



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

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Networks for effective asset recovery

Towards an effective asset recovery regime: networks

Background paper prepared by the Secretariat

I. Introduction

1. At its third session, the Conference of the States Parties to the United Nations Convention against Corruption (UNCAC) adopted resolution 3/3 in which it encouraged States parties to promote informal channels of communication, in particular prior to making formal requests for mutual legal assistance, by, inter alia, designating officials or institutions, as appropriate, with technical expertise in international cooperation in asset recovery as focal points to assist their counterparts in effectively meeting requirements for formal mutual legal assistance. It further encouraged those focal points and other relevant experts to come together, at the regional level or according to theme, to promote communication, coordination and development of best practices, including by taking advantage of existing networks to avoid duplication.

2. At its fourth meeting (16 to 17 December 2010), the Open-ended Intergovernmental Working Group on Asset Recovery (“Working Group”) highlighted the importance of the work on the establishment of a network of contact points for asset recovery and reiterated the need for a global network of asset recovery focal points with technical expertise. It requested the secretariat to reiterate its request to Member States to nominate asset recovery focal points and remind them to designate a central authority responsible for requests for mutual legal assistance in accordance with Article 46 (13), of the United Nations Convention against Corruption (“Convention” or “UNCAC”).¹ The Working Group also stressed the importance of regional networks as well as the need for collaboration and

* CAC/COSP/WG.2/2011/1.

¹ See CU 2009/146 of 9 October 2009, and CU 2011/52 of 29 March 2011.



coordination between global and regional networks, and requested the secretariat to prepare a background paper on existing networks of focal points, including the database of asset recovery focal points under the joint UNODC/World Bank Stolen Asset Recovery (“StAR”) Initiative, for consideration by the Working Group.²

3. In response to the above requests, the secretariat has sent several notes verbales requesting Governments to provide information designating asset recovery focal points that they would like to be included in a database. In total, 37 States parties and one signatory have designated asset recovery focal points.

4. Similarly, a total of 92 countries have filed notifications designating their central authorities that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution pursuant to Article 46 (13) of the UNCAC.³ A list of designated focal points and central authorities has been drawn up based on the notifications received from States parties. This list will be made available to States parties prior to the fifth Meeting of the Working Group in a conference room paper (CAC/COSP/WG.2/2011/CRP.1).

5. In accordance with the recommendation of the Working Group, the present background paper provides an overview of global and key regional networks and how they support the asset recovery process. It also provides an initial analysis of the composition of these networks.

II. Importance of international cooperation in the asset recovery process

6. Effective cooperation and exchange of information is critical to successful asset recovery. The key steps in the asset recovery process and the types of international cooperation that can support each stage of the process are shown in annex 1. Requests for mutual legal assistance are the cornerstones of international asset recovery, but a close look at the process also highlights that requests are only one step and others are needed to ensure success.

7. Success often depends on the thoroughness and quality of preparatory work, which is often significant. In many cases, such work may include providing to facilitate the processing of a mutual legal assistance request, and the forms of, and channels for this stage for formal mutual legal assistance are usually more diverse and flexible.

8. Many of the operational barriers that currently hinder the asset recovery process centre on international cooperation. A lack of trust between jurisdictions may inhibit or delay the provision of mutual legal assistance, particularly in urgent matters or where jurisdictions have significantly different legal, political, or judicial systems. Without trust, jurisdictions are hesitant to share intelligence and assist in gathering evidence or facilitating the recovery of assets. The complexity of procedures involved in mutual legal assistance requests, including deficiencies in

² CAC/COSP/WG.2/2010/4, paragraph 3 (g). See also CAC/COSP/WG.2/2009/3, paragraph 11; and CAC/COSP/WG.2/2008/3), paragraph 43.

³ As at 17 June 2011.

drafting, lack of clarity of procedures, delays in processing and responding to mutual legal assistance requests, further impede the provision of assistance. One of the means of lowering or eliminating these barriers is establishing networks of policymakers and practitioners.

