



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

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Item 3 of the provisional agenda\*

### Asset recovery

## Implementation of the recommendations of the Open-ended Intergovernmental Working Group on Asset Recovery

### Background paper prepared by the Secretariat

#### I. Introduction

1. Since the adoption of the United Nations Convention against Corruption<sup>1</sup> in 2003 and the recognition of the return of proceeds of corruption as a fundamental principle, asset recovery has attracted attention on a global scale. Due to increased international collaboration in asset recovery activities, efforts are steadily being made to reduce barriers to asset recovery and to allow fewer opportunities for safe havens. The Stolen Asset Recovery (StAR) initiative is a joint initiative by the United Nations Office on Drugs and Crime (UNODC) and the World Bank that was launched in September 2007 with the objective of encouraging and facilitating more systematic and timely return of assets. The StAR initiative uses the Convention as its legal framework and complements other international efforts to promote implementation of the Convention's asset recovery provisions.

2. At its first session, held in Amman from 10 to 14 December 2006, the Conference of the States Parties to the United Nations Convention against Corruption adopted its resolution 1/4, in which it decided to establish an interim open-ended intergovernmental working group to advise and assist the Conference in implementing its mandate on the return of proceeds of corruption. The first meeting of the Open-ended Intergovernmental Working Group on Asset recovery was held in Vienna on 27 and 28 August 2007. At its second session, held in Nusa Dua, Indonesia, from 28 January to 1 February 2008, the Conference decided in its resolution 2/3 that the Working Group should hold at least two meetings prior to the third session of the Conference in order to perform its mandated task. Consequently,

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\* CAC/COSP/2009/1.

<sup>1</sup> United Nations, Treaty Series, vol. 2349, No.42146.



the Working Group held its second meeting on 25 and 26 September 2008 and its third meeting on 14 and 15 May 2009.

3. The present background paper has been prepared to inform the Conference on the outcome of the second and third meetings held by the Working Group (section II below) and to provide an account of action taken to implement its recommendations (section III below). It is aimed at assisting the Conference in its deliberations and in charting the way forward to support the recovery of assets.

## **II. Overview of the discussions of the Working Group at its second and third meetings**

4. Reaffirming that chapter V of the Convention presented a unique framework for asset recovery, the Working Group devoted part of its discussion to challenges to the asset recovery process in practice. It was pointed out that divergences in legal systems presented obstacles, including through the requirement of dual criminality. The lack of capacity of prosecutors, investigators and financial intelligence units to deal with asset recovery cases greatly affected many States. The exchange of information between investigative and prosecutorial authorities of requesting and requested States were also considered difficult and often hindered by a deficit in trust between institutions at the national and international levels. Another challenge noted was the excessive length of proceedings. While the financial burden of pursuing asset recovery cases in requested States was not negligible, the costs associated with those procedures were greatly reduced once States had put in place effective systems to support requesting States.

5. The Working Group discussed positive examples, good practices and areas for action. It was stressed that States should strive to have the most comprehensive legal frameworks in place and it was considered equally essential to take all necessary steps to enable practitioners to make the best possible use of the legal tools in place. It was noted that it was necessary to develop a common understanding of standards for procedural and evidentiary requirements in requesting and requested States and to make use of modern information technology in evidentiary procedures and for the fast-tracking of information processing. Forensic accounting and auditing tools were also considered essential for asset recovery.

6. The Working Group discussed technical assistance approaches to supporting asset recovery such as capacity-building and training, gap analyses, the drafting of new laws where necessary, the facilitation of the mutual legal assistance process, knowledge dissemination and the provision of practical tools such as case management systems. Urgent and concerted action was necessary to build or strengthen trust among cooperating States and to promote informal channels of communication through, inter alia, the establishment of a network of focal points. Those focal points would be designated officials with technical expertise in international cooperation and be in a position to assist their counterparts in effectively managing requests. Further, the establishment of regional networks similar to the Camden Asset Recovery Inter-Agency Network (CARIN) was encouraged. The Working Group noted that other areas in which technical assistance was needed were mutual legal assistance and non-conviction-based forfeiture.

7. The Working Group noted with appreciation the work of the StAR initiative in developing practical guides and practitioners' tools and the work of UNODC in establishing a knowledge management consortium and a legal library. It discussed the importance of adopting an operational, practical and analytical approach to developing knowledge products and of ensuring broad consultations with experts from States from all regions and representing all legal systems. Further, it was important to coordinate efforts between existing initiatives in order to maximize the use made of expertise and resources, and forge further partnerships for asset recovery and technical assistance.

### **III. Update on the status of implementation of the recommendations of the Working Group**

#### **A. Developing cumulative knowledge**

##### **1. Recommendations**

8. The Working Group gave high priority to the availability, creation and management of knowledge on asset recovery. It welcomed the progress made by the Secretariat on the envisaged legal library and the comprehensive knowledge management consortium. The Working Group recommended that such a tool should contain not only legislation but also analytical work, in particular for the better understanding of complex procedural requirements. More clarity on the requirements of procedural law, in particular of requested States, would facilitate cooperation and expeditious cooperation for asset recovery. The Working Group called upon States parties to regularly provide information, such as legislation and analytical documents, for the establishment and maintenance of the envisaged UNODC products.

##### *Action taken*

9. UNODC is developing a comprehensive self-assessment checklist, pursuant to Conference resolutions 1/2 and 2/1 (see paras. 10, 39 and 71).

