Implementation Review Group
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Agenda item 4
State of implementation of the United Nations Convention against Corruption

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

Report prepared by the Secretariat

Summary

The present report serves as a supplement to the thematic report on the implementation of chapter V (Asset recovery) of the United Nations Convention against Corruption (CAC/COSP/IRG/2021/7). It provides an overview of the implementation of article 52, paragraphs 5 and 6, and article 53 of the Convention by regional groups of States parties under review in the second cycle of the Mechanism for the Review of Implementation of the Convention.
I. Introduction, scope and structure of the report

1. 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, the present report contains supplementary information, organized by geographical region, to the thematic report on the implementation of chapter V (Asset recovery) of the Convention (CAC/COSP/IRG/2021/7). It provides an overview of successes, good practices, challenges and observations in relation to the implementation of article 52, paragraphs 5 and 6, and article 53 of the Convention. The report has been drafted on the basis of information included in 53 executive summaries completed under the second cycle of the Implementation Review Mechanism, as well as information contained in 19 reviews completed for the Group of African States, 14 for the Group of Asia-Pacific States, 10 for the Group of Western European and other States, five for the Group of Latin American and Caribbean States and five for the Group of Eastern European States.\(^1\) The present report does not purport to be comprehensive, but instead endeavours to provide a summary of the information available in the country reviews completed under the second review cycle.

II. Implementation of select provisions of chapter V (Asset recovery) of the Convention, by regional group

2. Two topics were selected from the thematic report for further analysis on a regional basis: financial disclosure systems, including obligations to report an interest in or signature or other authority over a financial account in a foreign country by public officials (art. 52, paras. 5 and 6, of the Convention) and measures for the direct recovery of property (art. 53 of the Convention). These topics were among those where regional nuances, good practices and challenges in implementation were prevalent and where sufficient data were available from the country reviews to analyse regional trends. Further analysis and additional articles of the Convention will be included in future editions of the regional reports.

3. The following tables and figures provide an overview of the level of implementation of article 52, paragraphs 5 and 6, and article 53 of the Convention. To reflect the different sample sizes of States with completed reviews and make the data comparable, the numbers are portrayed relative to the size of the sample. For each regional group, total and proportional numbers are provided with regard to the number of States per group that received recommendations and the number of recommendations received per regional group.

4. As only four good practices were identified for article 52, paragraph 5 (one each for the Group of African States, Group of Asia-Pacific States, Group of Eastern European States and Group of Latin American and Caribbean States), one for article 52, paragraph 6 (in the Group of African States) and two for article 53 (both in the Group of African States), no tables or figures were created to depict good practices. The good practices are described in sections A and below.

\(^1\) The present data are based on executive summaries completed as at 20 May 2021.
Table 1
Recommendations issued with regard to the implementation of article 52, paragraph 5

<table>
<thead>
<tr>
<th>Group</th>
<th>Number of States with completed reviews</th>
<th>Number of States that received recommendations</th>
<th>Total number of recommendations received</th>
<th>Percentage of States per group that received recommendations</th>
<th>Number of recommendations issued per State in the group</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group of African States</td>
<td>19</td>
<td>14</td>
<td>17</td>
<td>0.89</td>
<td>74</td>
</tr>
<tr>
<td>Group of Asia-Pacific States</td>
<td>14</td>
<td>9</td>
<td>13</td>
<td>0.93</td>
<td>64</td>
</tr>
<tr>
<td>Group of Eastern European States</td>
<td>5</td>
<td>4</td>
<td>5</td>
<td>1</td>
<td>80</td>
</tr>
<tr>
<td>Group of Latin American and Caribbean States</td>
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<td>Group of Western European and other States</td>
<td>10</td>
<td>5</td>
<td>8</td>
<td>0.8</td>
<td>50</td>
</tr>
</tbody>
</table>

Figure 1
Proportional distribution of recommendations relating to article 52, paragraph 5, by regional group

Table 2
Recommendations issued with regard to the implementation of article 52, paragraph 6

<table>
<thead>
<tr>
<th>Group</th>
<th>Number of States with completed reviews</th>
<th>Number of States that received recommendations</th>
<th>Total number of recommendations received</th>
<th>Percentage of States per group that received recommendations</th>
<th>Number of recommendations issued per State in the group</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group of African States</td>
<td>19</td>
<td>14</td>
<td>14</td>
<td>0.74</td>
<td>74</td>
</tr>
<tr>
<td>Group of Asia-Pacific States</td>
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<td>8</td>
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<td>57</td>
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<tr>
<td>Group of Eastern European States</td>
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<td>3</td>
<td>0.6</td>
<td>60</td>
</tr>
<tr>
<td>Group of Latin American and Caribbean States</td>
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<td>5</td>
<td>1</td>
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<tr>
<td>Group of Western European and other States</td>
<td>10</td>
<td>6</td>
<td>6</td>
<td>0.6</td>
<td>60</td>
</tr>
</tbody>
</table>
Note: The percentage of States that received recommendations and the number of recommendations per State in the groups are identical because, in the absence of implementation of article 52, paragraph 6, a recommendation to implement the provision was issued to each of these States.

