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**State of implementation of the United Nations
Convention against Corruption**

**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 12 August 2022 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, focusing 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 chapters II and V of the United Nations Convention Against Corruption” (CAC/COSP/IRG/2022/8).



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 62 executive summaries and country review reports that had been completed as at 12 August 2022. The report 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. Regional differences are reflected as appropriate.²

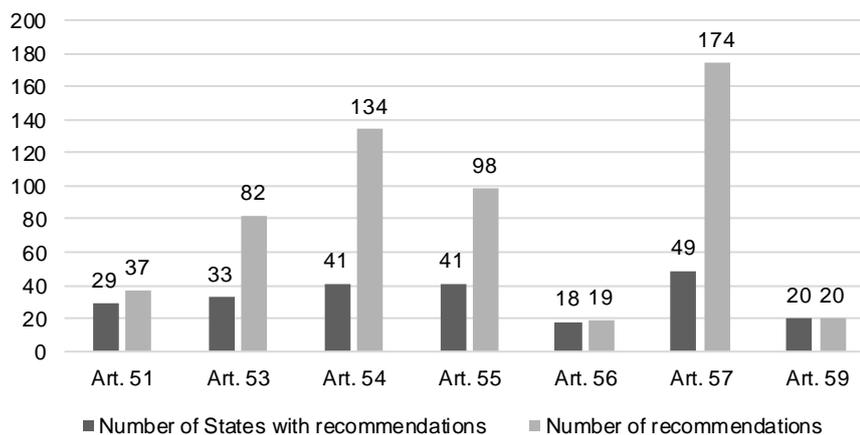
2. The present report contains information on the implementation of articles 51, 53–57 and 59, under chapter V (Asset recovery), of the Convention by States under review in the second cycle of the Implementation Review Mechanism. As for articles 52 and 58, given their close thematic links with, in particular, article 14, their implementation is assessed in a new thematic report entitled “Implementation of provisions of a cross-cutting nature in chapters II and V of the United Nations Convention against Corruption” (CAC/COSP/IRG/2022/8).

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.

Figure I

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



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 will be made available to the Implementation Review Group as a conference room paper.

² The present report is based on 19 completed reviews for the Group of African States, 20 for the Group of Asia-Pacific States, 10 for the Group of Western European and other States, 7 for the Group of Latin American and Caribbean States and 6 for the Group of Eastern European States.

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 | 29 | 37 | 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 |
| Article 53 | 33 | 82 | 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 |
| Article 54 | 41 | 134 | 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 | 41 | 98 | 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 | 18 | 19 | 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 |
| Article 57 | 49 | 174 | 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 |
| Article 59 | 20 | 20 | Lack or shortage of bilateral or multilateral agreements or arrangements; insufficient ability to use the Convention as a legal basis |

Figure II
Good practices identified in the implementation of chapter V of the Convention, by article

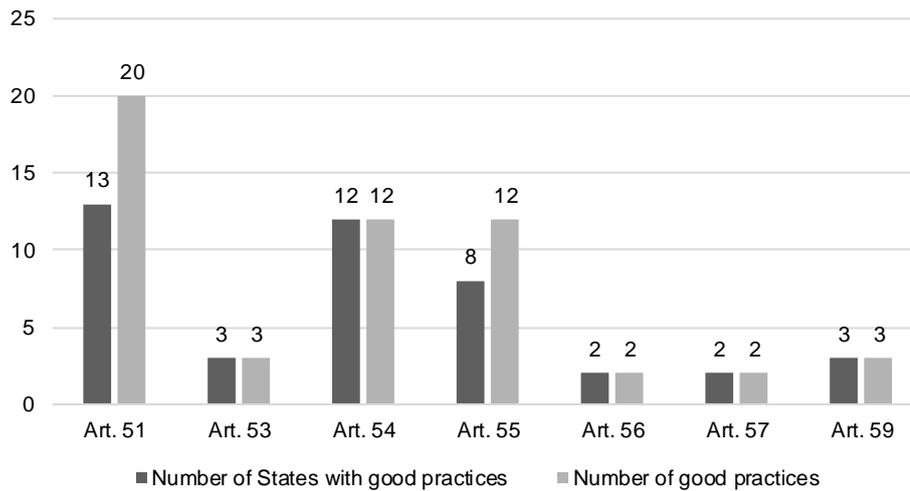


Table 2
Most prevalent good practices in the implementation of chapter V of the Convention

