



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

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## Report on the meeting of the Open-ended Intergovernmental Working Group on Asset Recovery held in Vienna on 30 and 31 August 2012

### I. Introduction

1. In its resolutions 1/4, 2/3, 3/3 and 4/4, the Conference of the States Parties to the United Nations Convention against Corruption established and continued the work of the Open-ended Intergovernmental Working Group on Asset Recovery. In particular, in its resolution 3/3, the Conference welcomed the conclusions and recommendations of the Working Group (CAC/COSP/WG.2/2009/3) and noted with interest the background paper prepared by the Secretariat on the progress made on the implementation of those recommendations (CAC/COSP/2009/7).
2. In its resolution 4/4, the Conference requested the Working Group to prepare the agenda for the multi-year workplan to be implemented until 2015.
3. Also in its resolution 4/4, the Conference decided that the Open-ended Intergovernmental Working Group on Asset Recovery should continue its work to advise and assist the Conference in the implementation of its mandate with respect to the return of the proceeds of corruption and should hold at least two meetings prior to the fifth session of the Conference, within existing resources.

### II. Organization of the meeting

#### A. Opening of the meeting

4. The Open-ended Intergovernmental Working Group on Asset Recovery held its sixth meeting in Vienna on 30 and 31 August 2012.
5. The meeting of the Working Group was opened by the President of the Conference, who recalled the mandate of the Working Group and stressed the importance of the implementation of chapter V of the United Nations Convention against Corruption as the basis for the work on asset recovery. He also emphasized Conference resolution 4/4 and highlighted the importance of strengthening the



efforts on international cooperation on asset recovery issues and of looking for ways to achieve a more determined coordination beyond the regional context. The Chair also commended the efforts of the Secretariat to ensure the success of the meeting.

6. The Executive Director of the United Nations Office on Drugs and Crime (UNODC) highlighted the importance of the Working Group as a platform to tackle the challenges in international action for asset recovery and the importance of a series of activities carried out to strengthen the international asset recovery agenda, including Group of Eight and Group of Twenty initiatives to promote asset recovery. At the Group of Eight meeting held at Camp David, United States of America, in May 2012, leaders had adopted an asset recovery action plan. In line with that decision, the First Arab Forum on Asset Recovery was to take place in Doha from 11 to 13 September in the context of the Deauville Partnership with Arab Countries in Transition. The Executive Director also announced that Ali Bin Fetais Al Marri (Qatar) had been appointed regional UNODC Special Advocate on Stolen Asset Recovery.

7. The representative of Qatar expressed gratitude for the appointment of its Attorney General as the regional UNODC Special Advocate on Stolen Asset Recovery and commended the efforts of the Secretariat to promote the implementation of the Convention. He emphasized the importance that Qatar attached to international asset recovery efforts, especially taking into account the events of the “Arab spring”.

## **B. Adoption of the agenda and organization of work**

8. On 30 August, the Working Group adopted the following agenda:
  1. Organizational matters:
    - (a) Opening of the meeting;
    - (b) Adoption of the agenda and organization of work.
  2. Presentation of the proposed multi-year workplan for the activities of the Working Group, covering the period 2012-2015.
  3. Overview of progress made in the implementation of Conference resolution 4/4 and the recommendations of the Working Group.
  4. Thematic discussion on cooperation in confiscation: article 54 (Mechanisms for recovery of property through international cooperation in confiscation) and article 55 (International cooperation for purposes of confiscation).
  5. Forum for discussions on practical aspects of asset recovery, including challenges and good practices.
  6. Forum for discussions on capacity-building and technical assistance.
  7. Adoption of the report.

### C. Attendance

9. The following States parties to the Convention were represented at the meeting of the Working Group: Afghanistan, Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Bolivia (Plurinational State of), Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Croatia, Cuba, Cyprus, Dominican Republic, Ecuador, Egypt, El Salvador, Finland, France, Gabon, Guatemala, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jordan, Kazakhstan, Kenya, Kuwait, Lebanon, Libya, Liechtenstein, Lithuania, Luxembourg, Malaysia, Mexico, Montenegro, Morocco, Namibia, Nigeria, Pakistan, Panama, Paraguay, Peru, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Serbia, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Togo, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela (Bolivarian Republic of), Viet Nam and Zimbabwe.