10. UNODC is establishing a legal library that will contain laws and jurisprudence relevant to the Convention. The legal library will build upon existing collections of legislation and on the information elicited through the self-assessment checklist launched in 2007, as well as through the comprehensive self-assessment checklist currently under development, which will be fully compatible with and allow the transfer of information from the existing self-assessment checklist. UNODC has awarded a grant to Northeastern University to develop the substantive content of the legal library. It is expected that by November 2009 laws related to the Convention will be collected from between 80 and 100 States. The objective is not only to collect national legislation in the legal library, but also to demonstrate how that legislation relates to the provisions of the Convention, including those governing asset recovery. Search engines and cross-references within the application will enable users to navigate the legal library and access legislation on asset recovery irrespective of the section of the library in which it is stored, thus furnishing a practical and user-friendly way of seeing how each State has implemented the respective provisions and what work still lies ahead.

11. The legal library will be part of the material accessible through the knowledge management consortium, a Web-based portal that will facilitate the dissemination of legal and non-legal knowledge on anti-corruption and asset recovery matters. The consortium will be an electronic repository of anti-corruption and asset recovery knowledge generated by reputable regional and international institutions, all of which maintain their own websites and carry out activities that contribute, from different angles and with different methodologies, to the advancement of work on anti-corruption and asset recovery. While each of the institutions wanted to generate such knowledge individually, the knowledge management consortium will consist of a single site where this information can be accessed. The consortium will also provide access to parts of the database of asset recovery focal points (see paras. 24, 46, 54 and 55), a directory of the central authorities identified in article 6, paragraph 3, (on preventive anti-corruption body or bodies) and article 46, paragraph 13, (on mutual legal assistance) of the Convention, as well as practitioners' tools and policy studies (see paras. 12-16). Negotiations with the private sector on the pro bono provision of the necessary technology for the legal library and knowledge management consortium are advancing. A proof of concept of both applications will be presented to the Conference at its third session.

12. While existing knowledge on the implementation of chapter V of the Convention, such as case studies, best practices and policy analyses, will be made available through the knowledge management consortium, there are still gaps in knowledge with regard to some highly relevant fields of asset recovery. In order to address those gaps, policy studies on selected topics related to asset recovery are being conducted in the framework of the StAR initiative to enrich the knowledge base for asset recovery policies. A study is being carried out on the identification of politically exposed persons, in other words individuals who have been entrusted with carrying out prominent public functions. The study will address the obligations of States parties, especially under article 52 of the Convention, on the prevention and detection of transfers of proceeds of crime, the current definitions of the term "politically exposed persons" and the possibility of adopting a concept that would be understood consistently worldwide, the criteria for ascertaining whether a financial institution is addressing issues related to politically exposed persons in a satisfactory manner, the types of due diligence and policies financial institutions should have in place for identifying and doing business with politically exposed persons, the due diligence issues related to legal entities controlled by politically exposed persons and the interaction with financial intelligence units, law enforcement agencies and anti-corruption units. The study is expected to be finalized and disseminated at the third session of the Conference.

13. Another study will address the misuse of corporate vehicles such as limited companies, trusts or foundations for money-laundering purposes. Typically, such vehicles are established under the laws of foreign jurisdictions, making it difficult to ascertain their beneficial owner. They can be misused to provide anonymity and frustrate law enforcement efforts to recover stolen assets. The study will provide a systematic, evidence-based overview of the mechanisms that allow corporate vehicles to be misused for illicit purposes and include a practical guide on how authorities can improve access to information on the beneficial ownership of foreign corporate entities. It is expected that the study will be finalized in 2010.

14. The barriers to asset recovery in requested States, in particular in financial centres, will be the topic of a separate policy study. It will provide analysis aimed at informing the design and implementation of policies and action plans for lowering the barriers to asset recovery in financial centres and assisting practitioners in requesting jurisdictions to better understand challenges in requested jurisdictions. In addition to carrying out a desk review of cases of selected financial centres, a practitioners' workshop will be held, as a key component to identifying the operational and practical barriers faced. A preliminary study will be presented at the third session of the Conference and the final product will be available by June 2010.

15. As part of a study on the global architecture for asset recovery, the roles and functions of national and international bodies engaged in asset recovery will be mapped out in order to identify gaps, overlaps and potential areas for collaboration. Asset recovery is part of the broader mandate of many institutions. It is expected that the results of the study will inform political debate by mapping out the current asset recovery framework, identifying strengths and weaknesses of such a framework and proposing adjustments and innovations. The study is expected to be finalized before the third session of the Conference.

16. A policy study to help countries with management of returned assets will provide analytical elements to inform decisions by policymakers about available options and best-fit models that can be used for that purpose. Through the study, all phases of the public financial management process, from governance arrangements to auditing mechanisms, will be reviewed and analysed and the options available to policymakers will be identified. The document, which will draw on case studies and be developed in consultation with expert practitioners, is expected to be finalized before the third session of the Conference.

## 2. Recommendation

17. The Working Group reconfirmed the recommendation to develop practical tools for asset recovery, in particular a practical step-by-step manual that should be tailored to the needs of practitioners in asset recovery cases and be used for capacity-building measures.

### *Action taken*

18. The asset recovery handbook, which is being developed in the framework of the StAR initiative, is expected to help practitioners with the strategic, organizational, investigative and legal challenges faced when recovering assets internationally by consolidating information dispersed across many fields into a single framework. It will highlight good practices in core areas, identify the most common challenges that States are likely to encounter and provide practitioners with possible solutions to problems faced in the course of recovering assets. A draft of the handbook prepared by a core team of experts will be tested with practitioners from a broad range of countries. An annotated draft of the handbook will be presented at the third session of Conference. It is expected that the handbook will be finalized in 2010 and regularly updated every 18 months by the core team, in consultation with stakeholders.