| Article of the Convention | Number of States with good practices | Number of good practices | Most prevalent good practices (in order of article of the Convention) |
|---------------------------|--------------------------------------|--------------------------|---|
| Article 51 | 13 | 20 | Active engagement in the development and promotion of international cooperation, in particular on 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 | 3 | 3 | 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 |
| Article 54 | 12 | 12 | 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 |
| Article 55 | 8 | 12 | 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 |

| <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 56 | 2 | 2 | Spontaneous sharing of information with a wide range of counterparts; placement of overseas liaison officers to facilitate information-sharing |
| Article 57 | 2 | 2 | Return of property to bona fide third parties; establishment of confiscated assets fund for victim compensation |
| Article 59 | 3 | 3 | 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, anti-money-laundering, anti-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. Two 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 experience with the direct application of the Convention, including with regard to asset return. For example, Armenia not only directly applied the Convention as a legal basis, but could also apply the laws of the requesting State in providing mutual legal assistance, on the basis of an international agreement. Although several States indicated that the Convention could be used as a legal basis for cooperation, they 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. In addition to legislation, States relied on guidance provided by requested States when seeking assistance, and the issuance of guidance documents was often identified as a good practice to facilitate the asset recovery process. Around one fifth of the 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. In addition, France and the United Kingdom of Great Britain and Northern Ireland had placed specialists and

liaison magistrates and prosecutors in other countries to facilitate mutual legal assistance, including for asset recovery.

8. At the institutional level, States differed in whether they used a centralized or a decentralized approach. 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 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 possible 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.

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.

Institutional level. Sri Lanka set up a special presidential task force on the recovery of State assets to coordinate asset recovery efforts. 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 Ireland established specialized offices to deal with the seizure, confiscation and management of criminal assets.

Operational level. Sri Lanka provided sample forms for requests for mutual legal assistance. Having requested assistance on the basis of the Convention in three cases, Mexico was willing to review draft requests for mutual legal assistance before their formal submission, including in asset recovery cases. In addition, Nigeria concluded a considerable number of successful asset recovery cases on the basis of bilateral agreements and reciprocity and shared its experiences widely in various international forums.

Several States had manuals or guides to facilitate international cooperation, including for asset recovery. For example, Saudi Arabia developed a dedicated asset recovery manual that was available in both English and Arabic, and the Plurinational State of Bolivia drafted a guide for the preparation of corruption-related mutual legal assistance requests in criminal matters. The Bahamas published a procedural manual on international cooperation on its government website to assist other States in determining how to best seek cooperation. South Africa developed an internal policy guide for its Asset Forfeiture Unit for handling asset recovery requests and managing requests received informally.

10. In terms of regional trends, two thirds of the States in the Group of Eastern European States, around half of the States in the Group of African States and the Group of Asia-Pacific States, and 40 per cent of the States in the Group of Western European and other States received recommendations. States in the Group of Latin American and Caribbean States did not receive any recommendations in relation to the implementation of article 51.

2. Spontaneous transmission of information (art. 56)

11. 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. Nauru 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. States without specific legislation either had existing practices on the spontaneous transmission of information or indicated that there was no legal prohibition of such practices. 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.

12. 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 in 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, such as 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

South Africa posted liaison police officers abroad to facilitate mutual legal assistance, including with regard to information-sharing, and mandated its Asset Forfeiture Unit to provide guidance to States seeking to recover assets, regardless of whether a mutual legal assistance request had been submitted. Portugal has spontaneously shared information with a wide number of counterparts, which has led to the successful freezing of assets in specific cases.

13. Almost half of the States in the Group of Asia-Pacific States and the Group of African States, as well as one State in the Group of Latin American and Caribbean States, received recommendations on the spontaneous sharing of information.

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

14. Almost all States had agreements or arrangements to enhance international cooperation undertaken pursuant to chapter V. Ghana had concluded 160 bilateral treaties, whereas another State reported that no bilateral treaties or agreements on criminal matters had yet been concluded. The United Kingdom highlighted the data-sharing agreements and memorandums of understanding used by its law enforcement agencies in international cooperation, while a number of others referred to the memorandums of understanding for cooperation concluded by their financial intelligence units or anti-corruption agencies.

15. More than 50 per cent of States in the Group of Latin American and Caribbean States and 40 per cent of Asia-Pacific States received recommendations in relation to concluding bilateral or multilateral agreements or arrangements, while approximately 20 per cent of States in the other regional groups received recommendations.