III. Overview of key networks in asset recovery and their constituent agencies

9. Networks of practitioners have proven effective in fostering international cooperation. They allow the easy and immediate identification of gateways. They provide a space for the emergence of a community of practice, thereby facilitating ongoing dialogue and the emergence of trust between peers.

10. There are a number of networks which enhance the recovery of assets by providing a platform for ongoing and informal dialogue between parties, and which play an important role in contributing to the creation of confidence and trust among requesting and requested States, which are prerequisites for successful cooperation. Most often, networks contributing to these improvements are not focused on asset recovery, but are broader in terms of their mandates. Building on such existing networks and making sure that asset recovery is part of their mandate is cost-effective. For example, networks for financial intelligence units, which are relevant for broader matters beyond the proceeds of corruption, have also proven integral to the efforts specific to the recovery of stolen assets.

11. Table 1 is a summary of the main networks which directly or indirectly support asset recovery. Networks described as direct have a mandate focusing on asset recovery, while those described as indirect have a broader role but can support part of the asset recovery process. For instance, the Egmont Group has as its purpose sharing financial information and intelligence — which can obviously contribute to tracing of assets. Likewise groups such as ARINSA (Asset Recovery Inter-Agency Network of Southern Africa) are focused on sharing pre-mutual legal assistance information and on facilitating mutual legal assistance in the broader area of confiscation of the proceeds of any crime. The groups that focus on mutual legal assistance such as the Hemispheric Information Exchange Network of the Organization of American States have a specific focus in respect of judicial cooperation but cover all cooperation in respect of all crime types.

12. This table does not provide a comprehensive picture of all such networks, and is only used to illustrate the wide range of networks that can already be mobilized for asset recovery purposes.

Table 1
Summary of identified operational networks to asset recovery

Area of Cooperation	Global	Regional	Others
Informal/pre-MLA Cooperation	<u>Direct</u> StAR-INTERPOL Focal Point Initiative <u>Indirect</u> <i>Egmont Group of Financial Intelligence Units</i>	<u>Indirect</u> <i>Camden Asset Recovery Inter-Agency Network (CARIN)/Asset Recovery Inter-Agency Network of Southern Africa (ARINSA)/Red de la Recuperación de Activos de GAFISUD (RRAG)</i>	
Formal Cooperation	<u>Direct</u> UNCAC Central Authorities	<u>Indirect</u> <i>European Judicial Network/Hemispheric Information Exchange Network of the Organization of American States/Ibero-American Legal Assistance Network (IberRed)/Judicial Regional Platforms of the Sahel and Indian Ocean Commission Countries</i>	<u>Indirect</u> <i>Commonwealth Network of Contact Persons/Harare Scheme</i>

13. On the policy level, the Working Group has a crucial role as a direct network for developing policy in the area of asset recovery.

14. The following section provides further information on the existing operational networks, their key contributions and roles.

A. Policymakers

The Conference of the States Parties and the Working Group

15. The Conference of States Parties is established by Article 63 of the Convention in order to improve the capacity of and cooperation between States parties to

achieve the objectives set forth in this Convention and to promote and review its implementation. Similarly, the Working Group was established in resolution 1/4 of the Conference of States Parties in order to assist the Conference in the development and exchange of knowledge and experience in the area of asset recovery.

FATF and FATF-Style regional bodies

16. FATF and FATF-Style regional bodies function as policymaking bodies for their members. The Grupo de Accion Financiera de Sudamerica (GAFISUD) is an example of such bodies, which has been instrumental in developing a regional network known as the Red de la Recuperación de Activos de GAFISUD (RRAG) to support informal cooperation in asset recovery.

17. GAFISUD is a regional inter-governmental organization which brings together at a policy level the countries of South America in order to combat money-laundering and terrorism financing. Its mandate also includes asset recovery. Recognizing the need for greater cooperation in asset confiscation and recovery, the Operational Working Group, which guides a number of GAFISUD endeavours, established the RRAG (see below para. 22).