19. The publication *Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture*, which was published in May 2009, is designed

as a practical tool for use by jurisdictions contemplating non-conviction-based asset forfeiture legislation, as envisaged by article 54, paragraph 1 (c) of the Convention. It is the first publication of its kind in the area of non-conviction-based asset forfeiture and the first published under the StAR initiative. The Guide identifies the key legal, operational and practical concepts that a non-conviction-based asset forfeiture system should encompass to be effective. The Guide is based on the practical experience of experts from different regions and legal systems and all phases of forfeiture. The Guide is being published in hard copy and electronically (in a CD-ROM, e-book and USB stick) in English and is being translated into Spanish.

20. An asset and income declarations guide is being developed in an effort to broaden the approach to asset recovery and to link it closely to governance and anti-corruption strategies. Examples from a number of developed and developing countries will be examined through case studies addressing different dimensions. The guide will be presented at the third session of the Conference and the annotated case studies will be published as a second volume in 2010. Possible follow-up activities include the development of curricula for training courses and the establishment of a network of practitioners.

### **3. Recommendation**

21. The Working Group stressed the importance of modern information technology and gave priority to exploring the expansion of the Mutual Legal Assistance Request Writer Tool and the further development of similar products.

#### *Action taken*

22. A final review of the concept note on an expanded Mutual Legal Assistance Request Writer Tool is in progress. The objective is a computerized, user-friendly tool for the preparation, transmission and receipt of mutual legal assistance requests, including those applicable to asset recovery. The expanded version of the tool will have the same structure as the existing tool, but have additional features on asset recovery and a new operational platform. The revised tool is expected to be finalized in 2010.

23. In addition, UNODC has a number of electronic tools that may be of use to the asset recovery process. These are available at a cost to all Member States. GoAML is a software application designed for use by financial intelligence units to counter the financing of terrorism and money-laundering. It can also be useful in identifying suspicious flows of money. GoCase, also a software application, is an investigative case management tool designed for use by law enforcement, investigative and prosecution agencies in conducting investigations and subsequent prosecutions. It also helps with the recording of every part of the process, including information about the parties involved and the outcomes.

24. Other electronic resources available to assist in the asset recovery process include the knowledge management consortium (para. 11), the legal library (para. 10), the self-assessment tool (paras. 10, 39 and 71) and the database of focal points (paras. 46, 54 and 55).

#### 4. Recommendation

25. The Working Group recommended that UNODC consider preparing a compilation of cases relating to asset recovery, building on relevant experience of the Office.

##### *Action taken*

26. UNODC is developing a compilation of cases using the same methodology it applied to the development of a digest of cases of terrorism. The digest of cases of terrorism aims to provide criminal justice officials, investigative police officers and relevant policymakers with practical perspectives and insights. It contains information on real events, legal cases and legal instruments dealing with terrorism selected by judicial, prosecution and law enforcement experts in terrorism. The digest is currently being finalized. On 30 June 2009, UNODC issued a note verbale requesting all States parties and States signatories to the Convention to cooperate in preparing a compilation of cases relating to asset recovery. It also requested Governments to submit information on cases related to the recovery of proceeds of corruption originating in or involving their jurisdictions by no later than 30 September 2009. The material will be treated in a manner that respects any confidentiality restrictions requested by States and be used as a basis for a compilation structured into thematic chapters that will complement other knowledge products prepared by UNODC. The compilation will be included in the legal library currently under development.

#### 5. Recommendation

27. The Working Group reiterated the need for activities aimed at developing cumulative knowledge to be carried out with broad consultation and participation of experts from different regions and legal systems.

##### *Action taken*

28. The Guide for non-conviction-based asset forfeiture (para. 19) is the product of a collaborative effort of a team of expert practitioners from 17 developed and developing countries, including magistrates, prosecutors and lawyers from nine civil and eight common law jurisdictions. Other knowledge products developed in the framework of the StAR initiative are also the result of broad consultation and participation of experts from diverse professional backgrounds, regions and legal systems, as this approach helps ensure that products more accurately reflect international experience and that good practices can be more easily identified. For example, the asset recovery handbook (para. 18) consolidates the experience from and reflects the requirements of key jurisdictions representing a range of legal traditions and institutional arrangements. The good practice guide to income and asset declaration draws on the experiences of 87 developed and developing countries in order to highlight successful approaches by practitioners working to prevent and detect corruption.

## 6. Recommendation

29. Tools and knowledge products need to be widely disseminated and follow-up on their effectiveness and usefulness should be considered by the Conference or the Working Group.

### *Action taken*

30. It is the policy of the StAR initiative to disseminate products as widely as possible. Such dissemination will be facilitated through international conferences as well as by the knowledge management consortium, where a variety of products will be posted. The Guide for non-conviction-based asset forfeiture has already been distributed widely, attracting a high degree of interest and resulting in requests for technical assistance from States in Africa, Asia and Latin America.

31. Through the communication strategy and action plan of the StAR initiative, awareness will be raised about the proceeds of corruption and asset recovery among key stakeholders. That will, inter alia, broaden the base of people who know how to access knowledge products and tools. The communications strategy and materials are expected to be available for the third session of the Conference.

## 7. Recommendation

32. The role of financial institutions in fostering exchange of knowledge and data was also noted. Such institutions were to be included in the development of cumulative knowledge on asset recovery. Work on the preventive measures contained in chapter V of the Convention was to be encouraged and emphasis was to be placed on effective financial investigations.