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)

16. In almost all 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: while foreign States had initiated civil action in domestic courts in the majority of the Group of Western European and other States, such a precedent existed in only one fifth of the States in the Group of African States, and in the majority of all other States, the authorities had no knowledge of any precedent in that regard.³

17. Only five States positively regulated locus standi for foreign States: Algeria and Burkina Faso established explicit jurisdiction over civil actions brought by other States parties to the Convention regarding compensation or the recognition of property rights over property acquired through acts of corruption. The laws of the Russian Federation explicitly referenced civil cases involving a foreign State and included a time limit; civil cases involving a foreign State were to be considered and resolved by the court within nine months from the date of receipt of the statement of claim by the court. In two additional 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.

18. 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 States where no regulation existed, primarily in 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 five 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. Two of those States limited locus standi to foreign individuals, organizations or entities, but excluded States from filing a civil suit. Two States instead referred States to their rights as victims in criminal proceedings.

19. In addition to civil litigation, prior legitimate ownership could often be determined and/or compensation be 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. In Greece, where foreign States could either litigate claims through civil proceedings or file them as part of the criminal trial, criminal courts were allowed to defer minor material claims to civil courts, but a tendency had evolved whereby courts allowed State entities to participate as civil plaintiffs before a criminal court in corruption proceedings. The reviewers of Fiji identified the possibility of pecuniary penalty orders, including in cases of unexplained wealth, as a potential additional means of seeking compensation for damages.

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/2021/8).

20. 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)). Means in this 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.

21. 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 and/or prior legitimate ownership in criminal or restitution proceedings. Procedures sometimes differed according to the crimes triggering confiscation where States had regulated procedural aspects in newer laws, for example in one Asian 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 3

Examples of implementation of article 53 (c)

In Ireland, pending or intended civil litigation could be taken into account when deciding on a confiscation order, and a foreign State, upon showing that the property was not the proceeds of crime, could apply for the transfer of property.

Italy allowed for restitution to victims, when no doubt about the ownership existed, at any stage of the recovery proceedings, even when no claim of ownership had been made, during the investigation phase or when confiscation was non-conviction-based.

In Saudi Arabia, victims or their representatives and heirs could initiate criminal proceedings to have their legitimate ownership recognized.

22. 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. In Mauritius, when the owner of property was unknown or could not be found, a notice had to be published in two daily newspapers with a wide circulation in an effort to locate possible bona fide third parties. Five States, all from the Group of African States, required publication in the gazette of notices of confiscation or restraint orders to notify any party with a prospective interest in the property involved.

23. While only two States in the Group of Western European and other States and about half of the States in the Group of Eastern European States received recommendations on article 53, two thirds of the States in all other regional groups received recommendations to specify in the law, or ensure in practice, mechanisms for the implementation of the three modalities of recovery laid out in article 53.

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))

24. The legislation in 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. Only five States were found to be unable to confiscate such property 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))*

25. 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.

26. 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” and “adequate grounds” for confiscation or forfeiture.

Box 4

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

Italy had established mandatory confiscation for persons considered “generally dangerous”, including persons suspected of defrauding public funds, persons considered to be “habitual bribers” or persons “used to living with the proceeds of illegal activities”; heirs to the property were excluded from third-party protection rights in those cases.

Similarly, in Germany, in addition to the possibility of confiscation in cases where conviction was statute-barred, assets could be confiscated if seized on the suspicion of a serious crime, such as money-laundering, in cases where there was no proof of a specific offence but where the court was satisfied that the proceeds were of criminal origin. If the court established that there was a major disparity between the value of the assets and the legal income of the accused, the burden of proof was shifted to the accused regarding the legitimate origin of the asset.

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.

Likewise, Kenya allowed for the forfeiture of unexplained assets determined by a court to have been acquired through acts of corruption or economic crime, and Ghana allowed its independent anti-corruption commission to initiate non-conviction-based forfeiture proceedings regarding assets illicitly acquired by public officials, and anchored that right in its Constitution.

Myanmar had introduced an administrative procedure whereby the anti-corruption authority could order confiscation without any involvement of judicial authorities in cases of illicit enrichment or the death, absconding or unknown identity of an accused person.

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

27. Almost 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 with 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 foreseen under criminal procedure laws. In one Asian 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. Three 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.

28. Roughly a third of the Eastern European States, half of the States in the Group of African States and the Group of Asia-Pacific States, two thirds of the States in the Group of Latin American and Caribbean States and one State in the Group of Western European and other States received recommendations to consider the introduction or expansion of a non-conviction-based confiscation regime.