B. Networks with a role in the pre-mutual legal assistance phase

Global

The StAR-INTERPOL Focal Point Initiative

18. The StAR-INTERPOL Focal Point Initiative was established by the StAR Initiative in partnership with the International Criminal Police Organization (INTERPOL) in January 2009. Its primary purpose is to support investigations through informal assistance for the purpose of recovering the proceeds of corruption and economic crime. It achieves this function through a secure database containing the names of the contact points that are law enforcement officials from the countries members of the network and who are available 24 hours a day, seven days a week, to respond to emergency requests for assistance, in situations where the failure to act immediately may cause law enforcement to lose the money trail. Each registered member country provides the contact details of two law enforcement focal points, which can be reached at any time for information or coordination. They also provide information on key bodies involved in international asset recovery, the types of assistance available, including how to best request such assistance; and an outline of evidence needed to open criminal investigations or to initiate criminal, civil or non-conviction-based action regarding stolen assets. The StAR-INTERPOL Focal Point Initiative has 77 member countries.

The Egmont Group of Financial Intelligence Units

19. The Egmont Group of Financial Intelligence Units is a global network established in 1995, composed of operational financial intelligence units that meet membership criteria. Its mandate is to promote international cooperation between Financial Intelligence Units (FIUs) through regular meetings, information exchange, and the provision of informal assistance, training and the sharing of expertise. The Egmont Group within very clearly delineated boundaries provides a structure for

this information to be shared internationally from FIU to FIU. It provides for better and secure communication among FIUs through the application of technology, such as the Egmont Secure Web (ESW). Any Financial Intelligence Unit which complies with the criteria of the Egmont Group of being a central, national agency responsible for receiving, (and as permitted, requesting), analysing and disseminating to the competent authorities, disclosures of financial information, is eligible to apply to become an Egmont FIU member. The Egmont Group consists of 120 members.

Regional

Camden Asset Recovery Inter-Agency Network (CARIN)

20. CARIN is an informal regional network and a cooperative group covering all aspects of tackling the proceeds of crime established in 2004. It is comprised of law enforcement practitioners primarily in Europe, and includes North American countries. The aim of CARIN is to increase the effectiveness of members' efforts, on a multi-agency basis, in depriving criminals of their illicit profits. The individual members provide to one another informal assistance in international criminal asset tracing, freezing, seizure and confiscation as far as their national legislation will allow. They can also advise on and facilitate mutual legal assistance, although mutual legal assistance requests must be made through the appropriate formal legal channels. Each member country provides assistance through two contact points, one of which should be the central agency involved in asset tracing and forfeiture or have direct access to practitioners in this area. Contact points also supply an outline and summary of their legislation and practical procedural guidelines relating to asset forfeiture, civil and criminal. CARIN consists of 35 members, and 22 observers and associate members.

Asset Recovery Inter-Agency Network of Southern Africa (ARINSA)

21. ARINSA is an informal network founded in March 2009, which consists of Southern African asset confiscation practitioners for all financial crimes, including corruption. ARINSA is based on the CARIN model and is currently comprised of a prosecutor and an investigator from each of the Southern African members. An agreement has been entered into between ARINSA and CARIN pursuant to which a member of one Network may transmit requests to a member of the other via the respective secretariats. A total of 9 Southern African countries are part of ARINSA.