### *Action taken*

33. Financial institutions have been included, in the framework of the StAR initiative, in the development of cumulative knowledge on asset recovery. For example, the Wolfsberg Group, an association of 11 global banks that aims to develop financial industry standards, was invited in March 2009 to participate in an expert group overseeing the global architecture study. Financial institutions are consulted where relevant. UNODC also deals with financial institutions on asset recovery as part of the Lausanne process.

34. Under its Global Programme against Money-Laundering, UNODC has mentors working in the field to assist selected Member States in building effective systems against money-laundering and the financing of terrorism, including by strengthening financial intelligence units, which assist in the identification of criminal assets, the analysis of financial information and the development of financial intelligence. The Global Programme is also working to provide investigators with skills to undertake financial investigations and trace assets.

35. The capacity-building activities provided in the framework of the StAR initiative include training on how to conduct effective financial investigations. Because financial institutions are required to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of politically exposed persons, the study on such persons is reviewing how different jurisdictions implement those requirements



and how financial institutions and supervisors can foster the effective implementation of enhanced scrutiny of politically exposed persons.

## **8. Recommendation**

36. The Working Group recommended that products such as the Guide on non-conviction-based forfeiture be considered for the implementation of other provisions of the Convention. With regard to legislative tools, the Working Group recommended exploring the selection of areas in which the preparation of models or best practice guides was feasible, such as for the restraint, freezing and confiscation of assets.

### *Action taken*

37. A number of products intended to assist practitioners in the asset recovery process are useful for the implementation of the other provisions of the Convention. For example, the asset recovery handbook and the good practice guide to income and asset declaration can be useful in supporting the prosecution of cases of corruption and assisting financial institutions in identifying politically exposed persons.

38. Areas in which the preparation of models or best practice guides is feasible are being assessed. In the meantime, the asset recovery handbook will include a chapter dedicated to tracing assets that will emphasize the importance of securing stolen assets as quickly as possible, whether through a freezing, restraint or seizure order, or through another type of legal instrument. In addition, the chapter will focus on how tracing assets can be crucial for an investigation and the importance of linking assets to criminal offences or unlawful conduct. Since assets derived from corruption and other illicit activities may be moved from one jurisdiction to another, national and foreign counterparts need to liaise; the handbook will demonstrate the need for coordination among jurisdictions and agencies. It will also provide guidance on some aspects of asset tracing that might be available in other jurisdictions.

## **9. Recommendation**

39. The Working Group recommended that the self-assessment checklist be used to gather information on the implementation of the Convention on articles relating to asset recovery, including information on case law at the national level, both in requesting and requested States.

### *Action taken*

40. A more comprehensive self-assessment checklist in the form of a software application is expected to be launched at the third session of the Conference. In it, the provisions of the Convention will be surveyed in order to elicit, in an incremental manner, the broadest possible range of information. For example, after the question on whether a State has adopted the measures necessary to comply with the provision under review, authorities will be asked to provide a reference to and attach such measures, and assess their effectiveness by providing concrete examples of application or case law.

**10. Recommendation**

41. The Working Group welcomed the study undertaken by Eurojust on obstacles to asset recovery and suggested that the Secretariat prepare a summary to be submitted to the Conference for its information and conduct a similar study at the global level.

*Action taken*

42. The Secretariat has prepared a summary of the Eurojust study (see annex to the present report). The Secretariat does not presently have the resources to conduct a similar study at the global level, but will consider the feasibility of doing so in the future.

**B. Building confidence and trust between requesting and requested States****1. Recommendation**

43. The Working Group highlighted the importance of the work on the establishment of a network of contact points for asset recovery. While the Conference and its Working Group were seen as serving as a platform for the exchange of knowledge and experience, a network of focal points could provide further opportunities for dialogue, which were deemed essential. Such a network would thus contribute to creating confidence and trust among requesting and requested States, which were prerequisites for successful cooperation. The Working Group highlighted that the full cooperation of States and international organizations was essential for the establishment and maintenance of such a network.

44. The establishment of close links between asset recovery focal points and regional anti-corruption networks such as the Arab Anti-Corruption and Integrity Network was encouraged. It was proposed that global and regional networks might be useful in providing practitioners with legislation, data and case law.

*Action taken*

45. Those recommendations have been addressed through the establishment of a database of asset recovery focal points and support for the establishment of regional networks similar to CARIN.

46. The database of asset recovery focal points was established in the framework of the StAR initiative in partnership with the International Criminal Police Organization (INTERPOL) and was launched on 19 January 2009. It contains the names of officials who are available 24 hours a day, seven days a week, to respond to emergency requests for assistance, in countries where the failure to act immediately may cause law enforcement to lose a trail. The database also allows members of the international law enforcement community to better coordinate their efforts in investigating and prosecuting individuals involved in the theft of public funds. It currently includes data on more than 66 countries, including contact details for initial enquiries, key offices involved in the recovery of foreign stolen assets, different types of requests required to initiate assistance, types of assistance available, evidence needed to open criminal investigations or initiate civil action

regarding stolen or embezzled assets and information on whether States have the authority to enforce foreign forfeiture judgments.

47. UNODC has supported the creation and strengthening of regional networks. In March 2009, UNODC was instrumental in creating a network modelled on CARIN comprising prosecutors, police officers and analysts dedicated to working on asset forfeiture in Southern Africa. CARIN is an informal network of judicial and law enforcement expert practitioners for criminal asset tracing, freezing, seizure and confiscation established in 2004; it currently has 45 members, including 39 States and jurisdictions, and six international organizations. The Southern African network is supported by CARIN, which is based at the headquarters of the European Police Office (Europol), and by the National Prosecuting Authority of South Africa, which has observer status in CARIN. It is expected that the Southern Africa network will eventually include all member States of the Eastern and Southern African Anti-Money-Laundering Group.