Table 3
Recommendations issued with regard to the implementation of article 53

<table>
<thead>
<tr>
<th>Group</th>
<th>Number of States with completed reviews</th>
<th>Number of States that received recommendations</th>
<th>Total number of recommendations received</th>
<th>Percentage of States per group that received recommendations</th>
<th>Number of recommendations issued per State in the group</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group of African States</td>
<td>19</td>
<td>13</td>
<td>25</td>
<td>68</td>
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<tr>
<td>Group of Asia-Pacific States</td>
<td>14</td>
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<td>20</td>
<td>50</td>
<td>1.4</td>
</tr>
<tr>
<td>Group of Eastern European States</td>
<td>5</td>
<td>4</td>
<td>9</td>
<td>80</td>
<td>1.8</td>
</tr>
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<td>Group of Latin American and Caribbean States</td>
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<td>9</td>
<td>80</td>
<td>1.8</td>
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<tr>
<td>Group of Western European and other States</td>
<td>10</td>
<td>2</td>
<td>5</td>
<td>20</td>
<td>0.5</td>
</tr>
</tbody>
</table>

Figure II
Proportional distribution of recommendations relating to article 52, paragraph 6, by regional group

Figure III
Proportional distribution of recommendations relating to article 53
A. Implementation of article 52, paragraphs 5 and 6, of the Convention (financial disclosure systems and reporting of an interest in or signature or other authority over a financial account in a foreign country)

5. Disclosure mechanisms for the assets and interests of public officials are a relatively modern phenomenon, but more and more States are introducing financial disclosure requirements with a view to (a) preventing, identifying and managing conflicts of interest; (b) detecting illicit enrichment where it is a criminal offence; and/or (c) better preventing and countering the transfer of proceeds of crime and facilitating their recovery.

6. The Conference of the States Parties to the United Nations Convention against Corruption, most recently in its resolutions 7/2 and 8/9, encouraged States parties to consider establishing effective financial disclosure systems for appropriate public officials, consistent with article 52, paragraph 5, of the Convention, and to consider taking such measures as may be necessary to permit their competent authorities to share that information, consistent with the requirements of domestic law, with other States parties, when necessary, in order to investigate, claim and recover proceeds of offences. States further reiterated this commitment in the political declaration adopted at the special session of the General Assembly against corruption, in which they stated that they would strengthen their efforts to prevent, identify and manage conflicts of interest, including through effective and transparent financial disclosure systems, with information disclosed by appropriate public officials made available as widely as possible, and the use of innovative and digital technology in this field, with due regard for data protection and privacy rights.

7. With 43 recommendations made in 35 countries, article 52, paragraph 5, is one of the provisions with the highest number of challenges and a very low number of good practices identified across all the regional groups. Combined with the recent commitments made by States parties to further improve financial disclosure systems, the provision lends itself well to more nuanced analysis by region. Given that article 52, paragraph 6, is closely related to article 52, paragraph 5, its implementation will also be analysed.

8. As article 52, paragraph 5, requires States to consider establishing effective financial disclosure systems only for appropriate public officials, it is not prescriptive in nature and provides States with a certain latitude in the design of their asset disclosure systems, allowing them to reflect their individual legislation and policy priorities. Disparities in criteria were observed among the reviews with regard to assessment of the different disclosure requirements. The more developed a system was found to be, the more likely it was that recommendations were issued to further refine the system beyond the immediate requirements of article 52, paragraph 6. Therefore, the number of recommendations issued does not necessarily reflect a lack of implementation.

9. Among the 53 States parties covered in the present report, the majority had in place financial disclosure systems for public officials at certain levels (art. 52, para. 5). However, the categories of officials subject to disclosure obligations, the effectiveness of financial disclosure systems, the public accessibility of asset declarations and the measures for sharing such information with the competent authorities of other States parties varied significantly between and within the different regional groups. Challenges were identified in the majority of States in all the regional groups, with implementation appearing to be relatively stronger in the Group of

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2 Given the close links between article 52, paragraph 5, and article 8, paragraph 5, (on the disclosure by public officials of, inter alia, investments and assets), additional relevant information can be found in the thematic reports on the implementation of chapter II (Preventive measures) of the Convention, as well as the documentation prepared in the context of the Working Group on the Prevention of Corruption.
Western Europe and other States and the Group of Latin American and Caribbean States.

10. Despite paragraphs 5 and 6 of article 52 being closely related, no correlation between implementation of the two provisions was observed and in the majority of States, the financial disclosure systems in place did not extend to foreign bank accounts. Only a limited number of States had measures in place that required appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts (art. 52, para. 6). All States in the Latin American and Caribbean Group, as well as more than half of States in the other regional groups covered in the present report, were identified as experiencing challenges in respect of their implementation of this provision.

Group of African States

11. All but one of the 19 African countries covered in the present report had established financial disclosure systems for public officials. However, the 18 States that had implemented such systems were assessed as not being fully in compliance with the requirements of an effective financial declaration system. Therefore, recommendations were issued in all 19 of the States in respect of their implementation of article 52, paragraph 5, of the Convention. With regard to article 52, paragraph 6, only three States were assessed as being compliant with the provision. In two countries, there was legislative implementation only, their disclosure systems remaining non-operational, owing mainly to a lack of resources.