10. The European Union, a regional economic integration organization that is a party to the Convention, was represented at the meeting.

11. The following States signatories to the Convention were represented by observers: Czech Republic, Germany, Japan, Saudi Arabia and Syrian Arab Republic.

12. The following observer State was also represented: Oman.

13. Palestine, an entity maintaining a permanent observer mission to the United Nations, was represented.

14. The following United Nations Secretariat units and specialized agency of the United Nations system and institutes of the United Nations crime prevention and criminal justice programme network were represented by observers: Office of the United Nations High Commissioner for Human Rights, United Nations Office on Drugs and Crime, World Bank, Basel Institute on Governance and Korean Institute of Criminology.

15. The following intergovernmental organizations were represented by observers: Asian-African Legal Consultative Organization, Council of Europe, Egmont Group of Financial Intelligence Units Secretariat, Eurojust, International Anti-Corruption Academy, Organization for Economic Cooperation and Development and Organization for Security and Cooperation in Europe.

16. The Sovereign Military Order of Malta, an entity maintaining a permanent observer office at Headquarters, was represented.

### III. Presentation of the proposed multi-year workplan for the activities of the Working Group, covering the period 2012-2015

17. The President of the Conference handed over the chairmanship of the meeting to the Vice-President of the Conference (Argentina).

18. The Working Group considered the draft proposed multi-year workplan for the activities of the Working Group for the period 2012-2015, pursuant to the request of the Conference. The Secretariat had prepared the draft workplan on the basis of guidance provided by the Working Group at its previous meetings as well as proposals submitted by several States parties. The draft workplan sought to ensure adequate preparation for the review of chapter V in the second cycle of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption and to provide opportunities for discussion in the Working Group on practical aspects of recovery, including challenges and good practices, and on capacity-building and technical assistance.

19. Several speakers commented on the draft workplan and made suggestions that were incorporated into an updated draft then circulated at the meeting. The proposed revised workplan was considered and adopted by the Working Group. It was noted that the workplan for the years 2014 and 2015 was indicative and subject to deliberations during the fifth session of the Conference, in 2013.

20. The workplan for the years 2012-2015 was as follows:

### **2013 Meeting**

#### *Standing items*

1. Overview of progress made in the implementation of asset recovery mandates, including presentation of finalized knowledge products.

[*Note:* Discussions on progress in asset recovery could be based on a quantification of assets returned and asset recovery actions taken.]

2. Forum for advancing practical aspects of asset recovery, including challenges and good practices.

3. Forum for discussions on capacity-building and technical assistance.

4. Forum for updates and developments on thematic discussions of the previous session

#### *Thematic discussion*

5. Discussion on article 56 (Special cooperation) and article 58 (Financial intelligence unit) and other relevant articles of the Convention.

[*Note:* The main topics of the discussion would be good practices and examples of legislation allowing for spontaneous disclosure of information on proceeds of offences to other States parties and cooperation between financial intelligence units and investigative authorities. The Secretariat could review relevant information submitted in the context of the ongoing review of implementation of chapters III and IV in relation to article 46, paragraph 4, of the Convention in order to identify positive experiences. With respect to article 58, the discussion could begin with a presentation by an official from a financial intelligence unit, who would present the role of such units in processing and disseminating suspicious transaction reports.]

6. Discussion on cooperation in freezing and seizure: article 54 (Mechanisms for recovery of property through international cooperation in

confiscation) and article 55 (International cooperation for purposes of confiscation) and other relevant articles.

[*Note:* Topics to be discussed may include challenges and good practices in identifying the location and estimated value of property and in obtaining bank account numbers in advance, good practices relating to seizure and restraint of assets for a time period sufficient to preserve assets while foreign proceedings are pending, and how requesting and requested States parties can jointly ensure that the condition of “reasonable basis” (art. 54, para. 2 (a)) is satisfied. Further topics may include examples of requirements relating to property designation in requests, how to meet such requests and how to simplify legal procedures and prevent the abuse of those procedures.]

## **2014 Meeting**

### *Standing items*

1. Overview of progress made in the implementation of asset recovery mandates, including presentation of finalized knowledge products.