48. A regional conference entitled “Asset recovery in Latin America and the Caribbean: setting the agenda for regional cooperation” was organized by UNODC from 11 to 13 August 2009 in Buenos Aires. Participants reaffirmed that a network of asset recovery focal points could provide opportunities for dialogue between requesting and requested States and that those focal points should make the maximum use of existing networks and contacts for international cooperation in criminal matters, as far as these were accessible to them and ready to provide the required assistance.

49. Also in August 2009, UNODC convened a meeting with the Inter-American Drug Abuse Control Commission (CICAD) of the Organization of American States and the secretariat of the Financial Action Task Force of South America against Money Laundering (GAFISUD), in order to discuss ways to improve the successful forfeiture of proceeds of crime in GAFISUD member States and to strengthen existing regional efforts. It was agreed that GAFISUD would provide an operational support platform to further discuss good practices in asset forfeiture at the domestic and regional levels. Specific terms of reference for an ad hoc group on asset forfeiture will be produced by the GAFISUD secretariat, CICAD and UNODC; they will then be submitted to the GAFISUD member States at the next plenary meeting of GAFISUD, scheduled to take place in December 2009.

50. Efforts are also being made to increase ties to existing networks that can be relevant for international asset recovery.

## **2. Recommendation**

51. The Working Group recommended exploring the feasibility of adopting a help desk approach for asset recovery to give advice at the initial stages of a case in an informal manner and refer requesters to counterparts who would be able to provide further assistance.

52. The Working Group also recommended that UNODC explore how the database of asset recovery focal points could be amended with a view to making it possible to ascertain the contact details of persons in other jurisdictions.

*Action taken*

53. The current database of focal points provides the name and contact details of a specified individual within the police force of a participating country. The system relies on the details of a contact point being secure, which enables the contact point receiving a request for immediate assistance to have comfort that the person asking for assistance is a law enforcement official. The feasibility of making it possible for the public to know which agency a contact works for is being assessed in the framework of the StAR initiative. Such added transparency would have the advantage of encouraging Governments to appoint focal points if they have not done so already and of raising awareness about how law enforcement agencies can share information on the proceeds of corruption.

54. Ways of expanding the database to include other types of contact points, such as those from existing regional networks and national competent authorities, are being considered. The feasibility of adopting a help desk approach will be assessed in that context. As the development of the knowledge consortium continues, staff members involved in the StAR initiative and/or the secretariat of the Convention will explore ways of linking the focal point initiatives to the work of the consortium.

55. Through the study on the global architecture to support asset recovery, existing networks are being explored to facilitate the exchange of information and initial recommendations are made on ways to improve the utility of those networks.

**3. Recommendation**

56. The Working Group recommended strengthening the cooperation between financial intelligence units, anti-corruption authorities and national authorities responsible for mutual legal assistance, at both the national and international levels. Further cooperation with existing networks and institutions such as the Egmont Group of Financial Intelligence Units and the International Association of Anti-Corruption Authorities (IAACA) should be explored.

*Action taken*

57. The report on the global architecture on asset recovery includes a note to donor agencies. One of the key elements of the note is advice on linking anti-money-laundering and anti-corruption strategies. Through its Global Programme against Money-Laundering, UNODC works with financial intelligence units to assist them in joining the Egmont Group and to implement the Egmont standards of exchange of information on money-laundering and financing of terrorism. UNODC continues to work closely and support the activities of IAACA. It participates in the IAACA Executive Committee and is regularly consulted with regard to the programme of work and the formulation of strategic future plans of the association.

**4. Recommendation**

58. The Working Group encouraged the establishment of a partnership with private sector entities in order to assist them in complying with their obligations under the Convention, facilitate mutual understanding and build confidence.

*Action taken*

59. After the third meeting of the working group on the tenth principle of the Global Compact (on anti-corruption) was held on 5 and 6 June 2008, UNODC contributed substantively to the development of (a) a guide to facilitate companies' reporting on the tenth principle, (b) a tool to prevent and fight corruption along the supply chain, and (c) a campaign waged by top business leaders in support of the Convention. Participants in the fourth meeting of the working group on the tenth principle, held in New York on 26 and 27 February 2009, reviewed the work generated by that group's task forces with a view to presenting it to the Conference at its third session. The fifth meeting of the working group on the tenth principle is scheduled to take place in Doha on 5 and 6 November 2009.

60. The sixth global forum on fighting corruption and safeguarding integrity, whose theme will be "strength in unity: public-private partnerships to fight corruption", will also take place in Doha, on 7 and 8 November 2009. It is expected that participants in the forum will place considerable emphasis on the contribution that the private sector can make to the fight against corruption, including by exploring alliances between the private sector and the donor community. The outcome of the forum will be brought to the attention of the Conference at its third session.

61. A report entitled *Anti-Corruption Policies and Measures of the Fortune Global 500*, produced by UNODC in cooperation with PricewaterhouseCoopers, provides an overview of the direct and indirect measures that companies listed in the Fortune Global 500 (2008 index), have adopted to combat corruption and economic crime. The report will be launched in Vienna on 17 September 2009. The research for that publication has been done by PricewaterhouseCoopers as a pro-bono contribution.

62. Pursuant to a commitment made by the business community in the outcome declaration issued at a meeting entitled "Business coalition: the United Nations Convention against Corruption as a new market force", held in Nusa Dua, Indonesia, on 30 January 2008, discussions are under way with Transparency International and the International Chamber of Commerce to align their business principles with the fundamental values of the Convention.