Red de la Recuperación de Activos de GAFISUD (RRAG)

22. RRAG was established at the GAFISUD Plenary in 22 July 2010 as an informal network to promote international cooperation in asset confiscation (see above). It is comprised of the member countries of GAFISUD and its constitutive documents allow membership by countries outside GAFISUD. It is also based on the CARIN model and each country is represented by two focal points who are a prosecutor and a police officer working in asset recovery or asset confiscation. The Focal Points provide informal operational assistance to other focal points as allowed by their respective jurisdictions. Participating member States provide a list of assistance that they can render, which is shared through a secure IT platform that allows the exchange of information and requests for assistance. They also have periodic meetings for the discussion of key issues in asset recovery and asset

confiscation. RRAG is similarly comprised of all 12 South American member countries of GAFISUD. The participating agencies in RRAG are largely law enforcement. Furthermore, many of these countries have two participating agencies, amounting to a total of 23 agencies and 24 participating members.

C. Cooperation in mutual legal assistance

Global

Central Authorities as designated by States parties to the UNCAC

23. Ninety-two countries have nominated central authorities in accordance with Article 46 (13) of the UNCAC. Central authorities have the responsibility and power to receive and transmit to other jurisdictions requests for mutual legal assistance and either to execute requests received or to transmit them to the competent authorities for execution. In other words, they are responsible for formal cooperation between States parties. A list of these authorities is made available to the Working Group.

UNCAC Asset Recovery Focal Points

24. Asset Recovery Focal Points have been nominated by States parties pursuant to previous recommendations, which had requested the nomination of asset recovery focal points for the purposes of compiling a database of such focal points. At the time of writing this paper, 38 countries have designated asset recovery focal points. Although the Asset Recovery Focal Points are not an operational network, it is worth pointing out that out of a total of 43 different agencies designated by the 38 States that responded to the secretariat, eight are the same authorities designated for the prevention of corruption under Article 6 (3) of the UNCAC. Further, five are also the Central Authorities; six are also the CARIN focal points; and four are also the StAR-INTERPOL Focal Points. This clearly demonstrates the overlap between such networks, but also indicates a risk of duplication and the need to ensure that additional networks have a clear mandate and add value.

Examples of regional and other networks

The European Judicial Network

25. This is a network of national contact points for the facilitation of judicial cooperation in criminal matters between the States members of the European Union. National contact points are designated by each member State among central authorities in charge of international judicial cooperation, judicial authorities and other competent authorities with specific responsibilities in the field of international judicial cooperation. The Network is composed of more than 300 national contact points throughout the 27 member States, the European Commission and a Secretariat based in The Hague.

Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition of the Organization of American States

26. This Network has three components: a public website, a private website and a secure electronic communications system. The public component of the Network

provides legal information related to mutual assistance and extradition for the 34 States members of the Organization of American States. The private component of the Network contains information for individuals who are directly involved in legal cooperation in criminal matters. The purpose of the secure electronic communications system is to facilitate the exchange of information between central authorities who deal with issues of mutual assistance in criminal matters and extradition.

Ibero-American Legal Assistance Network (IberRed)

27. The Ibero-American Legal Assistance Network (IberRed) is a structure formed by contact points from the Ministries of Justice and Central Authorities, Prosecutors and Public Prosecutors, and judicial branches of the 23 countries comprising the Latin American Community of Nations, aimed at optimizing instruments for civil and criminal judicial assistance and strengthening cooperation between countries.

The Judicial Regional Platforms of Sahel and Indian Ocean Commission Countries

28. Judicial Regional Platforms have been established by UNODC to strengthen international cooperation in criminal matters in the regions of the Sahel and the Indian Ocean. Their main focus is to prevent and combat forms of serious crime, such as organized crime, corruption, drug trafficking or terrorism. The Platforms are international cooperation networks of focal points, who facilitate extradition and mutual legal assistance in criminal matters procedures with the Member States of their Platforms.

Commonwealth Network of Contact Persons

29. The purpose of the Commonwealth Network of Contact Persons is to facilitate international cooperation in criminal cases between Commonwealth member States, including on mutual legal assistance and extradition, and to provide relevant legal and practical information. The Network comprises at least one contact person from each of the jurisdictions of the Commonwealth.

