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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 31 May 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/IRG/2023/10](https://www.unodc.org/documents/cac/cac/cac_cosp_irg_2023_10.pdf)).



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 72 executive summaries and country review reports that had been completed as at 31 May 2023. The report builds upon the previous thematic reports covering the implementation of chapter V, 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; certain articles and topics that are closely related are thus clustered together.² An analysis of the regional differences and trends is provided in a regional supplement entitled “Implementation of chapter V (Asset recovery) of the United Nations Convention against Corruption” ([CAC/COSP/IRG/2023/9/Add.1](#)), to be presented to the Implementation Review Group together with the present report.

2. The present 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 a 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/IRG/2023/10](#)).

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

3. 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.

¹ In line with the outcome of the discussions of the Implementation Review Group, the thematic report 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 report. A full list of the good practices identified in relation to the examined articles was made available to the Implementation Review Group as a conference room paper ([CAC/COSP/IRG/2022/CRP.1](#)).

² The present report is based on 20 completed reviews for the Group of African States, 24 for the Group of Asia-Pacific States, 13 for the Group of Western European and other States, 8 for the Group of Latin American and Caribbean States and 7 for the Group of Eastern European States.

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

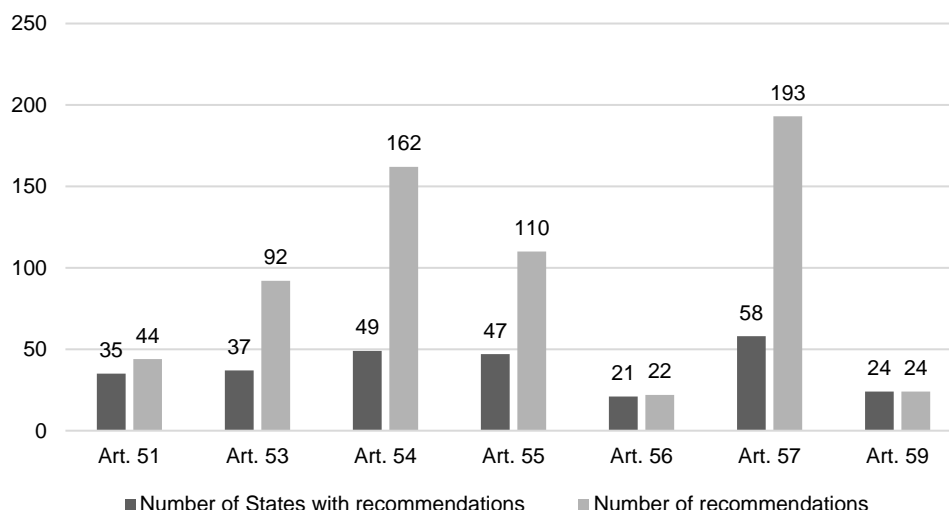


Table 1
Most prevalent challenges in the implementation of chapter V of the Convention

<i>Article of the Convention</i>	<i>Number of States receiving recommendations</i>	<i>Number of recommendations issued</i>	<i>Most prevalent challenges in implementation (in order of article of the Convention)</i>
Article 51	35	44	Inadequate legislation and/or procedures for mutual legal assistance; insufficient institutional arrangements and ineffective inter-agency coordination; complicated asset recovery procedures; lack of capacity of competent authorities; lack of case management system to measure the effectiveness of international cooperation and asset recovery
Article 53	37	92	Lack of mechanisms or 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 mechanism for granting foreign States locus standi in civil proceedings
Article 54	49	162	No direct enforcement of foreign confiscation orders or exclusion of certain Convention offences or of non-designated countries; no or insufficient mechanisms for preservation of property for confiscation; no or limited non-conviction-based confiscation; no or limited measures to freeze or seize upon an order or request by a foreign State
Article 55	47	110	No, 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
Article 56	21	22	Insufficient measures and lack of authority for the spontaneous transmission of information; transmission of information regarding proceeds of certain categories of offences to only a limited range of countries; inadequate record-keeping, case information and statistics on asset recovery and spontaneous assistance

<i>Article of the Convention</i>	<i>Number of States receiving recommendations</i>	<i>Number of recommendations issued</i>	<i>Most prevalent challenges in implementation (in order of article of the Convention)</i>
Article 57	58	193	Insufficient legislative or other measures for the return of proceeds to requesting States; no regulation of costs or means of deducting expenses in the course of mutual legal assistance proceedings; 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 mandatory requirement to return embezzled public funds
Article 59	24	24	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