## **5. Recommendation**

63. The Working Group called upon the Conference to promote dialogue between requested and requesting States in order to promote political will and strengthen commitment to asset recovery.

64. The Working Group emphasized the importance of political will in ensuring asset recovery and encouraged States parties to adopt a critical approach to their own systems and to seek to remove barriers to asset recovery, in particular by simplifying domestic procedures and by strengthening such procedures to prevent their misuse.

*Action taken*

65. The Conference and the Working Group provide opportunities for dialogue and strengthening political commitment. In addition, the StAR initiative actively

engages in advocacy in a number of international forums to strengthen political will. Following its endorsement of the statement released in November 2008 by the leaders of the Group of Twenty, the secretariat of the StAR initiative worked to consolidate work on key policy issues. As a result of those efforts, the recommendations of the Working Group reiterate the statement released by the leaders of the Group of Twenty at a summit held in London on 2 April 2009 and recommend the review and proposal of mechanisms to strengthen international cooperation on asset recovery, the enforcement of standards related to the identification of beneficial ownership and the monitoring of politically exposed persons.

66. At the international level, political attention to asset recovery and support for asset recovery efforts has increased, as expressed in numerous statements. Strong political commitment for asset recovery has recently been expressed at the highest political level in the Declaration of Commitment of Port of Spain, adopted at the Fifth Summit of the Americas, held in Port of Spain from 15 to 19 April 2009, in which 34 Governments reiterated their commitment to deny safe haven to corrupt officials, those who corrupt them and their assets, and to cooperate in their extradition as well as in the recovery and return of the proceeds of corruption to their legitimate owners. At the Follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus, held in Doha from 29 November to 2 December 2008, it was decided that additional measures should be implemented to prevent the transfer abroad of stolen assets and to assist in the recovery and return of such assets, in particular to their countries of origin. States noted the efforts of UNODC and the World Bank Group through the StAR initiative and other relevant initiatives. In the Accra Agenda for Action<sup>2</sup> adopted in September 2008 and the Group of Eight Hokkaido Toyako Summit Leaders Declaration issued in July 2008, States expressed their commitment to supporting asset recovery.

## **C. Technical assistance, training and capacity-building**

### **1. Recommendation**

67. The Working Group stressed the high demand for technical assistance for the implementation of chapter V of the Convention, especially for legal advisory services. Tailor-made approaches were required. The Working Group emphasized the importance of strengthening the capacity of legislators, law enforcement officials, judges and prosecutors on matters relating to asset recovery.

68. The Working Group recommended that UNODC seek to forge more partnerships and coordinate additional technical assistance activities in matters related to asset recovery with other relevant organizations and bodies.

#### *Action taken*

69. Technical assistance is provided in the framework of the StAR initiative in the preparatory stages of asset recovery proceedings. The goal is to help States collect and analyse information that will facilitate progress in asset recovery efforts and

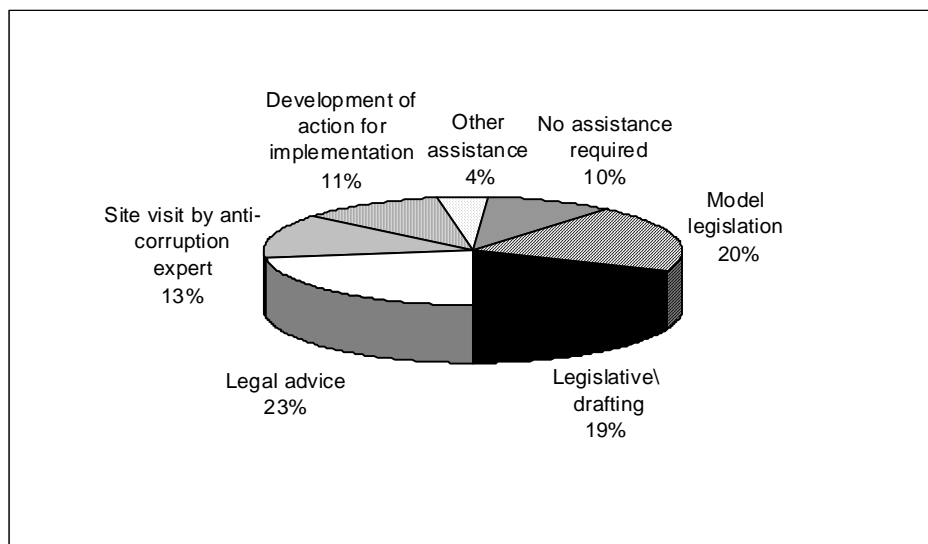
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<sup>2</sup> A/63/539, annex.

inform the decision-making of national authorities. Such assistance is provided by, for example, sponsoring meetings and workshops that bring together relevant parties at the national, regional and international levels as necessary, making available advisory services to support the preparation of analytical reports, legal research, assistance with audits and financial analysis; and making available advisory services to support the preparation and analysis of mutual legal assistance requests. As of August 2009, formal requests for assistance have been received from 20 States and discussions have been held with additional States. The nature of the assistance provided in the framework of the StAR initiative varies: in some cases, assistance is geared towards policy dialogue and facilitation of contacts between national authorities and financial centres; in other cases, assistance has focused on capacity-building activities and on providing advisory services to support asset recovery cases.

70. The technical assistance needs of States are shown in the figure below. The information is based on responses to the self-assessment checklist received from 56 States.

