



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

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**Third session**

Doha, 9-13 November 2009

## Note verbale dated 24 September 2009 from the Permanent Mission of Brazil to the United Nations (Vienna) addressed to the United Nations Office on Drugs and Crime

The Permanent Mission of the Federative Republic of Brazil to the International Organizations in Vienna presents its compliments to the United Nations Office on Drugs and Crime and, in its capacity as Chair of the Group of Latin American and Caribbean States, has the honour to transmit herewith a document entitled "Conclusions and recommendations of the Group of Latin American and Caribbean States present at the Regional Conference on Asset Recovery in Latin America and the Caribbean: Setting the Agenda for Regional Cooperation", held in Buenos Aires from 11 to 13 August 2009.

It is requested that the document be distributed as an official document of the third session of the Conference of the States Parties to the United Nations Convention against Corruption, to be held in Doha from 9 to 13 November 2009.



**Annex to the note verbale dated 24 September 2009 from the Permanent Mission of Brazil to the United Nations (Vienna) addressed to the United Nations Office on Drugs and Crime**

**Conclusions and recommendations of the Group of Latin American and Caribbean States present at the Regional Conference on Asset Recovery in Latin America and the Caribbean: Setting the Agenda for Regional Cooperation**

**Buenos Aires, 11-13 August 2009**

The Regional Conference on Asset Recovery in Latin America and the Caribbean: Setting the Agenda for Regional Cooperation was held from 11 to 13 August 2009 in Buenos Aires. The aim of the Conference was to discuss strategic and practical ways to enhance cooperation in asset recovery in the region, to address ways and means of coordinating policies and improving channels for communication and to prioritize technical assistance. Further, the Conference provided an opportunity to discuss the preparations for the third session of the Conference of the States Parties to the United Nations Convention against Corruption, to be held from 9 to 13 November 2009 in Doha.

The Conference was attended by representatives of the following States: Argentina, Belize, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Jamaica, Mexico, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, Uruguay and Venezuela (Bolivarian Republic of). The following international organizations were represented at the Conference: the European Police Office (Europol), the Ibero-American Legal Assistance Network (IberRed), the United Nations Development Programme and the World Bank.

The Conference was opened by Dimitri Vlassis (UNODC), Secretary of the Conference of the States Parties, Adrian Fozzard (World Bank), Coordinator of the Stolen Asset Recovery (StAR) initiative, H.E. Eugenio María Curia, the Permanent Representative of Argentina to the International Organizations in Vienna, and Julio Vitobello, Head of Public Administration Control of the Anti-Corruption Office of Argentina. During the opening, it was highlighted that asset recovery was attracting increasing interest, both in the region and globally, as one of the most innovative fields of international cooperation. Asset recovery was increasingly considered not only as a means of returning funds to countries of origin but also as a way to end impunity, deter corrupt practices and contribute to a culture of integrity.

The participants in the Regional Conference welcomed the opportunity afforded by the event for the exchange of experiences and lessons learned in asset recovery and for the discussion of steps to be taken to enhance cooperation in the region. Participants further expressed appreciation for the opportunity to discuss the preparations for the third session of the Conference of the States Parties.

### **Lessons learned from the region: asset recovery cases and best practices**

Participants shared recent experiences of concluded and ongoing asset recovery cases. They gave an update on recent amendments to their national legislation and regulatory practices and identified strengths and weaknesses of existing national and international regimes for mutual legal assistance and international cooperation in asset recovery. A number of speakers emphasized that cross-border asset recovery was a relatively new task for the institutions of their countries and that the number of cases was still limited but had been increasing in recent years. It was further stressed that asset recovery cases were particularly complex and that asset recovery invariably required long-term efforts.

The Inter-American Convention against Corruption and the United Nations Convention against Corruption were considered a useful framework and had been used in a number of cases as legal bases for international cooperation. It was noted that differences between legal systems, such as different forfeiture systems and requirements relating to bank secrecy, might present difficulties and that institutions had to be prepared to face such difficulties in order to cooperate quickly and efficiently. Some speakers identified legal requirements and institutional weaknesses in their national systems that were considered to be obstacles to asset recovery, thus pointing to the need for legislative and institutional reform. Some speakers reported on the inclusion of civil society in processes of institutional change, pursuant to article 13 of the Convention.