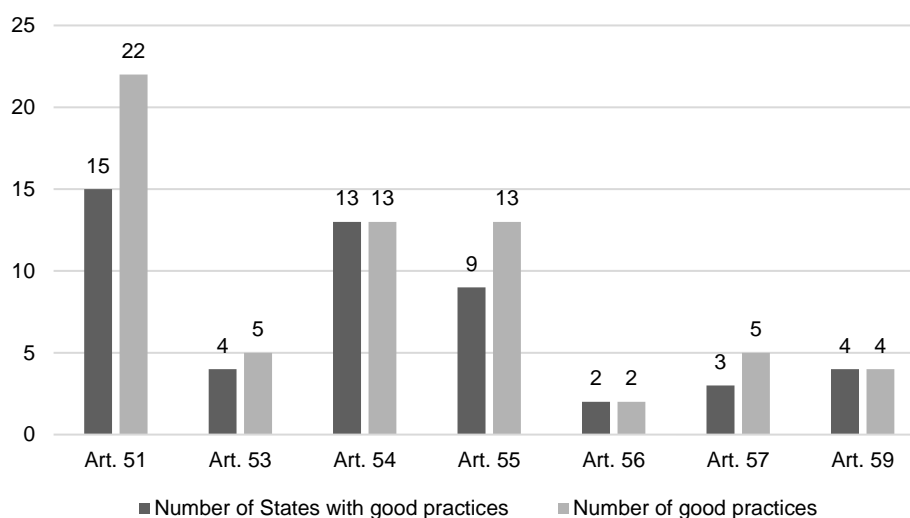


Table 2
Most prevalent good practices in the implementation of chapter V of the Convention

<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 51	15	22	Active engagement in the development and promotion of international cooperation, in particular on asset recovery; adequate legal basis for asset recovery; robust institutional arrangements, including sound inter-agency coordination and deployment of specialists and officers in other countries to facilitate international cooperation; issuance of guidance for asset recovery
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

<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 54	13	13	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	9	13	Infrastructure to facilitate successful asset recovery, such as guidance, specialized units or bank registers; close cooperation and consultations between requesting and requested States; use of the Convention as a legal basis for mutual legal assistance
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	3	5	Return of property to bona fide third parties; establishment of confiscated assets fund for victim compensation; clear recognition of the principle of asset return in legislation
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 the self-executing provisions of the Convention

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)

4. 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.

5. 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 by reviewers. In a number of States, the asset recovery regime was found to be in the early stages of development. Three States did not have specific provisions referring to the concept of asset recovery or return as a fundamental principle of cooperation.

6. 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.

7. 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.

8. 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. 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, inter-agency coordination was identified as posing practical challenges in many States.

9. 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. In addition to being commended for ensuring the transparency of asset recovery procedures and practices, the United Kingdom of Great Britain and Northern Ireland utilized various tools and mechanisms, such as unexplained wealth orders, account freezing orders and worldwide restraint orders to enable effective economic enforcement against proceeds of crime. 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.

10. Closely related to measures to prioritize asset recovery is 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.

11. Several States were found to apply flexibility in terms of international cooperation measures, such as a wide arsenal of tools, 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 mutual legal assistance requests. One State party indicated its willingness to review draft requests for mutual legal assistance before their formal submission, including in asset recovery cases.

Box 1

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

Regulatory level. Algeria dedicated an entire chapter of its anti-corruption act to international cooperation and asset recovery, to a large extent reflecting the provisions of chapter V of the Convention. The efforts by Burundi to establish a law on mutual legal assistance, including asset recovery, were praised.

Institutional level. The Plurinational State of Bolivia established an inter-agency working group on asset recovery with the support of the Stolen Asset Recovery (StAR) Initiative in order to foster inter-institutional coordination for asset recovery purposes. In addition, Belgium, France and the United Kingdom established specialized offices to deal with the seizure, confiscation and management of criminal assets. In South Africa, the existence of specialized structures such as the Asset Forfeiture Unit and the Investigating Directorate and the Specialized Commercial Crime Unit in the National Prosecuting Authority facilitated the recovery and return of assets.

Operational level. France and South Africa posted asset recovery specialists in criminal justice and law enforcement and liaison magistrates or prosecutors to other countries to facilitate mutual legal assistance, improving the efficiency of the asset recovery system.