**Technical assistance needs identified by 56 States parties reporting partial or no implementation of chapter V of the United Nations Convention against Corruption**



71. Through the StAR initiative, a number of different training courses have been financed or co-financed in East and Southern Africa and in South and East Asia. Training has been delivered at two levels: introductory workshops have been organized to raise awareness about asset recovery and more advanced training courses have been organized to deal with the technical aspects of asset recovery. Since the StAR initiative was launched, over 150 participants from 13 different countries have participated in the introductory workshops and 190 participants from 9 different countries have participated in the training courses. The introductory workshops have generally been held at a regional level, to allow practitioners to share experiences and develop contacts, including contacts in regional financial centres. Those events are designed for higher-level decision makers who do not need extensive training on hands-on asset recovery techniques and procedures.

72. In addition to the advanced training course, specialized training on specific topics or to specific groups has been provided through the StAR initiative.

73. In the framework of the StAR initiative, a tender process for a drawdown contract that would facilitate the planning and delivery of courses was launched. That tender process resulted in contracting the International Centre for Asset Recovery (ICAR) to deliver its first regional training course in Kenya in March 2009. A workshop was held to train investigators and prosecutors from five East African countries to understand the standards of evidence required for asset recovery cases in financial centres, to form a network of asset recovery specialists in the region and to identify potential partnerships.

74. A number of training sessions have been carried out directly by the StAR initiative. For instance, in May 2009, a StAR initiative team travelled to Baghdad in response to a request made by the Government of Iraq to hold a workshop on reforming the anti-money-laundering laws in Iraq and using the anti-money-laundering laws to fight corruption. An inter-ministerial meeting was also held on the StAR initiative, at which the technical assistance needs of Iraq were discussed and future strategies were mapped out.

75. In June 2009, StAR initiative staff conducted a two-day workshop for 50 judges in Indonesia on how other jurisdictions use financial and expert witnesses and documentary evidence to establish a money trail in forfeiture cases, how they structure opinions, including finding of facts and conclusions of law, and how they write forfeiture judgements. In July 2009, a training event was held at the Asset Forfeiture Unit of South Africa for practitioners from Botswana, Lesotho, Swaziland and South Africa. The following additional training sessions are scheduled to take place in 2009: a session on tracing, freezing and recovering assets, in Viet Nam in October, and a regional training session on the standards of evidence required for asset recovery in financial centres, in Bulgaria in December.

76. Lessons learned include that there is an acute shortage of technical skills in some jurisdictions, that regional training activities have proved successful in developing informal networks of cooperation but are costly and less successful in transferring the skills needed for practitioners to work within their national jurisdiction, and that the selection of participants in the operational aspects of asset recovery is critical.

77. UNODC has forged more partnerships with other organizations and bodies for the purpose of coordinating technical assistance activities related to asset recovery, including with IAACA, the Organization of American States, the Asia-Pacific Economic Cooperation and the Organization for Security and Cooperation in Europe, as well as with the Government of Switzerland through the Lausanne process. UNODC has also been actively involved in those efforts through its work with the Development Assistance Committee of the Organization for Economic Cooperation and Development and the Anti-Corruption Task Team of the Committee's Network on Governance (GOVNET).

## **2. Recommendation**

78. The Working Group gave high priority to training and capacity-building. In addition to activities such as seminars and training courses, the Working Group encouraged the exploration of innovative tools such as e-learning programmes.



*Action taken*

79. UNODC is partnering with INTERPOL and the Government of Austria, with the support of the European Anti-Fraud Office, in the establishment of the International Anti-Corruption Academy. Asset recovery will feature prominently in the curricula of this institution. The Academy will be established as the world's first educational institution dedicated to fighting corruption within the framework of the Convention. Hosted by the Government of Austria in Laxenburg, outside Vienna, the Academy is expected to become an institution of higher learning that will disseminate specialized anti-corruption knowledge around the world. The training provided at the Academy will be aimed at a wide variety of stakeholders. It is foreseen that the Academy will open its doors in 2010.

80. Currently, the Secretariat does not have the resources to establish e-learning programmes but is considering doing so in the future.

**3. Recommendation**

81. The Working Group emphasized the importance of providing technical assistance in the field of mutual legal assistance, including asset recovery, to officials and practitioners to enable them to draft requests and responses to requests.

*Action taken*

82. As part of the preparatory assistance provided in the framework of the StAR initiative to improve countries' asset recovery programmes, StAR initiative staff have worked directly with specific States, facilitating progress on ongoing and potential cases with a view to delivering quick wins with an important demonstration effect. That has included providing assistance in other jurisdictions to determine the status of recovery cases, facilitating contact between jurisdictions and providing technical assistance and training activities, such as the preparation of mutual legal assistance requests for several jurisdictions and the training of judges in the use of confiscation orders. For example, during a mission to Haiti in May 2008, StAR initiative staff assisted the Haitian authorities in taking further action on assets related to the Duvalier family. The Swiss authorities subsequently dismissed the Duvalier claims to those assets. Subsequent to a further appeal by the Duvalier family, on 14 August 2009, the Federal Criminal Court in Bellinzona, Switzerland, issued a decision upholding the return of the assets to Haiti.

**D. Reporting and follow-up**

83. The Working Group called for the systematic follow-up of the implementation of its recommendations at the third session of the Conference.

84. Taking into account the recommendations of the Working Group and progress made thus far, the Conference may wish to deliberate on the best way forward. The Conference may also wish to give an overall appraisal of progress made so far in the implementation of the asset recovery provisions and in the tackling of barriers to asset recovery. It may further wish to build on and adapt the recommendations of the Working Group as it deems appropriate and suggest further ways of enhancing the implementation of asset recovery provisions.