It was stressed that criminal justice should pursue the recovery of proceeds of corruption more routinely, as an activity complementary to that of pursuing criminal convictions. In that regard, participants recognized the urgent need for capacity-building. Capacity-building measures should cover the whole range of aspects pertaining to asset recovery, in particular financial investigations and mutual legal assistance. They should further address all institutions acting in asset recovery cases, including the judiciary.

The issue of costs associated with the administration of forfeited or frozen assets was also discussed. Some legal systems allowed for the selection of those assets for seizure or forfeiture which could be sold and did not carry excessive management costs.

Time was considered an essential factor in asset recovery cases. While it could take considerable time to achieve a final judgement, a rapid decision on the freezing of assets was considered of paramount importance. With regard to good practices, it was recommended that financial investigations should be initiated in parallel with the investigation of criminal conduct and that inter-agency meetings could be useful in supporting cooperation at the national level.

### **Development of tools under the StAR initiative: best practices guide on non-conviction-based forfeiture, studies on financial disclosure systems, on the global architecture for asset recovery and on politically exposed persons**

Participants reiterated the importance of developing cumulative knowledge on asset recovery and welcomed the development of practical tools under the StAR initiative.

Participants expressed appreciation for the recent publication of the Good Practices Guide for Non-Conviction-Based Forfeiture.<sup>1</sup> The Guide identifies the key concepts that a non-conviction-based asset forfeiture system should encompass. Speakers considered non-conviction-based forfeiture a useful tool for those States considering action in pursuance of article 54, subparagraph 1 (c), of the United Nations Convention against Corruption.

Participants were briefed on the development of an asset and income declarations guide, which will be based on a comparative study of at least 10 countries. The delegation of the host country gave a presentation on the Argentine asset declaration system. A number of speakers shared the experiences of their national systems, which differed in terms of institutional competence in the collection of and follow-up on declarations, the type of officials who were obliged to declare and possible exemptions from declaration requirements. Small jurisdictions were considered to face particular challenges in maintaining asset declaration systems, given that those systems were often resource-intensive and the number of public officials concerned was small.

With regard to the policy study on the global architecture for asset recovery, which was under development, participants gave an account of their national institutional architecture for asset recovery. There is a high degree of diversity among States regarding their institutional set-up for asset recovery. Speakers stressed that a number of institutions were involved in the process at the national level and that coordination among them was of the essence. Speakers further highlighted the importance of formal and informal contacts with institutions at the international level, which were made through liaison offices and networks. A request was also made to all participants to provide information on their countries' three largest asset recovery cases with an international dimension. The request would be followed up in writing.

Participants were briefed on a study on barriers to asset recovery, aimed at identifying the key hurdles for asset recovery in 15 financial centres and focusing primarily on the requesting countries' perspective. Twenty-seven practitioners from 20 countries, technicians with experience in mutual legal assistance, countering money-laundering and corruption matters discussed the barriers they had encountered in financial centres, including formal (legal) and informal (operational) barriers. Most discussed past cases and experiences, on the basis of which they made observations and recommendations. Those recommendations included, but were not limited to, development of a network of practitioners (or perhaps expanding existing networks); development of a tool indicating the specific mutual legal assistance requirements of financial centres; development of a tool to help practitioners to speak a common language and bridge the gap between civil and common law jurisdictions; the streamlining of formal procedures whereby the process could be made expeditious; and consideration of more formal means of addressing those issues.

Participants were further briefed on the development of a study on best practices for the identification and management of politically exposed persons.

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<sup>1</sup> Theodore S. Greenberg, Linda M. Samuel, Wingate Grant and Larissa Gray: Stolen Asset Recovery: A Good Practices Guide for Non-Conviction-Based Asset Forfeiture, 2009 (<http://siteresources.worldbank.org/EXTSARI/Resources/NCBGuideFinalEBook.pdf>).

### **Networks and communication channels in the region**

The Conference of the States Parties to the United Nations Convention against Corruption, in its resolution 2/3, entitled “Asset recovery”, highlighted the importance of building confidence, facilitating the exchange of information and ideas on the expeditious return of assets among States and encouraging cooperation between requesting and requested States with regard to asset recovery, and requested the Open-ended Intergovernmental Working Group on Asset Recovery to explore means of achieving those goals. The Working Group, in considering that request, recommended the establishment of a network of contact or focal points for asset recovery (CAC/COSP/2008/4 and CAC/COSP/WG.2/2008/3).