[*Note:* Discussions on progress in asset recovery could be based on a quantification of assets returned and asset recovery actions taken.]

2. Forum for advancing practical aspects of asset recovery, including challenges and good practices.

3. Forum for discussions on capacity-building and technical assistance.

4. Forum for updates and developments on thematic discussions of the previous session.

### *Thematic discussion*

5. Discussion on article 52 (Prevention and detection of transfers of proceeds of crime) and other relevant articles.

[*Note:* It is suggested that participants present and discuss legislative initiatives and concrete measures to ensure that financial institutions adopt and implement effective customer due diligence measures, measures for the identification of beneficial ownership, and measures for the identification and enhanced scrutiny of assets belonging to individuals who have been entrusted with prominent public functions and to their family members and close associates. Such measures could include the establishment of national or central registries of bank accounts and other public registries (company registries, land registries etc.), especially those permitting electronic searches. Further, the discussion could address good practices in requests for notifications under article 52, paragraphs 2 and 6, examples of effective financial disclosure systems for public officials and ways to manage them.]

[*Note:* A panel discussion could bring together representatives of authorities supervising the banking sector and of financial institutions in order to provide information on their perspectives and approaches.]

6. Discussion on article 53 (Measures for direct recovery of property) and other relevant articles.

[*Note:* Topics to be discussed may include the possibility for States parties to initiate civil action in the courts of other States parties, and the sharing of recent experience with the payment of compensation or damages to States parties affected by corruption offences, including experience with the issue of the difficulties of calculating damage in the context of payment of compensation to States parties.]

### **2015 Meeting**

#### *Standing items*

1. Overview of progress made in the implementation of asset recovery mandates, including presentation of finalized knowledge products.

[*Note:* Discussions on progress in asset recovery could be based on a quantification of assets returned and asset recovery actions taken.]

2. Forum for advancing practical aspects of asset recovery, including challenges and good practices.

3. Forum for discussions on capacity-building and technical assistance.

4. Forum for updates and developments on thematic discussions of the previous session.

#### *Thematic discussion*

5. Article 57 (Return and disposal of assets) and other relevant articles.

[*Note:* States may wish to expand, exchange views and share good practices on the topics introduced by the panel discussion.]

[*Note:* Topics to be discussed may include the following: the practice followed for the deduction of reasonable expenses incurred in investigations, prosecutions or judicial proceedings; ways to reduce the overall cost of asset recovery; and examples of agreements/arrangements on a case-by-case basis for the final disposal of confiscated property; and implementation of article 57, paragraph 3 (b) and (c) (“When the State party reasonably establishes its prior ownership of such confiscated property or when the requested State party recognizes damage to the requesting State party as a basis for returning the confiscated property” (art. 57, para. 3 (b))). Another topic to be included could be good practices in the management and preservation of restrained assets.]

## **IV. Overview of progress made in the implementation of Conference resolution 4/4 and the recommendations of the Working Group**

21. The Secretariat provided an overview of the note by the Secretariat entitled “Strengthening international asset recovery efforts: progress report on the implementation of asset recovery mandates” (CAC/COSP/WG.2/2012/3). The note was structured according to the three functions of the Working Group: developing cumulative knowledge in the field of asset recovery; building confidence and trust between requesting and requested States; and technical assistance, training and

capacity-building. The comprehensive self-assessment checklist was highlighted as a useful information-gathering tool for States in that respect, as well as the legal library established and maintained by UNODC and the knowledge products developed by the Stolen Asset Recovery (StAR) Initiative. A digest of asset recovery cases was currently being finalized following its consideration by an expert group at a meeting held in Vienna on 2 and 3 April 2012. Regarding networks of practitioners, the Secretariat had received 53 notifications of national asset recovery focal points. Further cooperation was being undertaken with the financial sector and financial intelligence units and with other organizations. Technical assistance had included, inter alia, legislative assistance and capacity-building, as well as assistance with specific cases. Further activities had included consideration of cooperation with international and regional academies and e-learning programmes.