12. In terms of the categories of officials subject to disclosure obligations, the majority of States opted for a selective approach and required certain categories of public officials to disclose their assets on the basis of their level of seniority and/or the corruption risks their positions were exposed to. Seven of the 19 countries subjected all public officials to such financial disclosure. Recommendations issued by reviewers were not always consistent, and different recommendations were made by different review teams. In one country, a recommendation was issued to extend the system to cover all public officials, while in another, a recommendation was given to narrow the scope of application to appropriate officials, to be identified on the basis of their seniority and/or the corruption risks their positions were exposed to. In three countries, public officials were not required to declare the financial interests of their spouses. The legislation of one of those countries referred only to wives of public officials, which excluded female public officials from the duty to report on the assets and incomes of their spouses.

13. The majority of the recommendations touched upon the effectiveness of the financial disclosure systems, and in one third of States concerned, the establishment or enhancement of existing verification systems. During the course of the reviews, almost all States reported challenges regarding the manual verification of declarations and noted the need for an electronic system for filling and verifying declarations in order to enhance efficiency and increase compliance rates. Such electronic systems were adopted in two countries but operationalized only in one of them. It was recommended that three States adopt an electronic system for asset disclosure and that one State take the necessary steps to make its system operational. The enforcement of financial disclosure obligations was identified as a major challenge in at least two countries, where there was legislation establishing sanctions for non-compliance. However, statistics regarding the compliance rate and sanctions imposed were not always provided, which prevented the reviewers from comprehensively assessing the effectiveness of these financial disclosure systems, including the proportionality of the applicable sanctioning regimes.

14. It was recommended that one State make declarations publicly accessible, and that another share financial disclosure information with foreign competent authorities, when necessary, in order to investigate, claim and recover criminal proceeds. In another State,
both domestic and foreign competent authorities could access asset declaration information, but the public official involved was required to be informed and given the opportunity to object to such access within 14 days. A recommendation was therefore issued to overcome this impediment to the sharing of information.

15. Frequency of reporting was identified as an issue in one country and a recommendation to make the periodic update of declarations a requirement was issued for this country.

16. Sixteen of the reviewed countries were assessed as being either non-compliant or partially compliant with article 52, paragraph 6, of the Convention, which requires States to consider taking measures to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts.

**Group of Asia-Pacific States**

17. Two of the 14 Asia-Pacific States covered in the present report had not adopted financial disclosure systems for public officials. Among the 12 countries that had adopted such systems, seven were identified as having implementation gaps and received recommendations in that regard. One State had just finalized the legislative framework for financial disclosure but had not implemented it in practice, which made it difficult to assess the effectiveness of its financial disclosure system.

18. In terms of the scope of public officials subject to disclosure requirements, three countries had made the declaration systems applicable to all public officials, while others had opted for a selective approach. In two States, the scope of public officials subject to financial disclosure was very narrow, either covering officials from one or two sectors or only requiring officials from a specific sector to declare their assets on the occasion of carrying out certain duties. In one State, for example, parliamentarians, before participating in the consideration of a parliamentary matter, were required to declare their financial interests in that matter. Six of the countries did not extend declarations to spouses or minor children, but in another State, even the assets of unmarried partners were to be reported in public officials’ declarations.

19. The adoption of an electronic system was observed in only three States, and recommendations to consider digitalizing the submission of declarations and their verification had been issued for two States.

20. Almost half of the States in this group received recommendations to enhance the effectiveness of their financial disclosure systems, in particular through adopting strengthened measures to ensure accurate submissions and efficient verifications. In one country, for instance, verifications were carried out only in cases of existing criminal investigations, and in another country, there was no follow-up mechanism to report back on the process for the verification of asset declarations. In terms of enforcing the rules on financial disclosure, four States had not adopted measures for non-compliance.

21. Two of the 12 States that had adopted financial disclosure measures had not considered adopting measures to permit the sharing of relevant information with competent foreign authorities and it was recommended that one country consider enhancing the transparency of its financial disclosure statements.

22. Half of the Asia-Pacific States had not considered requiring appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities (art. 52, para. 6).

23. In terms of good practices, reviewers noted that the legislation of one State required financial declarations to be submitted to the National Anti-Corruption Commission with supporting evidence that could prove the actual existence of assets and liabilities, including evidence of the income tax of a natural person in the previous tax year.
### Box 1

**Example of implementation**

**Organic Act on Anti-Corruption, B.E. 2561 (2018) of Thailand**

**Section 102.** In the proceedings under section 28 (3), the NACC shall at least prescribe that the following persons shall submit the account of assets and liabilities of himself or herself, spouse and child under the legal age to the NACC:

1. Person holding political position;
2. Justice of the Constitutional Court;
3. Person holding a position in an Independent Organ;
4. Judicial official under the law on Rules of judicial official of the Court of Justice who is in the position of the Director-General and above;
5. Official of the Administrative Court under the law on establishment of Administrative Court and administrative case procedure who is in the position of the Director-General of the Administrative Court of First Instance and above;
6. Prosecutors under the law on rule of prosecutors who is in the position of the Director-General and above;
7. Person holding a high-ranking position;
8. Other positions as prescribed by other laws to submit the account of assets and liabilities;
9. Local administrator, local deputy administrator, assistant local administrator and members of the local assembly as prescribed by the NACC.