Guidance materials. The Bahamas 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 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 developed an internal policy guide for its Asset Forfeiture Unit on handling asset recovery requests and managing requests received informally.^a

^a The good practices identified in the executive summaries for Mexico, Saudi Arabia and Sri Lanka, which were finalized in the second cycle, have been omitted in order to provide opportunities for the publication of new practices. An exhaustive list of good practices is contained in the conference room paper entitled “Good practices identified under chapter V and under provisions of a cross-cutting nature under chapters II and V of the United Nations Convention against Corruption” (CAC/COSP/IRG/2022/CRP.1).

12. 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.

2. Spontaneous transmission of information (art. 56)

13. Almost all States allowed for the spontaneous transmission of information, although some required prior approval for such transmission. 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 request. States without specific legislation either had existing practices on 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 the proceeds of certain categories of offences or to a certain group of countries.

14. 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 of 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 can disseminate information spontaneously and upon request. Specific legislation regulates the transfer of data to other countries.^a

^a The good practices identified in the executive summary for Portugal, which was finalized in the second cycle, have been omitted in order to provide opportunities for the publication of new practices.

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

15. 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

In Burkina Faso, the Higher Authority for State Control and the Fight against Corruption worked with its counterparts in the subregion on the basis of the Convention. Indonesia was commended for its use of several networks and instruments to facilitate international cooperation in asset recovery.

16. Some States parties reported on the collection of 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)³

17. In the vast majority of States, foreign States could initiate civil action to establish title to or ownership of property (art. 53, para. (a)) or claim compensation or damages for harm caused by a Convention offence (art. 53, para. (b)) on the basis of domestic substantive law. However, few States cited experience with foreign States litigating in their jurisdictions.

18. Only six States positively regulated locus standi for foreign States. In three of those States, legal standing for foreign States had been established, but was conditional upon the recognition of the foreign State, and in one State the procedure required for recognition remained unclear.

19. In the majority of States, legal standing for States was implicit: legislation granted locus standi to legal persons, the definition of which included States. In the case of Norway and Sweden, although their legislation did not refer explicitly to foreign States, it regulated the capacity of States to be a party in proceedings. That

³ For a more detailed analysis of the implementation of article 53, see the report by the Secretariat on the implementation at the regional level of chapter V (Asset recovery) of the United Nations Convention against Corruption (CAC/COSP/IRG/2023/9/Add.1).

would also include foreign States. Moreover, some States in which locus standi was granted to persons in general argued that the term included legal persons. In that regard, another State mentioned the principle of direct implementation of international conventions embedded in its constitution to support that approach. Nevertheless, the lack of case law in that regard was noted by reviewers in at least one State and a recommendation was issued to ensure that the legal provisions applied also to foreign States.

20. In States where no regulation existed, primarily common-law countries in all regions, foreign States were usually entitled to pursue contract or tort claims under the general principles of civil litigation. Several States referred to the need to observe domestic civil procedure, including the hiring of local counsel, the demonstration of a legitimate interest or the payment of a deposit prior to a lawsuit being heard. In one State, the statute of limitations granted only three months to file a lawsuit from the date of knowledge of the commission of a wrongful act, which could de facto bar foreign States from litigating. In only seven States did foreign States have no possibility to 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. Four States instead referred to the rights of foreign States as victims in criminal proceedings.

21. 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.

22. Many States referred to the general rights of victims or bona fide third parties in criminal proceedings as sufficient measures to permit courts or competent authorities to recognize another State party's claim as a legitimate owner of property when having to decide 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 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.

23. 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. The absence of case examples became particularly relevant in one State that did not allow foreign States to be parties to legal proceedings but where foreign States could theoretically be considered prior legitimate owners. 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 a number of States, there was 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 under way.

Box 4

Examples of implementation of article 53 (c)

In the Republic of Korea, a foreign Government that was the rightful owner of property subject to confiscation could recover that property through civil action, even if the confiscation ruling was finally adjudicated.^a

^a The good practices identified in the executive summaries for Ireland, Italy and Saudi Arabia, which were finalized in the second cycle, have been omitted in order to provide opportunities for the publication of new practices.

24. 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.

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))

25. 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, reviewers did not issue recommendations when the legislation on confiscation did not formally distinguish between proceeds of local and foreign origin, on the understanding that it would cover both. 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 own citizens but not those committed by foreigners.