22. Speakers commended the work undertaken to implement chapter V of the Convention and called for further activities in support of States' efforts in that respect. The need to prepare for the review of implementation of chapter V in the second cycle, starting in 2015, was stressed, including through the use of the comprehensive self-assessment checklist. Speakers welcomed the role of UNODC and the joint UNODC/World Bank StAR Initiative, and recalled that all activities undertaken needed to be in line with the provisions of the Convention and resolutions of the Conference. International efforts for asset recovery were to be reinforced, and reference was made to the relevant Group of Twenty decisions as well as the establishment and operation of networks of practitioners. Speakers noted the development of knowledge products including the digest and database. Two speakers referred to the work undertaken by the International Centre for Asset Recovery of the Basel Institute on Governance. Other initiatives mentioned were the Lausanne Process and its informal platform of experts from requesting and requested States.

23. A representative of the Secretariat presented the results of the work of the Secretariat on the expansion of the Mutual Legal Assistance Request Writer Tool with added asset recovery features. It was stressed that the tool was currently in its final preparation stage and would be ready by the resumed third session of the Implementation Review Group in November 2012. The tool in its expanded form included different steps of the asset recovery process under which specific types of mutual legal assistance would be available. Based on the recommendations of the expert group meeting, held in Vienna on 14 and 15 December 2012, on the expansion of the Mutual Legal Assistance Request Writer Tool, the representative of the Secretariat encouraged the Working Group to consider making a recommendation to the States parties to provide practical information on asset recovery. If desired, the Secretariat could develop a generic template, to be linked to the enhanced tool, with a view to assisting countries in compiling relevant information.

24. Speakers commended the work of the Secretariat on the enhancement of the Mutual Legal Assistance Request Writer Tool and the efforts of the Secretariat for the dissemination of asset recovery information and suggested distributing via the UNODC website the information about asset recovery training sessions and various bodies in charge of asset recovery. The representative of the United States brought to the attention of the meeting the guide on asset recovery assistance prepared by

his country in order to facilitate asset recovery cooperation. He noted that the Group of Eight countries had agreed to produce similar guides on their domestic requirements and to work together with all the countries of the Deauville Partnership with Arab Countries in Transition in the implementation of the Group's asset recovery action plan.

## **V. Thematic discussion on cooperation in confiscation: article 54 (Mechanisms for recovery of property through international cooperation in confiscation) and article 55 (International cooperation for purposes of confiscation)**

25. Panellists from the United States presented their country's legal framework with regard to the provisions of the Convention relevant to confiscation, and the related experiences and challenges encountered. Positive experiences were reported with respect to the use of non-conviction-based forfeiture. The findings were based on four high-level corruption asset recovery cases. In three of the cases, the United States brought domestic non-conviction-based confiscation actions. In one of the cases, it enforced a foreign restraining order. In response to a court challenge, United States law had been amended to allow for the enforcement of foreign seizure or freezing orders prior to a final confiscation judgement in the requesting country. The panellists also presented a case where the United States brought an action against assets located in Singapore linked to a corruption case in Bangladesh, the link with their jurisdiction being that the funds had been transferred through a bank located in the United States. It was highlighted that according to United States law, the statute of limitations was suspended when assets were not located in the United States.

26. The panellists further highlighted that in those cases the United States had to a great extent depended on the information provided by the requesting country. In some cases, conduct had been treated as if legitimate in the requesting country because of the influence of corrupt officials, or the officials had been acquitted. Investigators or prosecutors had been unwilling to provide evidence due to fear of reprisals or evidence had been difficult to evaluate, especially in cases conducted long after a regime change in the requesting country. Furthermore, in cases in which the official being investigated had been in power for many years, it was difficult to determine the legal or illegal origin of the assets with certainty. Limited financial investigative capacity in the requesting country could also hinder establishing the nexus between the corrupt conduct and the assets. Dual criminality was considered a challenge, in particular with regard to the offences of false financial disclosure statements, malfeasance and illicit enrichment, which were not offences for which forfeiture could be ordered in the United States. Further, concerns about due process in the requesting country could undermine the enforcement of foreign judgements.

27. The panellist from France reported that the French legal system was based on criminal conviction, and confiscation was considered an additional sanction. However, confiscation could be carried out on the basis of requests for mutual legal assistance, following rulings by the Court of Cassation in 2003 and as confirmed in 2009. A request for civil confiscation could be executed in France if one of two conditions were met: if the decision underlying the request for confiscation was



final, binding and its execution would not be against public order; or if the proceeds could have been confiscated under similar proceedings under French law.