Spouses under paragraph one shall include persons living together as if being husbands and wives without registering marriage certificate under the criteria as prescribed by the NACC.

**Section 105.** Submission of account of assets and liabilities to the NACC shall be made with the evidence which can prove the actual existence of the assets and liabilities including the evidence of income tax of a natural person in the previous tax year. In the case of submission of documents, the person submitting such documents shall sign and certify, every page, the correctness of the account of assets and liabilities and each of the copies including the details of the documents for the account of assets and liabilities submitted. In this regard, the assets and liabilities to be submitted shall include the assets and liabilities in a foreign country and include direct or indirect assets of such person being entrusted in the possession or supervision of other persons.

The criteria, duration, extension of time, procedure for submission of account of assets and liabilities and evidence pertaining thereto under paragraph one shall be as prescribed by the NACC and may be submitted through the electronic means. Such prescription shall also consider technology appropriate to the electronic form and method to replace the documents and shall be in accordance with the law on electronic transaction and time for submission of account of assets and liabilities shall not be less than sixty days.

### Group of Eastern European States

24. All five Eastern European States covered in the present report had adopted financial disclosure systems, but none of those systems had been assessed as fully effective. Four of the States received recommendations relating to article 52, paragraph 5, and three received recommendations relating to article 52, paragraph 6. The majority of the States that were reviewed required public officials to submit declarations when assuming and leaving office and to provide regular updates. In one State, the system had only been implemented at the legislative level and had not yet entered into force, which meant that its effectiveness could not be assessed.
25. In terms of scope, all five States had opted for a selective approach with regard to the public officials who were required to submit declarations, including one State that required only high-level public officials to do so, thereby excluding regular public officials who held positions that were more vulnerable to corruption. However, the reviewers recommended that only one State extend the requirement of financial disclosure to all public officials.

26. Only one State had been assessed as having adopted comprehensive legislation on financial disclosure backed up by an electronic system that allowed declarations to be published on a dedicated website and shared with foreign States.

27. Two States had reported using an electronic platform for the submission and verification of financial disclosures.

28. Two States had established legal requirements for making declarations available to the public. However, in one State data were not effectively available to the public as it had been estimated that 60 per cent of declarations contained inaccuracies, and one of the common problems identified was that the assets of close persons, such as spouses and minor children living with them, which were not subject to disclosure requirements, were disclosed. In one State, declarations had not been published or shared with competent authorities.

29. Four States required public officials subject to asset declarations to include the assets of their family members. In one of those States, such declaration was required only when it was reasonable to infer that the person subject to disclosure was transferring his or her property or income to family members for the purpose of evading suspicion.

30. In one State, the asset declaration system was assessed as not being effective owing to the absence of enforcement measures, and it was recommended that another State revise the sanctioning regime, as relevant sanctions applied only to persons who held public positions at the moment that misconduct was detected.

31. Of the five Eastern European States covered in the present report, three had not considered requiring appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities (art. 52, para. 6). One country reported not being in a position to check violations relating to accounts held abroad, which constituted a challenge in the verification process.

**Group of Latin American and Caribbean States**

32. All five Latin American and Caribbean States covered in the present report had adopted financial disclosure systems. Two of those countries received recommendations relating to paragraph 5 of article 52, and all received recommendations relating to paragraph 6 of article 52.

33. With regard to the implementation of article 52, paragraph 5, it was recommended that one State consider allowing information on asset disclosure to be shared with foreign competent authorities and establish effective sanctioning and verification regimes, and that the other State comprehensively strengthen its disclosure system in terms of compliance rate, verification and enforcement by adopting and implementing an effective sanctioning regime.

34. Only one State had made financial disclosure requirements applicable to all public officials. Four States required asset declarations to be updated either annually or every two years and only one State limited declarations to occasions when officials assumed and left their office.

35. Only in one country did declarations include the official’s spouse and any person for whom the official was legally responsible. Only one country had adopted an electronic system for submitting declarations, while also permitting paper-based submissions.
36. Four of the five States had adopted measures allowing part or all of a declaration to be made public. In one State the scope of the declarations to be made public was too narrow, covering only the President and the Vice-President. In another State, only a small section of the declaration was publicly accessible. In one State, a register of all declarations had been established; however, public access was granted only for those who had been authorized by the submitters. In another State, a summary of the declaration was to be published on a dedicated website.

37. In one country, the competent authorities were permitted by law to share information with their foreign counterparts if such information was sought through a request for mutual legal assistance. In another country, if a request was made within the context of criminal proceedings, the information in a declaration could be shared. The three other States could share only information that was made accessible to the public with foreign States.

