragraph 3 (b), of the rules of procedure for the Conference.

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CIVIL SOCIETY ASSET RECOVERY PRINCIPLES

Submission by CIFAR - Civil Forum for Asset Recovery e.V. to the 10th Session of the UNCAC
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INTRODUCTION

This document presents a set of principles that aim to promote transparent accountable and participatory asset recovery in line with international standards and best practice. These principles draw on the UNCAC, international human rights law, soft law instruments and experience from asset recovery experts to set out minimum standards for asset recovery across three areas: A) asset management, B) anti-corruption sanctions, and C) victims and asset recovery.¹ These principles have been developed by civil society organizations through a collaborative process and are designed to form the basis for further development in national asset recovery policy.

A. CIVIL SOCIETY PRINCIPLES FOR THE ACCOUNTABLE, TRANSPARENT, AND PARTICIPATORY MANAGEMENT OF FROZEN AND RECOVERED ASSETS

1. An asset management mechanism should be assigned or established by law to manage and maintain the value of frozen/seized and confiscated assets. This mechanism should have clear administrative powers and transparency and accountability responsibilities.
2. Asset management mechanisms should be adequately equipped with the necessary capacity and resources to undertake their work.
3. Asset management mechanisms should meet the highest standards of transparency and accountability. They should at a minimum provide public and easily accessible information on budgets, structures, staffing and expenditure, with regular audits of their work carried out and published.
4. Proactive and timely public disclosure of accessible information on the receipt, management modalities and disposition of assets should be mandated. This should be digital where possible and available without cost.
5. National, public databases of international and domestic recoveries comprising of frozen/seized and confiscated assets should be established, available online, updated regularly, easily accessible, and in compliance with data protection measures.
6. Asset management mechanisms should have effective oversight to ensure accountability and prevent potential misuse or misappropriation of assets. This can include through procedures of

¹ Civil Society Principles for Accountable Asset Return have also been developed and were submitted to the CoSP 9 and UNGASS 2021 against corruption:

https://www.unodc.org/documents/treaties/UNCAC/COSP/session9/CAC-COSP-2021-NGO-1_E.pdf

parliament, by courts and supreme audit institutions, and/or by civil society. Oversight mechanisms should have the power to ensure compliance with other standards set out here.

Any oversight system or process should not replace remedies available under ordinary law, which must remain fully available, particularly for complaints over possible misuse or misappropriation of assets.

7. Broad public participation, including through independent civil society organizations, should be part of the management and disposition of recovered assets from the earliest possible point in the legal process.

This could include formal inclusion of independent civil society organizations in the oversight of asset management mechanisms.

8. Asset management mechanisms should be designed to contribute to the realization of human rights and sustainable development goals, including implementing social investment projects in the countries and communities of origin of the assets.

Civil society actors, identifiable victims and groups representing victims should be involved in decisions around the use of managed assets.

B. CIVIL SOCIETY PRINCIPLES ON THE USE OF ANTI-CORRUPTION SANCTIONS AS A TOOL FOR ASSET RECOVERY

1. Sanction regimes specifically designed to tackle corruption should be established, effectively implemented and monitored. Where appropriate, they should be implemented in coordination with other jurisdictions.
2. Anti-corruption sanctions alone are not enough to address kleptocracy. The imposition of anti-corruption sanctions needs to be linked through law or policy to the opening of investigations by law enforcement into the origins of sanctioned wealth.

Investigations should take place in the sanctioning jurisdiction and, where applicable, the country requesting the imposition of sanctions. The opening of an investigation in the sanctioning jurisdiction should be irrespective of the opening of an investigation in the jurisdiction where the corruption is alleged to have taken place.

As part of this, on implementing anti-corruption sanctions, law enforcement authorities should set out plans to move from sanctions to investigations, prosecutions, and eventual asset recovery.

3. Requests from the jurisdiction where the alleged corruption took place should not lead automatically to the closure of investigations into criminality in the sanctioning jurisdiction. This should be the case even where sanctions have been imposed on the request of that jurisdiction.

Assessments should be made that address the likelihood of the alleged corruption leading to a criminal conviction in the jurisdiction where the corruption took place, and any lifting of sanctions should be taken on the basis of assisting a conviction consistent with the rights of the defence and the principle of a fair trial elsewhere.

4. Criteria should be established for the designation or lifting of anti-corruption sanctions to avoid political interference in this process.

This should include transparent designation criteria and a commitment to apply sanctions consistently.

Designations should be public and published in a timely manner. They should include as much background information on the designation as possible within the remit of ongoing investigations. Court decisions and confiscations relating to those sanctions should be published.

5. Provision should be made to engage with independent civil society organizations in both the sanctioning jurisdiction and the jurisdiction where the corruption occurred throughout the process.

Any reasoned request from civil society for the imposition of anti-corruption sanctions in relation to a given person should be followed by an appropriate examination and responsible authorities should provide a reasoned response within a reasonable timeframe.

6. Information should be publicly disclosed on aggregate amounts frozen under anti-corruption sanctions regimes to allow for public and civil society oversight over the implementation of sanctions regimes.

7. Anti-corruption sanctions should be effectively implemented, and measures should be in place to monitor and enforce compliance.

Institutions or agencies should be assigned or established to oversee the effective implementation of anti-corruption sanctions and respond to breaches. These institutions should be properly resourced.

Breaches of anti-corruption sanctions should incur penalties commensurate with their severity.

8. The imposition of sanctions should be linked to a broader anti-corruption strategy in the sanctioning jurisdiction and in the jurisdiction where the corruption occurred to reduce the need for sanctions in the long term.

C. CIVIL SOCIETY PRINCIPLES ON THE ROLE OF VICTIMS IN ASSET RECOVERY

1. Funds should be returned swiftly to identifiable victims or groups. Where victims cannot be identified, funds should be returned to the countries, regions, communities and peoples from whom they were stolen.
2. Legal and policy frameworks should be established for victim compensation. These should include broad definitions of victims in corruption cases and should be applicable to both domestic and international recoveries.
3. Victims' rights to be heard in judicial proceedings and other procedural rights as set out in international human rights law and under the UNCAC should be respected, protected and fulfilled. This can include through allowing civil society to both represent victims in ongoing cases and to bring complaints on behalf of victims and victim groups in criminal, civil and administrative cases, depending in the respective national jurisdiction.

4. Rules listed in the UNCAC, and international best practice on victim compensation should be taken into account when allocating the confiscated proceeds of corruption.
5. Transaction costs for mechanisms to return funds should be minimized to ensure that victims receive the maximum compensation possible.
6. Recovery of the proceeds of corruption to the victims of that corruption should not preclude the possibility of compensation claims being brought for damage occurred.
7. Where individual victims cannot be identified, or direct compensation is impractical, open and accessible public consultations must be held to determine the allocation of funds to broader groups of victims. All victims must have the opportunity to participate without discrimination, with transparent decision-making and the right to appeal any irregularities.