(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. Ireland applied a mixed approach, allowing for the direct enforcement of confiscation orders from States with which a treaty existed, while requiring an exequatur procedure for orders from other States, which in turn had to be designated under domestic legislation. States members of the European Union were obliged to mutually recognize and execute, without further formality, both freezing and confiscation orders.

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 took place 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, especially 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. A handful of States in each regional group (about one fifth of States in total) also permitted the direct enforcement of foreign non-conviction-based confiscation orders. While that was usually highlighted as positive by reviewers, one Asia-Pacific State allowed for the enforcement of foreign non-conviction-based orders without any domestic exequatur proceedings, which was noted by the reviewers as a potential threat to the domestic rule of law and a possible obstacle to the enforcement by other States of requests sent by that State.

33. 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. 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. Malaysia accepted a certificate issued by an appropriate foreign authority stating that a foreign forfeiture order was in force and was not subject to appeal as sufficient proof for the registration of the foreign confiscation order. In Nauru, measures available under international cooperation went beyond those available domestically: authorities were in a position to enforce foreign confiscation, seizure or freezing orders, or to make an order on the basis of a foreign request, while domestic interim measures required a conviction or indictment.

34. Four States could not enforce foreign confiscation orders and a domestic confiscation order had to be obtained. 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, including the Cook Islands and Fiji, had the option of either directly enforcing a foreign order or obtaining a domestic one on the basis of a foreign confiscation request.

35. Recommendations were issued to a third of the States in the Group of African States, half of the Group of Eastern European States, two thirds of States in the Group of Asia-Pacific States and the Group of Latin American and Caribbean States, and one State in the Group of Western European and other States relating to the ability to give effect to foreign orders, to not limit that ability to certain predicate offences or to consider extending it to non-conviction-based orders.

Box 5

Examples of flexibility regarding the enforcement of foreign search, seizure, freezing or confiscation orders

In Liechtenstein and Mauritius, where foreign confiscation orders were directly enforceable, domestic confiscation proceedings would often be opened in parallel in order to accelerate the process, with the foreign request being attached to an affidavit and used as evidence. In both of those States, search, seizure or even confiscation was then possible within 24 hours.

Malaysia was commended for its mutual legal assistance act, which allowed Malaysian authorities to fulfil, within legal limits, a request in the manner the requesting State wished and to the fullest extent.

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 was forwarded to the requesting State. Nigeria described successful cooperation with the United States of America through informal modes of communication such as email and telephone, which had led to the successful forfeiture of assets in the United States.

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

36. 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.

37. 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.

Box 6

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

In Algeria, Belgium, Egypt, Germany and Thailand, the reviews explicitly established that the same set of measures and procedures available for asset recovery in domestic criminal proceedings were available for international cooperation. Useful measures to facilitate the identification or tracing of assets included centralized bank account registers, for example in France and Germany. Reviewers commended France for its dedicated platform for the identification of criminal assets, which had been designated as a focal point in different international cooperation networks.

38. 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. Two States were able to obtain and execute a domestic search or seizure order based on a foreign order, but had no mechanism in place to freeze or seize property on the basis of a request from another State.

39. Forty per cent of States received recommendations under article 54, paragraph 2, and article 55, paragraphs 1 and 2, to bring their systems into line with the Convention regarding the execution of foreign requests or orders for seizure or freezing.

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

40. Twelve 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. In Ghana, where an electronically submitted foreign seizure request sufficed, the financial intelligence unit could issue an account freezing order with a duration of up to seven days without a court order, and authorized law enforcement authorities could freeze or seize property without a court order for up to 14 days. In Peru, if a request for legal assistance did not meet the legal requirements, the competent authority could nevertheless take interim measures to avoid irreparable harm until the request had been amended.

41. 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 dedicated asset management agencies or units. Portugal explicitly included property seized or confiscated in the course of international cooperation under the authority of its property management office. Asset management in Botswana explicitly included an assessment of the quality of the assets and a determination of steps needed for their preservation, such as making sales and investments and paying the proceeds into a trust fund. While two States parties highlighted practical and budgetary challenges, the specialized asset management department set up in the prosecutor’s office in one State faced challenges due to the limited scope of its jurisdiction, which covered only money-laundering and financing of terrorism cases. 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. When issuing a freezing order, courts in Zimbabwe could at the same time order measures for the preservation, management or disposition of assets. In the Russian Federation, property could be transferred, at the discretion of the person who effected the seizure, to the owner or holder of the property for storage. 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. In Fiji, the Attorney General could enter into agreements with foreign States regarding the control and management of foreign restrained property.