38. In one country, where the purpose of the asset and income declaration system was to identify possible cases of illicit enrichment, reviewers noted positively the process for the verification of the information contained in sworn declarations of assets and income and the fact that a summary of that information was published on a dedicated website. The system allowed for online submission and cross-checking with the external databases of both public and private entities through a platform known as the Integrated System of Anti-corruption Information and Recovery of State Assets. The system was characterized by its use of a special procedure to select public officials for the ex officio verification of their declarations. The system had produced concrete results, and had led to criminal prosecution and the subsequent recovery of assets when corruption offences were identified.

Box 2
Example of implementation

Law No. 2027 on the Statute of Public Officials of Bolivia

Article 53 – Declaration of assets and rents
All public servants, regardless of their status, hierarchy, quality or category, are obliged to make express declarations of the assets and income they have at the time of starting their employment relationship with the administration.
During the period of employment of the public servant with the administration and even at the end of it, whatever the cause of termination, the declarations of assets and income may be, at any time, subject to verification. For this purpose, public servants shall provide periodic declarations and updates in accordance with the regulations.

Supreme Decree No. 1233

Article 5 – Declaration during the exercise of office
I. All civil servants must update the information on their Affidavit of Assets and Income during their term of office, presenting it during the month of their birth if they live in the department capitals, and if they live outside the department capitals, they will additionally have the month following their birth.

Article 18 – Publication
A summary of the last Sworn Declaration of Assets and Income, taking into account the date of your form, will be published through the website of the Affidavit of Assets and Income, containing: Name and surname, date of the form of the Affidavit, Total of: Assets, Liabilities, Patrimony and Income, and will cease to be published when this date of the declaration form is not the last one or when its presentation date is more than two (2) years old.

The summary of the declarations of the civil servants shall be published pursuant to article 54 of Law No. 2027 of 27 October 1999, on the Statute of the Civil Servant and legal provisions in force.
Group of Western European and other States

39. Nine of the 10 States that are covered in the present report had adopted financial disclosure systems for appropriate public officials. Seven of the States received recommendations with regard to their financial disclosure systems, three States were assessed as having shortcomings in their implementation of article 52, paragraph 5, and seven States were assessed as having shortcomings in their implementation of article 52, paragraph 6. In one country, the asset declaration system was assessed as being ineffective, as it covered only a small number of categories of public officials, the declarations of some officials were not subject to any internal review and there were no sanctions in case of non-compliance.

40. Recommendations issued for this group of States included measures such as widening the scope of declarations to cover spouses and minor children; providing a legal definition of the term “substantive change” for systems designed to identify an inexplicable increase in a public official’s wealth; ensuring a strengthened verification system; and sharing information with foreign competent authorities and reporting accounts that public officials had an interest in or signature or other authority over in foreign jurisdictions.

41. One country had not established a specialized financial disclosure system. The disclosure requirements applicable to certain public officials were primarily directed at the disclosure of interests. However, that country had considered adopting financial declaration requirements for appropriate public officials focused on the disclosure of interests, including certain financial interests such as income from secondary activities and donations, commensurate with the country’s assessed corruption risk profile.

42. In terms of the scope of public officials subject to declaration requirements, all the States subjected only designated public officials to financial declarations. In three States, the legislation explicitly extended the declarations to spouses and minor children, including two that further extended them to partners and one that further extended them to children of the spouse. It was recommended that two States consider extending their financial disclosure systems to cover spouses and minor children.

43. In one country, there was no institution responsible for the verification of declarations, and the content of declarations was neither accessible to the public nor could it be shared with foreign countries, while in another country there was no specific requirement for civil servants to disclose foreign accounts.

B. Implementation of article 53 of the Convention (measures for the direct recovery of property)

44. In the political declaration adopted at the special session of the General Assembly against corruption, held in 2021, States noted existing barriers to asset recovery and return, posed in particular by mutual legal assistance processes that were often found to be lengthy and complicated. States thus highlighted the need to use all methods available to recover assets, including measures for the direct recovery methods outlined in article 53 of the Convention, which provides flexible means for States to directly recover assets without having to rely on international cooperation. States committed to share information and good practices and develop further guidance in that regard, in order to facilitate litigation of cases in foreign courts.

45. The present section analyses the frameworks in place to implement article 53 of the Convention. When comparing the implementation of article 53 across the different regional groups, similar trends were observed, and any differences often related to the legal system of the State under review.
Overall, 68 recommendations were issued to 28 States of the 53 covered in the present report, meaning that challenges were identified in roughly half the States for which executive summaries were completed. Although foreign States could initiate civil action to establish title to or ownership of property (art. 53 (a)) or claim compensation or damages for harm caused by a Convention offence (art. 53 (b)) on the basis of domestic substantive law in the majority of States, explicit locus standi for foreign States was found in the legislation of only four States. In the other 49 States, foreign States were often treated like any other legal person and were assumed to have legal standing, or were referred to criminal proceedings and the possibility of being awarded compensation as part of a verdict. Few States cited experience with foreign States litigating in their courts, meaning direct recovery methods could be an area for the Implementation Review Group to discuss further with a view to facilitating the consistent implementation of article 53 and clarifying the procedures for foreign States to directly recover their assets without needing to rely on mutual legal assistance processes.