28. Forfeiture under French law could be divided into three main parts: first, the identification of the proceeds of crime, done by multidisciplinary structures including special police regional intervention groups and different administrative agencies; second, seizure, starting with setting-up of special files at the investigative stage as a necessary preparatory step for forfeiture; third and last, confiscation itself, which was very broad as that sanction was applicable for any criminal offence punishable by over a year of imprisonment and could cover any assets belonging to the concerned person as well as any assets at his/her disposal even without being the legitimate owner. Recent legislation had made it possible to confiscate the equivalent value of the assets.

29. In 2010, France had established a specialized agency for the recovery and management of seized and confiscated proceeds (AGRASC), which had, since its establishment, dealt with 10,000 cases involving 400 million euros worth of confiscated assets.

30. In practice, mutual legal assistance requests were received by the Ministry of Justice, as the central authority, and channelled through the Office of the Prosecutor of Paris. Challenges had been faced with regard to the time required for translation, which could take several months due to the complexity of requests and the information contained therein. The need to seek additional information for the identification of relevant persons and tracing of assets also caused delays, during which time assets were being moved. To overcome that problem, the Ministry of Justice had attempted to enhance informal communication and regular follow-up with different authorities involved. An automatic confirmation of receipt of the request would also be sent to the requesting States. Seminars on asset confiscation were organized for foreign authorities, as well as training for French practitioners. To illustrate the process, the panellist cited a recent case that had resulted in confiscation of assets on the basis of the money-laundering offence. The panellist noted that most corruption offences had a fairly short limitation period under the statute of limitations, an average of three years, but that the Court of Cassation had interpreted the starting point of the limitation period as the day when public action on the offence could reasonably begin, that is, when elements of the offence had been discovered. The problem was further mitigated by the fact that charges were often brought for concealment, which, as a continuous offence, was not subject to the statute of limitations.

31. The panellist from Indonesia highlighted a number of difficulties relating to asset recovery. Particularly, the transnational nature of corruption and differences in legal systems. In view of the difficulties encountered, Indonesia had taken a more active approach by creating the Asset Recovery Task Force. Further plans included the creation of an asset recovery office, with more responsibilities and powers. Based on the experiences of Indonesia with various agencies being involved in the asset recovery process, the panellist highlighted the value of inter-agency coordination. Indonesia applied the measures contained in articles 54 and 55 for international cooperation for asset recovery.

32. The representative of Brazil shared the experience of the Office of the Attorney General. It was highlighted that the general avenue for asset recovery

taken by the Office was civil proceedings. Three specialized groups had been created within that institution: an international affairs group, responsible for initiating civil law suits abroad, as well as the execution of the assistance requests received by Brazil; a proactive group on combating corruption, pursuing mainly the domestic recovery of assets derived from public funds; and the group of asset recovery of major debtors, focusing on situations involving federal agencies and public foundations. Examples were given of successful cases of assets recovered from various jurisdictions and transferred to Brazil. The panellist also described successful recent experiences with the tracing and freezing of funds pursuant to Security Council resolutions 1970 (2007) and 1973 (2007). In the final case presented, however, the freezing order had been lifted once the institution had been removed from the list of entities subject to asset freezing under those resolutions. The panellist noted that delays in the Brazilian criminal procedures were a main challenge in asset recovery proceedings. Brazil had had over \$2 billion in assets frozen in other States that could not yet be returned, due, in most cases, to the lack of final court decisions in Brazil on those cases.

33. In the ensuing discussion, speakers recognized the growing trend towards non-conviction-based forfeiture in a number of countries. Some speakers highlighted the positive experience with non-conviction-based forfeiture, especially in organized crime and grand corruption cases. One speaker reported that the enforceability of foreign non-conviction-based forfeiture orders will, as of September 2012, be extended to all foreign jurisdictions. Others reported about their countries' concerns with regard to non-conviction-based forfeiture legislation vis-à-vis the right of ownership and the presumption of innocence. Reference was made to the ongoing negotiations within the European Union on the issue of confiscation. While the European Court of Justice, in a recent ruling, had found that non-conviction-based forfeiture did not constitute a violation of the right of ownership or the presumption of innocence, agreement to a European Union-wide directive had not yet been reached as views diverged considerably.