IV. Coverage of the key networks in asset recovery

30. In order to have a complete picture of networks involved in the asset recovery process and identify gaps, it was felt necessary to provide an overview of the geographical coverage of the different networks involved in the pre-mutual legal assistance context on the one hand, and the formal mutual legal assistance on the other.

31. In the pre-mutual legal assistance context, a number of different practitioners may be involved including FIUs, law enforcement practitioners and prosecutors. With 120 countries, the Egmont Group network has probably the widest coverage in all regions. Prosecutors and law enforcement practitioners are available to assist in asset recovery through regional networks such as CARIN, ARINSA, and RRAG which link practitioners in Europe, North America, Southern Africa and South America. Half of StAR-INTERPOL Focal Point members are also members of the above-mentioned regional networks.

32. As a result, and pending additional work for a more comprehensive mapping of existing pre-mutual legal assistance networks, the main geographical gaps include Asian States, the Caribbean and East, West and North African States.

33. For formal mutual legal assistance, the only global network is the central authorities under the Convention. Europe and the Americas are well represented. In addition a majority of States parties from North Africa, South Asia and the Commonwealth have notified the Secretary-General of their central authorities.

34. With regard to the two global networks, i.e. StAR-INTERPOL and UNCAC Central Authorities, 45 States have designated both StAR-INTERPOL Focal Points and a Central Authority. Amongst these States, only seven overlap in terms of designated agencies. At this stage, this confirms that there is space and need for both the StAR-INTERPOL network focusing on pre-mutual legal assistance for asset recovery, and to step up global efforts to establish an active and operational network of central authorities looking into formal mutual legal assistance.

35. The central authorities for mutual legal assistance under the UNCAC could provide a forum for practitioners involved in mutual legal assistance. The primary purpose would be to facilitate mutual legal assistance and to create a “community of practice” of central authorities. Possible initiatives that an active and “living” network of central authorities could undertake include the simplification and clarification of mutual legal assistance, and building on innovative e-tools for knowledge and learning such as the Tools and Resources for Anti-Corruption Knowledge (TRACK) of UNODC.

V. Conclusion: proposed issues for consideration by the Working Group

36. The unique value of networks in facilitating international cooperation required at each stage of the asset recovery process has been repeatedly recognized. While progress has been made in bringing together practitioners in asset recovery and confiscation, a number of States parties are still not members of networks that could assist in facilitating asset recovery. The Working Group may wish to call upon States that have not done so to become members and designate the appropriate agencies to the different networks.

37. At this stage of the analysis, most of the networks required for dealing with the preparatory stages of asset recovery exist and are either well functioning as is the case for the network of FIUs and several regional networks or are being established and growing in membership as is the case for the StAR-INTERPOL network.

38. The main gap and challenge going forward is a functioning network bringing together those authorities that are dealing with the formal mutual legal assistance process, i.e. the central authorities. The Central Authorities designated by States parties of the UNCAC could take the role of a network underpinning mutual legal assistance generally and asset recovery more specifically. The Working Group may wish to provide guidance to the secretariat on the desirability for and, if deemed relevant, the possible mandate of such a network, as well as on ways and means of establishing such a network.

39. The Working Group may also wish to consider the way forward as regards the Asset Recovery Focal Points. From the foregoing analysis, it appears that, leaving aside mutual legal assistance, both the informal and formal aspects of international cooperation are addressed by existing networks. The policymaking role in asset recovery is also assumed by the Working Group. In order to avoid duplication, the Working Group may wish to consider the possibility to fold the Asset Recovery Focal Points into the StAR-INTERPOL Focal Points or a possible network of Central Authorities suggested above. This will also contribute to avoiding the multiplication of networks and sharpen the focus on their operational, and visible added value.

40. Given the large number of existing networks, the Working Group may wish to consider the possibility of the development of a “How to Guide” for practitioners, describing how to engage with the various networks and providing more detail on how each of these networks can support their work and at which stage of the asset recovery process.

Annex 1 How International Cooperation supports the Process for Recovery of Stolen Assets