In the 53 executive summaries, only two good practices were identified under article 53, both relating to countries in the Group of African States. Both States were commended for treating States like any other person, a good practice that was only identified as such in the early stages of the second cycle. In later reviews, the practice was identified by reviewers as a general trend rather than as a good practice.

**Group of African States**

Three States explicitly granted locus standi to foreign States to initiate civil claims in domestic courts. Unique to the Group of African States, the anti-corruption acts of two of these States transposed the requirements of article 53 verbatim and thereby established the explicit jurisdiction of their courts over civil claims by foreign States to establish title to or ownership of property (art. 53 (a)) or claim compensation or damages (art. 53 (b)), and obliged courts to recognize another State’s claim of legitimate ownership when ruling on confiscation (art. 53 (c)).

**Box 3**

**Examples of implementation**

**Law 06-01 on Preventing and Fighting Corruption of Algeria**

**Measures for the direct recovery of goods**

Art. 62. The Algerian courts are competent to hear civil actions initiated by the States parties to the convention in order to have the existence of a right of ownership over property acquired as a result of acts of corruption recognized.

The court hearing proceedings under paragraph 1 of this article may order persons convicted of corruption to pay civil compensation to the requesting State for the damage caused to it.

In all cases where a confiscation order is likely to be pronounced, the court must take the necessary measures to preserve the right of legitimate property claimed by a third State party to the convention.

**Civil Procedure Code of Kenya**

57. When foreign state may sue

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3 As with the thematic reports, recommendations were counted in a quantitative and qualitative manner. If a State had received a recommendation to “take measures to implement article 53 of the Convention”, for the purpose of the present report, the recommendation was counted as three recommendations; one for each paragraph of article 53. This was done in order to most accurately reflect the level of implementation of each provision and count the challenges identified while not taking into account the preferences of reviewers with regard to the formulation of recommendations.
A foreign state may sue in any court of Kenya, provided that state has been recognized by Kenya, and provided the object of the suit is to enforce a private right vested in the head of that state or in any officer of that state in his public capacity.

Every court shall take judicial notice of the fact that a foreign state has or has not been recognized by Kenya.

49. In several other States, legislation granted locus standi to legal persons, the definition of which included, or was interpreted to include, States. Where it was unclear whether or not the definition of legal person would extend to States, recommendations were issued to clarify in the law or ensure in practice that legal persons were given standing in domestic courts. In States where no regulation existed, primarily in predominantly common law countries, foreign States were usually entitled to pursue contract or tort claims under the general principles of civil litigation. Reviewers frequently found that nothing in a State’s domestic legislation prevented foreign States from initiating civil action, although no case law existed in this regard. In such cases, recommendations were issued to specify recovery mechanisms in the law or ensure in practice that States could initiate civil claims with a view to recovering their assets directly.

50. Reviews of five States found that foreign States were subject to the general rules of procedure, including the need to demonstrate a legitimate interest, deposit of cautio iudicatum solvi and representation by local counsel. The requirement to demonstrate legitimate interest was in one case noted by reviewers as a potential obstacle for foreign States, although, in the absence of case law, the reason for the corresponding recommendation was not clear.

51. While four States reported that foreign States had initiated litigation in their courts or even directly recovered damages, five States indicated that foreign States had never filed lawsuits or otherwise appeared before their courts to claim compensation.

52. Several States did not allow foreign States to initiate civil action to establish title to or ownership of property acquired through the commission of an offence or claim compensation. Although the codes of criminal procedure of these countries allowed the courts to order compensation to be paid to victims or injured parties as part of criminal proceedings (art. 53 (b)), the procedures for making claims for compensation were at times unclear or had not been tested in practice. Where civil litigation was not possible but the courts could order the return of an item to its prior legitimate owner or compensation for a loss as part of sentencing, the requirement for a criminal conviction could be an obstacle to the direct recovery of assets. In this regard, five States received recommendations to ensure that other States could be awarded compensation, or to monitor the possibility of them doing so, either through a lawsuit or as part of criminal proceedings.

53. Three States allowed, in addition to the possibility of civil litigation, the bringing of auxiliary civil action in criminal court to seek compensation. As all these States had inquisitorial criminal legal systems, giving States the choice to either initiate their claim in civil court or join their claim to criminal proceedings provided them with the benefit of being able to choose legal recourse with lower costs and a shifting of the burden of proof to the court and away from the plaintiff. In order to ensure that victims of crime received compensation, one State was in the process of setting up a confiscated and forfeited funds account and a criminal assets recovery fund, which would potentially cover foreign States that were considered victims of a corruption offence.

54. A number of States could not recognize another State’s claim of legitimate ownership of property when deciding on confiscation (art. 53 (c)), and it was recommended that they remedy this in their domestic legislation. Several States referred to the general rights of injured or bona fide third parties in criminal proceedings, while two States had provisions in place for the return of confiscated
assets to those who had lost possession as a result of an offence. Another State had established legislation enabling foreign parties to claim interest in property in forfeiture proceedings. In addition, as part of ancillary proceedings following forfeiture, this country’s courts could suspend the realization of forfeited property to satisfy claims of injured parties and any person having an interest in property could challenge preservation orders over their property.