34. One speaker emphasized that in line with article 55 of the Convention, Member States should cooperate with each other proactively in responding effectively to requests for exchange of information related to proceeds of corruption as referred to in article 31 of the Convention that were situated in the territory of the requested State party. He noted further the need for Member States to develop appropriate mechanisms to overcome obstacles that might arise out of the application of bank secrecy laws.

35. Speakers highlighted the importance of spontaneous disclosure of information on assets by the States in which the assets were located. It was recommended that measures to strengthen confidence and trust between requesting and requested States should be enhanced in order to encourage spontaneous disclosure. Some speakers highlighted the need for greater information-sharing and coordination, regarding both information on assets and on the procedures and legal systems. Similarly, several speakers reported on their experience and highlighted the procedural obstacles in their countries that resulted in lengthy procedures first for confiscation and then for the return of the assets.

## **VI. Forum for discussions on practical aspects of asset recovery, including challenges and good practices**

36. The Group addressed practical aspects of asset recovery through a panel discussion on selected issues.

37. The panellists from Belgium stressed the importance of information-sharing and swift action with regard to asset recovery. The multiplication of parallel national and international procedures in each case complicated effective asset recovery. Therefore, an international standard procedure based on the principles of State responsibility, ethical conduct, confidence-building among partners and reasonable delay was considered the most efficient way to ensure successful asset recovery. The process would consist of three phases: the alerting stage, the investigation phase and the return phase. The first phase would consist of an international alert sent by an international body such as the United Nations or the StAR Initiative to the States' financial intelligence units. Based on that alert, States could take temporary freezing orders. The second phase, the investigation phase, would draw from the recent Belgian experience with the creation of a pilot online database established specifically to pursue, together with all the countries involved, asset recovery with regard to a multi-jurisdictional case originating in Tunisia. That database, set up on an ad hoc basis through a secure system provided by the International Criminal Police Organization (INTERPOL), and updated by a focal point in each country involved, allowed online access to the information for all parties. The importance of respecting the highest standards with regards to the rule of law was stressed. The third phase, the return of assets, would follow the principles of integral return of assets and the legality of proceedings. The use of a standard procedure during that phase would help to tackle the obstacles currently arising from lack of coordination between the multiple, parallel proceedings. It was stressed that all States would participate in such cooperation based on their sovereignty and in the framework of their national law, and that no deadlines would be set for the different actions in the framework of the proposed cooperation.

38. The panellist from the Islamic Republic of Iran provided an overview of practical aspects of asset recovery. Highlighting the estimated volume of bribery at the global level, as well as the portion of illicit funds transferred to other jurisdictions, the panellist emphasized the relatively limited success of asset recovery efforts to date. He recalled that the Convention provided for a comprehensive set of avenues and tools to trace, seize, confiscate and return the proceeds of corruption, including international cooperation for the purpose of the recovery of assets in criminal and in non-conviction-based forfeiture proceedings, as well as direct recovery by means of private civil litigation. However, that innovative legal regime had been only partially successful in bringing about the recovery of assets, with the estimated global volume of assets returned to requesting countries not exceeding \$5 billion. Against that background, he underscored that the most effective mechanism for protecting public funds continued to be prevention, including the adoption of codes of conduct; the establishment of income and asset declaration systems; public access to information; the active involvement of all stakeholders, in particular civil society, in corruption prevention; systems allowing for the identification of beneficial owners of assets and in general terms monitoring of compliance of private sector entities as well as public officials with existing

regulatory frameworks and the introduction of effective sanctions for respective violations.