85. The Conference may wish to identify and discuss ways and further means of collaboration, exchange of views and cooperation between Member States and the various initiatives promoting asset recovery, including the StAR initiative.

86. On a global level, the Conference may suggest ways of enhancing collaboration between Member States and international organizations for the development of knowledge products and tools, the building of trust, and technical cooperation.

87. The Conference may wish to consider and discuss ways and means to link the network of asset recovery focal points and regional networks to other networks that exist or are under establishment, for international cooperation in criminal matters. It may consider linking the work of those networks to support international cooperation in criminal matters, in particular for the purposes of confiscation, under various United Nations instruments.

## Annex

### **Summary of the study by Eurojust on obstacles to asset recovery**

1. A study subcontracted by the European Commission to the Matrix Group was undertaken by Eurojust on asset recovery and confiscation in all States members of the European Union. The report and the respective analysis is based on the full completion of a specific questionnaire and on European Union and international legislation on the matter.
2. The questionnaire, which was created by the Case Management Team at Eurojust, covered all the stages of the asset recovery process through six questions. Questions 1 and 2 referred to the main obstacles encountered in cross-border investigations for the purpose of asset recovery and to possible solutions to those obstacles. Questions 3 and 4 referred to the main obstacles in the judicial phase of asset recovery. Questions 5 and 6 concerned the return and disposal of returned assets.
3. Common obstacles faced during the course of international investigations concerning asset recovery were found to be connected to the following issues: tracing and detection of international transfers of illicit proceeds; direct exchange of information between law enforcement authorities; non-existence of centralized national units/a central European body for the swift exchange of information between national authorities; identification of criminal assets and coordination of cross-border asset recovery actions; lack of harmonized national provisions on bank secrecy; and shortage of trained financial investigators. The responses revealed that States considered that the following practical and legal provisions would facilitate bilateral and multilateral investigations for the recovery of assets: the creation of central registers of movable and immovable property and central registers for financial products; the harmonization of national legislation on central registers for real estate and movable property of a de minimis value; the establishment of national asset recovery offices and simplification of procedures for exchanging of information between such offices; and the training of investigators, prosecutors and judges in asset recovery techniques.
4. The study revealed that States considered the following to be obstacles at the judicial phase of the asset recovery process: the dual criminality requirement; the requirement of proof of unlawful origin of assets and identification of assets in the confiscation request; un-harmonized national regulations on asset recovery and differences in the legal systems of European Union member States between criminal and civil recovery; jurisdiction and territoriality problems; and rights of ownership over confiscated assets. The following were considered to be possible solutions: flexibility in the application of the dual criminality requirement; immediate freezing procedures and extended confiscations; in rem confiscations; creation of a consistent system based on civil and criminal recovery; harmonization of national legislation on asset recovery and confiscation; and implementation of existing international legal instruments.
5. States considered the following to be obstacles to the implementation of confiscation orders: proof of unlawful origin of alleged proceeds of crime;

specification of criminal assets in confiscation orders, evidence of a link between the suspect and the property; non-recognition of confiscation orders (often when they are based on civil confiscation procedures); and sharing of costs related to the execution of confiscation orders and maintenance of assets. The study revealed that the following were considered possible solutions: mitigation of the burden of proof regarding the source of criminal assets; measures for expeditious execution of foreign freezing and seizure orders; ad hoc agreements for the purpose of disposing of property; implementation of an adequate legal framework for asset sharing, bilateral and multi-lateral, mutually acceptable agreements for asset sharing; implementation of existing international instruments allowing efficient confiscation actions; and the application of the principle of mutual recognition of decisions on confiscation.

6. An analysis of the responses to the questionnaire lead to the conclusion that in respect of asset recovery and confiscation, differences in both substantive and procedural rules in European Union member States constitute the major impediment to the investigation, identification, tracing and recovery of assets stemming from cross-border organized criminal activities. Harmonization of national legislations relative to banking secrecy, privacy issues and asset recovery and confiscation procedures is seen as the practical solution for granting successful international investigations, adoption of provisional (rapid) measures and repatriation of ill-gotten assets.

7. Training investigators, prosecutors and judges in new investigative techniques and implementation of existing international instruments was also detected as essential for acquiring the necessary expertise to deal with the increasing sophistication of organized crime, organize systematic cross-border asset recovery actions and obtain sufficient admissible evidence. Additionally, the creation of national asset recovery offices for the swift and simplified transmission of information and coordinated actions was identified as a practical solution for facilitating international investigations for the purpose of asset recovery.

8. To confront the problems of the dual criminality principle and the burden of proof of unlawful origin of assets at the judicial phase, the most suitable solutions were considered to lie in the approximation of national criminal laws and procedures in favour of a more flexible application of the dual criminality requirement and in mitigating the onus of proof regarding the source of assets.

9. Similar issues (dual criminality, un-harmonized legislation etc.) were identified as the most critical obstacles to recovering and disposing of criminal assets. The conclusion of bilateral agreements or mutually acceptable arrangements for the disposal of confiscated property and for asset sharing were viewed as being the most reasonable steps for disposing of and returning recovered assets. In addition, implementing existing international instruments and applying the mutual recognition principle for freezing and confiscation orders would boost opportunities for efficient confiscation actions and subsequently for the successful management of confiscated assets (repatriation of assets and asset sharing).

10. Regarding non-conviction-based forfeiture, the study revealed that confiscation orders based on civil confiscation procedures or on the extended use of taxation powers would not necessarily be executed in all member States, as the Council Framework Decision 2006/783/JHA of 6 October 2006 on the application

of the principle of mutual recognition to confiscation orders seems to apply only to confiscation orders issued within the framework of criminal proceedings.

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