55. In the absence of legislation, case law and practical experience, it was usually unclear what was required domestically in order to establish a State’s good faith and/or prior legitimate ownership in criminal or restitution proceedings.

56. Notably, of a total of only five States that cited notice requirements for prospective owners in asset recovery proceedings, four African States had established specific means of giving notice to prospective victims or legitimate owners of property to allow them to demonstrate their ownership during asset recovery proceedings. These States required publication of notices of confiscation or restraint orders in the gazette in order to notify any party with a prospective interest in the property involved. In one of these States, when the owner of property was unknown or could not be found, a notice must be published in two daily newspapers with a wide circulation in an effort to locate possible bona fide third parties.

57. In total, 25 recommendations were issued to 13 of the 19 African States under review.

Group of Asia-Pacific States

58. Diversity in implementation could be observed in the Group of Asia-Pacific States, as legal systems were more heterogeneous than in other groups and included mixed systems with elements of civil law, common law, Islamic law and customary law that influenced the ways in which States had implemented article 53.

59. The code of civil procedure of one State explicitly established standing for foreign States, but at the same time established the condition of recognition by its President and “judicial notice” of this recognition by the courts. The procedures for recognition by the President and judicial notice by the courts remained unclear, and it was recommended that this State adopt clear legislative provisions and ensure that recognition by the President did not pose obstacles.

60. Several States, in the absence of legislation, referred States to the general principles of civil litigation under common law to establish title to or ownership of property (art. 53 (a)) or claim compensation or damages (art. 53 (b)). In two of these States, despite no case law being available, reference to the general right to initiate litigation under common law was deemed sufficient by the reviewers. The other two States, as well as an additional common law State that did not refer to common law principles, received recommendations to specify recovery mechanisms in domestic law or ensure in practice that foreign States could initiate civil action.

61. In the predominantly civil or Islamic law countries, civil procedure law granted locus standi to “persons”, “injured persons” or “legal persons”, which in all cases was interpreted to include foreign States and deemed sufficient by reviewers. One State allowed foreign individuals, organizations and enterprises to initiate litigation in its courts, but there was no legal basis granting locus standi to States and a recommendation was issued accordingly. With regard to procedural requirements for a foreign State to file a lawsuit, one State required representation by local counsel.

62. Few executive summaries or country reports contained information on the concrete experience that States had with regard to foreign States initiating civil action in their courts. One State that recognized foreign States as legal persons highlighted cases involving other States or their embassies on its territory. At least one State explicitly stated that no foreign country had ever initiated litigation in its courts. However, as the term “legal person” was usually interpreted by the State under review and the reviewers to include States, or it was established that “nothing prevented foreign States from initiating civil action”, it could be deduced that the majority of
States had little experience with foreign States making claims in their courts, but this was not explicitly established during the review. The same conclusion applies to the other groups of States under review.

63. Four States allowed the joining of civil claims to criminal proceedings or the filing of civil claims in criminal courts. Another five States allowed foreign States to act as victims in criminal proceedings in order to claim, or be awarded, compensation. Although not regulated explicitly, it was established that nothing in the domestic statutes prevented the terms “victims” or “injured persons” from being extended to foreign States. The criminal code of one State provided specifically that criminal sanctions or confiscation did not prevent victims from seeking restitution, compensation or expenses or exercising other rights, which was also deemed to extend to States. In one State, compensation in criminal proceedings could already be claimed at the investigation stage. Reviewers of a Pacific State highlighted the possibility of pecuniary penalty orders, including in cases of unexplained wealth, as a potential additional means of seeking compensation for damages.

64. In one State, while courts could recognize claims of legitimate ownership when having to decide on confiscation, this did not extend to foreign States. In several other States, no such mechanisms were in place or the review teams were unable to clarify the details of such mechanisms. One State had implemented legislation on the return of confiscated property to its prior legitimate owner, but it was unclear whether this would apply to foreign States. As a means of notifying prospective owners, one State required publication in the gazette of notices of confiscation or restraint orders in order to notify any party with a prospective interest in the property involved.

65. In total, 20 recommendations relating to the implementation of article 53 were issued in seven of the 14 States.

Group of Latin American and Caribbean States

66. Although three countries in the Group of Latin American and Caribbean States granted locus standi to “the State”, legal persons or even “foreign legal persons of a private nature”, legislation excluded foreign States or, where legal persons were granted standing, this was not interpreted by these States or their reviewers as including foreign States. Thus, in only two of the five countries in the Group of Latin American and Caribbean States under review could foreign States initiate civil proceedings in their capacity as legal persons in order to establish title to or ownership of property acquired through the commission of an offence (art. 53 (a)). However, this had not yet happened in practice.