39. He further highlighted practical, procedural and substantive barriers to the successful pursuit and recovery of assets and provided some suggestions for the removal of such barriers. At the domestic level, he stressed the strategic importance of article 31, paragraphs 7 and 8, of the Convention with a view to ensuring efficient access for law enforcement authorities to records held by financial institutions, as well as the shifting to the owner of the assets the burden of proof with regard to the licit origin of those assets. With respect to the national or multilateral levels, he identified as major impediments to asset recovery the difficulties of obtaining accelerated and effective cooperation from the requested country. He called for action to discourage the denial of cooperation for economic interests or political considerations. The lack of direct and open channels of communication among jurisdictions as well as among different national agencies was another obstacle for effective cooperation, including the absence of a network of national asset recovery focal points. He also underscored challenges in terms of delays in responding to requests for mutual legal assistance, the lack of informal cooperation in preparation of mutual legal assistance requests, and the frequent requirement from requested countries of mutual legal assistance treaties, as well as the excessive use of grounds for refusal. He also perceived a certain reluctance by financial institutions to effectively prevent the laundering of the proceeds of corruption and to cooperate in the tracing of such proceeds. With a view to tackling some of those challenges, he proposed to fast-track the establishment of a network of asset recovery focal points, to strengthen the role and powers of financial intelligence units in exchanging information and to enhance informal channels of communication and networking among asset recovery practitioners. He called for enhanced support by UNODC and the StAR Initiative for the creation of an asset recovery network for the Middle East and North Africa, as well as the development and delivery of training programmes specifically designed to build skills and knowledge of asset recovery practitioners in developing countries and countries in transition.

40. The panellist from Guernsey outlined some of the challenges and good practices that he had encountered carrying out asset recovery, noting that it was a remedy in the context of economic and financial crime. The speaker referred to three aspects: the quality of information, the mechanisms for the transmission of such information, and possible impediments to transmission. On the first aspect, the importance of determining the origin of the assets, namely, which bank accounts had been used to acquire them, and the beneficial ownership of such accounts, were the main types of information needed. The speaker stressed that if jurisdictions were fully compliant with the Financial Action Task Force Recommendations and had the requisite regulatory oversight and enforcement regimes, such information should be readily available. Secondly, mechanisms for the transmission of such information were to be viewed both at the domestic and international levels. Information was to be shared legally at the domestic level, and at the international level, several avenues for transmission existed, inter alia, police-to-police communication (through INTERPOL), among financial intelligence units (through the Egmont Group), and through the International Organization of Securities Commissions, tax information exchange agreements and mutual legal assistance. Thirdly, the speaker highlighted possible impediments, namely, the incompatibility of legal frameworks,

issues concerning in rem as well as value-based confiscation, and challenges in carrying out mutual legal assistance.

41. The speaker noted that the work undertaken by the StAR Initiative was fundamental in providing a knowledge base that assisted with making informed decisions on how to refine processes and systems for asset recovery. Entities such as the Camden Asset Recovery Inter-Agency Network were crucial to exchanges between experts in the field. Direct communication among practitioners from different jurisdictions working on a related case at an early stage could enable them to fully understand what the different boundaries and requirements were and to tailor their work accordingly. He stressed that there was a need to respect the rule of law and one's own domestic procedures. Risks could be incurred in terms of costs as well as reputational damage, and investigation and prosecution services needed to be provided with the requisite level of resources to ensure equality of arms. The speaker stressed that most complex corporate structures were used for legitimate purposes. It was therefore crucial for asset recovery practitioners to understand those structures with a view to being able to identify their potential illicit use through proper and informed investigations requiring a high degree of expertise and competence.

42. In the ensuing discussion, various speakers expressed their interest in the asset recovery initiative described by the panellists from Belgium and in discussing it further in future meetings of the Group. They thought that the approach could enhance information-sharing and case coordination while providing for flexibility due to the ad hoc nature of the cooperation. With regard to the alerting function, it was pointed out that it would not fall under the current mandate of UNODC or the StAR Initiative.

43. Several speakers presented information on their national system and shared their experience with regard to practical aspects of assets recovery. The issue of the lack of responsiveness by requested countries in certain cases was also raised. Several speakers also referred to the exchange of information on transactions, bank accounts and records above a certain value. It was noted that transparency and sharing of information on the transfer of funds was also a necessary preventive measure. It was also emphasized that the links between good governance, prevention, the participation of all stakeholders, capacity-building and a human-rights-based approach were a means of ensuring the best conditions for the successful return of the assets. The Office of the High Commissioner for Human Rights informed the Working Group that on the basis of Human Rights Council resolution 19/38, an independent expert had been nominated to conduct a study on the negative impact of non-repatriation of funds of illicit origin to the countries of origin, paying special attention to developing countries and countries with economies in transition burdened by foreign debt. A seminar would be conducted in that framework in September.