Participants in the Regional Conference made reference to the Working Group’s call to States Parties to establish contact or focal points for asset recovery and reaffirmed that a network of such contact points could provide opportunities for dialogue between requesting and requested States and thereby enhance confidence and trust.

It was highlighted that asset recovery focal points should make maximum use of existing networks and contacts for international cooperation in criminal matters, in so far as those networks and contacts were accessible to them and ready to provide the required assistance. Among existing networks in the region, reference was made to IberRed, the Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition, operated by the Organization of American States, the recently launched database of the asset recovery focal point established in partnership with INTERPOL within the framework of the StAR initiative, the Egmont Group and the competent national or central authorities established pursuant to the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption.

Participants stressed that, at both the regional and global levels, the designation of asset recovery focal points should avoid overlap and duplication and that focal points should create synergies with existing structures and networks. It was further advised that care should be taken to avoid networks becoming a burden to States, particularly in situations of limited resources and capacity. Emphasis should be placed on the designation of focal points who would be competent to provide accurate and timely information and engage in informal exchanges of information and able to provide guidance on legislation, regulation and procedural requirements for asset recovery at all stages of a case. It was recognized that States took different approaches to the assignment of responsibilities and the division of labour within their systems. That made the designation of focal points even more necessary. The next step would be to identify and build the most appropriate and efficient channels of communication among such focal points in a way that would not only ensure the unimpeded and expeditious flow of information but also promote informal contacts, which were at the root of establishing confidence and trust. It was recommended to strengthen links and enhance cooperation between existing institutions and networks, provided of course that membership-based networks did not place restrictions on such membership.

**Preparations for the third session of the Conference of the States Parties, to be held from 9 to 13 November in Doha**

**Review of implementation**

Participants reiterated their support for the establishment of a review mechanism with the basic characteristics set out in resolutions 1/1 and 2/1 of the Conference of the States Parties. Recalling the experience gained through regional mechanisms such as the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption (MESICIC), the Financial Action Task Force of South America against Money-Laundering (GAFISUD), the Caribbean Financial Action Task Force (CFATF) and the OECD Working Group on Bribery in International Business Transactions, and also through the UNODC pilot programme for the review of implementation, in which seven countries of the region participated, participants expressed broad agreement on further characteristics of the future mechanism.

A peer review methodology should be applied, with support by the Secretariat. The review should use a gradual approach, proceeding from a selection of articles towards complete coverage of the Convention. Experts conducting the review must be nominated by Governments. A wide range of information should be taken into account. Country visits were considered highly beneficial in achieving in-depth understanding and the development of meaningful recommendations, depending on the will of the country under review. It was emphasized that guidelines on the participation of civil society should be developed.

The report on a given country review should be developed and concluded by the representatives of the two reviewing countries and the country under review, with the support of the Secretariat. The country under review should have the opportunity to comment on the draft prepared by the experts with the support of the Secretariat. The outcome of the review process should be submitted to the Implementation Review Group and to the Conference of the States Parties. Participants expressed the will of their Governments to publish country reports developed under the review mechanism.

A representative of Transparency International briefed participants on the position of that organization on the establishment of the review mechanism, in particular with regard to the institutional structure, the review process, the participation of civil society and the transparency of the future mechanism.

**Technical assistance**

It was recalled that technical assistance was addressed in the Convention itself and that the donor community continued to show great interest in supporting the implementation of the Convention. In order to make maximum use of limited resources, it was considered important to establish priorities at the country, subregional and regional levels. Governments were encouraged to provide guidance on anti-corruption and criminal justice issues to the donor community, in order to guarantee ownership and minimize overlap of activities, and to enhance internal coordination and to strengthen cooperation mechanisms at the country level, such as donor round tables.

It was further recalled that the future review mechanism should serve to identify technical assistance needs. Systemic approaches might be preferred over ad hoc development of programmes. Horizontal approaches (South-South cooperation) should be enhanced. To that end, States were encouraged to designate experts for the expert database developed by the Secretariat, pursuant to the mandate established by the Open-Ended Working Group on Technical Assistance.

### **Prevention**

Participants were briefed on the status of the initiative to place emphasis on the prevention of corruption at the third session of the Conference, which the Conference had supported at the end of its second session. An expert group meeting was held from 9 to 11 January 2009 in Doha. The group suggested short-, medium- and long-term measures in a concept paper that may serve as a basis for a draft resolution to be submitted to the Conference at its third session. Participants agreed to provide comments on the document by 15 September 2009.

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