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

26. 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, as well as of civil forfeiture in cases of serious crime or property considered tainted.

27. 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 very broad 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.

Box 5

Examples of a reversed or eased burden of proof in non-conviction-based confiscation proceedings

In the Bahamas, non-conviction-based forfeiture could be ordered if the court was satisfied that property was, on the balance of probabilities, the proceeds of crime, an instrumentality or terrorist property.

Fiji could use its criminal offence of unexplained wealth in combination with non-conviction-based *ex parte* forfeiture orders to increase the efficiency of asset recovery.

In Cyprus, the anti-money-laundering legislation allowed for the registration of non-conviction-based confiscation orders issued by foreign States.^a

^a The good practices identified in the executive summary for Italy, which was finalized in the second cycle, have been omitted in order to provide opportunities for the publication of new practices.

28. 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. The limited non-conviction-based confiscation regimes could be explained by the more recent adoption of legislation on money-laundering or proceeds of crime, which introduced non-conviction-based confiscation for the crimes covered by those statutes, while such confiscation was not provided for under criminal procedure laws. In one State, a detailed anti-money-laundering act provided for civil forfeiture, as well as the taking of interim measures, but in the absence of a mutual legal assistance act, assistance was limited to cases of money-laundering. Whether the anti-money-laundering act also applied to predicate or stand-alone corruption offences could not be clarified by the review team. One State reported that it 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 certain cases execute foreign non-conviction-based confiscation orders. In addition, one State indicated that, while foreign non-conviction-based confiscation orders were not enforceable in its jurisdiction, there was an exception regarding those received from other States members of the European Union owing to the mutual recognition of freezing and confiscation orders provided for by European Union legislation.

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

29. 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. One State could enforce only those orders issued by competent authorities of “designated countries”, but not all States parties were designated countries.

30. 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 desk review of an order sufficed, in the Russian Federation, for example, in addition to procedural requirements that any foreign request had to meet, a hearing was held in open court, with notice being given to the person whose property was the subject of the confiscation order to be enforced, to other interested persons, to the competent foreign authority and to the court.

31. 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 by the review team to monitor whether the requirements of the Convention were taken into account when such discretion was exercised, in particular where no guidelines existed on the possible course of action for the attorney general, such as in the cases covered by article 57 of the Convention.

32. Five States could enforce foreign confiscation orders, including non-conviction-based 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; a recommendation was issued in that regard. 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.

33. Six States could not enforce foreign confiscation orders and a domestic confiscation order had to be obtained. In that regard, the authorities of one State acknowledged the need to amend the existing legislation to avoid the need to carry out an independent assessment of the foreign confiscation order. 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 flexibility regarding the enforcement of foreign search, seizure, freezing or confiscation orders

Several States did not require diplomatic channels for mutual legal assistance requests regarding the freezing or seizure of assets, and accepted informal cooperation such as police-to-police cooperation or cooperation between financial intelligence units or asset recovery offices. Portugal described a situation in which, during an initial investigation based only on an informal request, possible property of the accused had been discovered in two other States; the information had been forwarded to the requesting State.^a

^a The good practices identified in the executive summaries for Liechtenstein, Mauritius, Malaysia and Nigeria, which were finalized in the second cycle, have been omitted in order to provide opportunities for the publication of new practices.

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

34. 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 request from 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. One State could rely only on mutual legal assistance treaties for assistance, as it had no laws governing mutual legal assistance.

35. 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.

36. 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 was the result of the lack of relevant legislation, which prevented States parties from developing any practices with regard to 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.¹⁰

Box 7

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

In Cyprus, when a court received a foreign freezing or seizure request, it could issue a restraint or charging order if it was satisfied that proceedings had been instituted but not concluded in the requesting country in a period during which a foreign order could be made.

Courts in Pakistan could freeze or seize property upon a foreign request. In such cases, the court could issue a freezing or seizure order only after providing the persons concerned with the opportunity to be heard and ensuring that a number of requirements were met. Although the condition of notifying the persons concerned before freezing or seizing property had the potential to compromise foreign investigations and could result in requests not being made, in corruption-related cases, foreign jurisdictions had the option to send the request directly to the National Accountability Bureau, which could order the seizure or freezing of property without notifying the persons concerned. Orders remained in force for a period not exceeding 15 days, unless otherwise confirmed by the court.