67. In the other three States, although foreign States could not initiate civil proceedings, domestic criminal courts could order the payment of compensation or damages to anyone harmed by the commission of an offence (art. 53 (b)), which was interpreted to extend to foreign States. In one State, compensation could be claimed by any person, including “legal persons or the State”, from which it was deduced that foreign States would be included in the definition. In another State, compensation for material or immaterial damages suffered by any injured person must be requested ex officio by the prosecutor. To ensure that foreign States would be able to pursue their claims proactively through civil litigation, these three States were recommended to adopt the appropriate legislative or other measures to allow foreign States to act as plaintiffs. In addition, in the absence of case law, two of these States were also recommended to ensure in practice that States could be awarded compensation in criminal proceedings.

68. In the two States that allowed civil litigation by foreign States, no procedural requirements, obstacles or examples of cases were reported.

69. One State had a procedure in place for civil claims to be filed in criminal court by persons harmed by an offence, which could include foreign States. In the absence of relevant case law, it was recommended that the application of the legislation in practice be monitored.
70. In two States, competent authorities could not recognize another State’s claim as legitimate owner of property acquired through the commission of an offence (art. 53 (c)). Recommendations were issued accordingly, and a third State was recommended to monitor the application of the legislation in practice, given the absence of case law. In the States where recognition mechanisms existed, no notice requirements for prospective owners were identified.

71. Overall, only one of the five countries in the Group of Latin American and Caribbean States had implemented all three elements of article 53. Nine recommendations were issued to the other four States.

**Group of Eastern European States and Group of Western European and other States**

72. In all 10 countries in the Group of Western European and other States and all five countries in the Group of Eastern European States, foreign States could initiate civil action to establish title to or ownership of property (art. 53 (a)) or claim compensation or damages for harm caused by a Convention offence (art. 53 (b)) on the basis of domestic substantive law.

73. In the three common law countries in the Group of Western European and other States, foreign States were entitled to pursue contract or tort claims under the general principles of common law civil litigation. In the civil law countries, civil procedure law granted locus standi to legal persons, the definition of which included, or was interpreted to include, States. In two countries in the Group of Western European and other States and three countries in the Group of Eastern European States, in the absence of case law and the clear inclusion of foreign States in the definition of legal persons, recommendations were issued to clarify this in law or ensure implementation in practice. With regard to specific requirements, in one country in the Group of Western European and other States, the person bringing a civil action on behalf of a State must establish, in accordance with the principles of international law governing inter-State relations, his or her capacity to represent that State before the courts.

74. Several States also allowed the pursuit of civil claims in criminal proceedings and injured parties, including foreign States, could claim compensation without having to obtain a civil title. In this regard, States could either participate as civil plaintiffs, by filing civil claims directly or having them joined with the criminal proceedings, or by seeking victim status and compensation. Several jurisdictions had the option of compensation or restitution orders in conjunction with criminal convictions, and the courts of one country in the Group of Western European and other States could order confiscated assets to be paid in settlement of a compensation order, should the convicted person be unable to settle the claim. The review of only one Eastern European State clarified that although there were provisions for civil claims to be filed in the course of criminal proceedings, these had never been used in practice with regard to foreign States. It is, however, probable that this applies to many of the States under review, given that the regulations applied to aggrieved persons in general and were not designed specifically for foreign States.

75. In one of the countries in the Group of Western European and other States that provided the option for foreign States to either initiate claims through civil proceedings or file them as part of a criminal trial, criminal courts were allowed to defer minor material claims to civil courts. However, the State noted that a tendency had developed whereby courts allowed State entities to participate as civil plaintiffs before criminal courts in corruption proceedings.

76. Several States demonstrated their implementation of article 53 (a) and (b) through the provision of case law. However, four countries in the Group of Eastern

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4 Owing to the similarity of legal systems and levels of implementation, as well as the limited number of States in both groups for which executive summaries had been completed, the analysis of implementation by these two groups was combined.
European States and two in the Group of Western European and other States reported that no foreign State had initiated civil proceedings in their jurisdictions.

Box 4
Example of implementation

In France, where foreign States were recognized as legal persons under domestic law and could either file a lawsuit to litigate their claims in civil courts or become a civil party in criminal proceedings, several States had brought cases before the courts. At the time of the country visit, several cases concerning, in particular, the acquisition of property through the laundering of embezzled public funds, aggravated breach of trust and concealment were pending before French courts.

77. With regard to measures permitting 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 (c)), all 10 States had measures in place. Those measures included third party interventions in criminal proceedings; restitution/ancillary proceedings following confiscation; the exclusion from confiscation of property to be returned to a victim; and orders for property to be returned to a victim upon confiscation. Notice requirements for potentially affected parties were in place, often as part of the general obligation to keep victims informed of the status of criminal proceedings.

78. Nine recommendations were issued to four countries in the Group of Eastern European States, and five recommendations were issued to two countries in the Group of Western European and other States.

C. Outlook

79. The present report reflects the analysis of 53 completed executive summaries and more detailed information provided in the country review reports and self-assessment checklists. As more data become available from completed country reviews, more comprehensive trends and nuances will be identified in future iterations of the thematic reports and regional addenda and will be used to keep the Implementation Review Group informed of successes and challenges identified in the course of the reviews. With regard to the regional addenda to the thematic reports, different topics will be chosen that lend themselves to more nuanced regional analysis.