42. Roughly two thirds of the States in the Group of Asia-Pacific States, half of the States in the Group of Eastern European States, a third of the States in the Group of African States and one State each from the Group of Western European and other States and the Group of Latin American and Caribbean States were recommended to introduce or strengthen existing mechanisms for the preservation of property pending confiscation.

(vi) *Prerequisites and content required for mutual legal assistance requests (art. 55, paras. 3 and 4)*

43. All but one State had domestically regulated the content required for mutual legal assistance requests (art. 55, para. 3), and the rendering of assistance was subject to domestic procedural law or bilateral or multilateral agreements or arrangements (art. 55, para. 4). The content required for 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. After consultations, authorities in Palau could take action on the basis of foreign requests even if they did not meet the minimum requirements. One State required a statement specifying the measures taken by the requesting State to give appropriate notice to bona fide third parties and to ensure due process, while two States reserved the right to hear persons potentially affected by the enforcement matter, such as the convicted person or any person having rights in the property. A few States required translation of the request into one of their official languages, with one State requiring that the translation be verified by a certified court interpreter. Review teams have issued recommendations to specify requirements in order to provide more guidance to requesting States on the content required in mutual legal assistance requests, going as far as recommending that States transpose the information that requesting States should provide according to article 55, paragraph 3, as mandatory requirements into domestic law.

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

44. 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. 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.

45. 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. Three States in the Group of African States and three States in the Group of Asia-Pacific States explicitly indicated that no request for cooperation regarding the recovery of assets had ever been denied.

46. Other reasons cited by States for the refusal of requests included an inability to prosecute the underlying offence in the requested State, whether for 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 State. 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)*

47. All but 10 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 reason 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 States consulting as a matter of practice received the recommendation to make statutory amendments in that regard. Of the 10 States where no laws existed, several had never received a request, so they could not refer to any practice regarding consultations.

Box 7

Examples of practices regarding consultations between States

Malaysia ensured that consultations were held even when circumstances allowed for the refusal of the request, and Mauritius referred to a letter of refusal as the last resort and, as a matter of practice, always wrote to requesting States, identifying potential grounds for refusal and requesting the issuance of a new or supplementary request. Mauritius also conducted regular formal and informal meetings with the diplomatic representatives of foreign requesting States to address issues regarding submitted mutual legal assistance requests. Australia, Mauritius and Mexico encouraged foreign authorities to submit draft requests for review prior to submitting the formal request to ensure that all necessary information was included. Indonesia used meetings between senior officials of States from the same region as a platform for discussion and coordination, while Panama could allow the competent authorities of the requesting State to participate in the execution of a request. Saudi Arabia adopted a policy of "informal" assistance by reviewing requests before their official submission. To facilitate successful asset recovery, the United Kingdom placed specialist advisers in priority countries to assist with mutual legal assistance, extradition and European arrest warrants, or as criminal justice or asset recovery advisers.

48. 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)

49. 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.

50. 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. 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. 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. Possibilities of payment from the Confiscated Assets Fund of the Bahamas provided 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.

51. Some provisions on the return or disposal of assets were in place in most States, although the 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. Only one State, from the Group of African States, was found to have legislation stipulating the mandatory transfer to the requesting State of any amount recovered in terms of a final and binding foreign confiscation order, albeit “subject to any agreement or arrangement with the requesting State”. In several States, confiscated property could be returned by 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 was bound by article 57, paragraph 3 (a). The United Kingdom specifically referenced the scenarios of 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.

52. Two States in the Asia-Pacific Group of States could return assets only on the basis of bilateral treaties or arrangements and would otherwise retain any confiscated assets. In the absence of a mutual legal assistance act, another Asian State could return forfeited proceeds of money-laundering or could conclude ad hoc arrangements with requesting States. 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 to be able to return 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.

53. In all but three 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.

54. All States in the Group of Latin American and Caribbean States and the Group of Eastern European States, all but one State in the Group of Asia-Pacific States, roughly two thirds of the States in the Group of African States and one third of the States in the Group of Western European and other States received recommendations regarding the return of assets, with a particular focus on mandatory return in cases of embezzlement of public funds, demonstrating significant gaps in the area of asset return.

55. 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. One State 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.

56. 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

57. The present report reflects the analysis of 62 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.