37. Another State restricted assistance to the issuance of a search warrant. In a few States, usually common-law jurisdictions, the taking of measures regarding the execution of requests for interim measures was at the discretion of the domestic authorities. Three 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.

(v) *Additional measures for preservation of property (art. 54, para. 2 (c))*⁴

38. Sixteen 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. Cyprus' legislation allowed the court to freeze and seize assets when there was reasonable suspicion of money-laundering, irrespective of where it was committed. Preservation orders in the Republic of Korea were applicable in relation to confiscation, value-based confiscation and international cooperation.

39. 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. Two States parties highlighted practical and budgetary challenges, and the specialized asset management department set up in the prosecutor's office in another State faced challenges owing to the limited scope of its jurisdiction, which covered only money-laundering and financing of terrorism cases. In another State, although a mechanism for the management of frozen and seized assets existed, the review team noted the lack of implementing regulations. 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 and 4)*

40. All but two States had regulated the required content of mutual legal assistance requests (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, the regulations on international cooperation did not contain detailed specifications regarding the required format and content of mutual

⁴ 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 this topic can be found in thematic reports related to the first review cycle.

legal assistance requests, but reviewers noted that some guidance could be found in the legislation governing extradition. However, that was not deemed sufficient and a recommendation was issued to consider providing further legislative or administrative specifications. The required content of requests included information to satisfy the dual criminality requirement, or a proportionality review in practice, information about the non-appealability of an order or the time limit for carrying out the request. Review teams issued recommendations to specify requirements in order to provide more guidance to requesting States on the required content of mutual legal assistance requests, going as far as recommending that States transpose into domestic law the information that requesting States should provide according to article 55, paragraph 3, as mandatory requirements.

(vii) *Grounds for refusal of mutual legal assistance requests (art. 55, paras. 4 and 7)*

41. 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. 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 from that State confirmed that, in practice, assistance was provided irrespective of the value. The de minimis values included amounts such as \$800 and \$5,000. 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.

42. Sufficient evidence was needed by most States in order to execute a mutual legal assistance request, but States would generally ask the requesting State to present such evidence prior to lifting provisional measures or refusing assistance. Malaysia would provisionally close the 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.

43. 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 or the expiration of the statute of limitations in the requesting or requested States. One State could refuse a request if the importance of the matter did not justify the measures requested. 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, 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. 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)*

44. All but 11 States indicated that consultations with a requesting State would take place prior to the lifting of any provisional measure and that the requesting State would be given an opportunity to present its reasons in favour of continuing the measure. States had specific legislation on this issue, applied the Convention directly, included 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, the reviewing team 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 10 States where no laws existed, several had never received a request, so they could not refer to any practice regarding consultations.

45. 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 prior to the lifting of any provisional measures.

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

46. In line with the trend observed in previous thematic reports, few States had practical experience with the return of sizeable amounts of assets, while most States indicated that no return had taken place so far or no requests had been received or made. As a result, a lack of agreements was also noted. In the reviews analysed, the majority of 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.

47. 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 where no such 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.

Similarly, the Cook Islands set up a confiscated assets fund to satisfy the claims of foreign jurisdictions in respect of confiscated assets based on a treaty or an asset-sharing agreement.

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.

48. 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). The United Kingdom specifically referenced the scenarios set out in article 57, paragraph 3, in its asset recovery guide for requests under the Convention, whereas for other cases it relied on asset-sharing agreements, but authorities were guided by compensation principles that helped identify cases in which compensation to victims of economic crime in other countries and the swift return of funds to affected countries, companies or people was called for. 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.

49. 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, while another 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.

50. 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). Italy allowed for the direct transfer of confiscated assets to a victim in a foreign State even without a request by that State or a criminal conviction. In Solomon Islands, assets could be returned solely upon sufficient demonstration of a reasonable basis for ownership by the requesting State. Germany required the compensation, from public funds, of injured parties if they could show that they could not obtain full satisfaction of their claim through the enforcement of a title. Legislation in the Cook Islands and Oman stipulated that seized items must be returned to those who had lost possession as a result of an offence.

51. Most States could deduct reasonable expenses incurred (art. 57, para. 4). 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. Three 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.

52. 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). In Kenya, taxpayers had been identified as victims of underlying corruption offences, and the funds returned to the country were invested in social projects benefiting society.

IV. Outlook

53. The present report reflects the analysis of 72 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.