## **VII. Forum for discussions on capacity-building and technical assistance**

44. The panellist from Uganda described the current situation in her country with respect to asset recovery and the technical cooperation currently provided. She

outlined the assistance provided to the countries in the region through the training-of-trainers programme organized jointly with the East African Association of Anti-Corruption Authorities and the StAR Initiative, in which five practitioners from each East African country had participated. The training programme had positive results with regard to the drafting of mutual legal assistance requests and the initiation of asset recovery cases. The speaker reported that, as a concrete result of the training, a Ugandan magistrate for the first time issued a confiscation order as part of a penalty in a corruption case. Participants had followed up with national training sessions in their respective institutions. Further, participating countries had identified needs for legislative action, such as the adoption or amendment of forfeiture laws. She highlighted the importance of membership in regional and global initiatives such as the East African Association of Anti-Corruption Authorities and the Global Focal Point Initiative on Asset Recovery supported by the StAR Initiative and INTERPOL. Furthermore, the speaker highlighted that the Mechanism for the Review of Implementation of the United Nations Convention against Corruption had allowed her country to identify needs for technical assistance, and that as a result, along with other national initiatives, a UNODC initial assistance programme had begun with the Inspector General of the Government.

45. The panellist from the United Kingdom described the obstacles encountered and solutions found to enhance his country's focus on the "supply side" of corruption (i.e. companies paying bribes) and provision of assistance to developing States. Given resources and personnel restraints, mutual legal assistance often needed to be prioritized, and experience had shown that priority was often given to big cases and to countries with which national law enforcement authorities had established long-term trust-based relationships or countries with similar legal systems, in particular with respect to gathering proof, which ensured its admissibility in court. The panellist reported on the efforts of the United Kingdom Department for International Development to have dedicated resources in place that would specifically look into requests for mutual legal assistance from developing countries. Three national institutions, namely the Metropolitan Police, the City of London Police and the Crown Prosecution Service Confiscation Unit allocated specific posts for cooperation with developing countries for the purposes of asset recovery, financed by the Department for International Development. The system was highly successful, and the value of assets returned had been far greater than the investment. The system complemented other contributions to developing countries made by the United Kingdom in this field.

46. The panellist from the World Bank described the different levels of capacity-building currently provided by the StAR Initiative. A number of countries received general capacity-building training in the areas of investigation, prosecution and international cooperation for asset recovery. Further technical assistance activities at a national level addressed preventive aspects such as policy advice on financial disclosure systems and on politically exposed persons. Further, an increasing number of countries showed interest in hands-on assistance based on specific cases, including advice on strategic cases. Strategic choices to be discussed during such assistance activities included decisions on civil versus criminal avenues and on mutual legal assistance versus information exchange at the level of police or financial intelligence units. In that process, the StAR Initiative also provided contacts to key counterparts and facilitated the discussion with them upon request.

Examples of case-specific assistance included the work of the StAR Initiative in Egypt and Tunisia. Finally, the speaker highlighted that policy work and the adoption of legislation had to be linked to capacity-building and case work in order to advance the asset recovery agenda.

47. In the ensuing discussion, a number of speakers referred to their experience with technical assistance on asset recovery. They reported on a number of needs of their countries, including in relation to non-conviction-based forfeiture. With regard to capacity-building, speakers mentioned the problem of fluctuation of staff, which could limit the effectiveness of training programmes. In addition, the cost of some capacity-building events presented a challenge for the participation of persons from developing countries. In that context, speakers mentioned time constraints of the training sessions and one-off training sessions, especially in the complex field of asset recovery, which required a longer-term, sustainable approach that was closely linked to other criminal justice challenges. The training-of-trainers programme was commended, as it could address some of the challenges mentioned.

### **VIII. Adoption of the report**

48. On 31 August 2012, the Working Group adopted the report on its meeting (CAC/COSP/WG.2/2012/L.1 and Add.1-3).

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