



# 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 29 and 30 August 2013

### I. Introduction

1. In its resolution 3/3, the Conference of the States Parties to the United Nations Convention against Corruption welcomed the conclusions and recommendations of the Open-ended Intergovernmental Working Group on Asset Recovery (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.

### II. Organization of the meeting

#### A. Opening of the meeting

4. The Open-ended Intergovernmental Working Group on Asset Recovery held its seventh meeting in Vienna on 29 and 30 August 2013.
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 emphasized resolution 4/4, adopted at the fourth session of the Conference, held in Marrakech, Morocco, in 2011, and recommended redoubling the efforts of international cooperation on asset recovery issues. The Chair also called upon States parties to



face challenges in asset recovery through joint strategies and mechanisms on the regional and international levels in order to find suitable solutions.

6. In his opening remarks, the Director of the Division for Treaty Affairs of the United Nations Office on Drugs and Crime (UNODC) pointed out that since the last meeting of the Working Group, the number of States parties had grown by six and now numbered 167 States parties. He noted that since the last meeting of the Working Group, asset recovery had remained high on the global political agenda and that the political changes in the Middle East had continued to increase the demand for transparent and efficient asset recovery proceedings. Some recent successful cases had shown that asset recovery was feasible where political will and technical capacity existed. Encouraging examples from other regions had further demonstrated that concrete implementation of chapter V was becoming a reality.

7. The Secretary of the Working Group noted that concrete results in asset recovery had finally begun to emerge. At the same time, he emphasized the need to remain vigilant and stay the course as progress was slow. He underlined that the issue of asset recovery would figure prominently on the agenda of the Conference's upcoming fifth session. That would provide a forum to showcase and consolidate the work done in the past two years since the Conference's fourth session.

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

8. On 29 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. Overview of progress made in the implementation of asset recovery mandates.
  3. Forum for advancing practical aspects of asset recovery, including challenges and good practices.
  4. Forum for updates on and developments relating to thematic discussions of the previous session.
  5. Thematic discussions:
    - (a) Thematic discussion on article 56 (Special cooperation), article 58 (Financial intelligence unit) and other relevant articles of the Convention;
    - (b) Thematic discussion on cooperation in freezing and seizure: article 54 (Mechanisms for recovery of property through international cooperation in confiscation), article 55 (International cooperation for purposes of confiscation) and other relevant articles of the Convention.
  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, Australia, Austria, Bahrain, Belarus, Belgium, Bolivia (Plurinational State of), Brazil, Brunei Darussalam, Burkina Faso, Canada, Chile, China, Colombia, Côte d'Ivoire, Croatia, Cuba, Cyprus, Dominican Republic, Ecuador, Egypt, El Salvador, Finland, France, Gabon, Ghana, Guatemala, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lebanon, Lesotho, Libya, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Netherlands, Nicaragua, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela (Bolivarian Republic of), Viet Nam, Yemen 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 and Syrian Arab Republic.

12. The following non-signatory States were also represented by observers: Kiribati, Oman and the State of Palestine.

13. The following United Nations Secretariat units, institutes of the United Nations crime prevention and criminal justice programme network and specialized agencies of the United Nations system were represented by observers: International Narcotics Control Board, UNODC, United Nations Interregional Crime and Justice Research Institute, Basel Institute on Governance and World Bank.

14. The following intergovernmental organizations were represented by observers: Asian-African Legal Consultative Organization, Convention on International Trade in Endangered Species of Wild Fauna and Flora Secretariat, Egmont Group of Financial Intelligence Units secretariat, Eurojust, European Police Office (Europol), Ibero-American Network for International Legal Cooperation, International Anti-Corruption Academy, International Criminal Police Organization (INTERPOL) and Organization for Security and Cooperation in Europe.

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

### III. Overview of progress made in the implementation of asset recovery mandates

16. The Secretariat provided an overview of the progress made in the implementation of the asset recovery mandates, as described in the note by the Secretariat (CAC/COSP/WG.2/2013/3). With regard to the development of cumulative knowledge, various databases containing asset recovery knowledge

existed, including the knowledge portal developed by UNODC known as “Tools and Resources for Anti-Corruption Knowledge” (TRACK) and the Asset Recovery Watch developed by the Stolen Asset Recovery (StAR) Initiative. Several knowledge products developed by the StAR Initiative had been finalized, including a study on settlements and their impact on asset recovery, to be presented at the fifth session of the Conference, and the draft digest of asset recovery cases, which would be circulated for comments, in addition to the Mutual Legal Assistance Request Writer Tool with asset recovery features. UNODC had revised the self-assessment checklist for chapters II and V of the Convention.

17. A number of speakers emphasized the progress made in the implementation of relevant provisions of the Convention and reported on successful asset recovery cases. Speakers presented information on recent national reforms and initiatives and experience with regard to practical aspects of assets recovery. A number of States parties reported on new, innovative legislation and highlighted tools for enhancing inter-institutional and international cooperation. Many speakers made reference to their use of asset recovery networks and the role of their central authorities for mutual legal assistance.

18. A number of speakers were of the view that only limited recoveries had been achieved so far and addressed the importance of political will to overcome barriers to asset recovery. Among other challenges noted was insufficient complementarity of legal systems and insufficient understanding of the legal requirements of the jurisdictions involved. In that context, speakers referred to the role of databases, which should contain up-to-date, accurate information on the legislation and requirements of States parties. The country guides developed by the Group of Eight and the Group of Twenty were considered useful tools for orientation. Some speakers thought that the requirements for mutual legal assistance in asset recovery could be further analysed with a view to their eventual harmonization.

19. Speakers stressed the importance of mutual trust and of treating international cooperation partners in an equal and respectful manner. One speaker recommended making use of mechanisms to share expenses in asset recovery cases.

20. Speakers also commended a number of important initiatives aimed at promoting international asset recovery efforts at the regional level. In that context, speakers welcomed the first Arab Forum on Asset Recovery organized by the Government of Qatar in cooperation with the United States presidency of the Group of Eight and supported by the StAR Initiative. Speakers informed the Working Group that the second Forum was scheduled to take place in Morocco in October 2013.

21. One speaker proposed that in the light of the issues considered, the progress made and the challenges identified, the Conference at its fifth session could request the Working Group on Asset Recovery to make recommendations relevant to the second cycle of the Implementation Review Mechanism, on chapter V of the Convention.

22. One speaker reported that during the XXVII Plenary of Representatives of the South American Financial Action Task Force on Money Laundering (GAFISUD), the request of his country to become a member to the platform provided by the GAFISUD Asset Recovery Network (RRAG) was accepted — with the peculiarity that it was not a country of the region — with the purpose of being able to exchange

information and intelligence about the identification of assets of physical and legal persons that were being investigated by police either in his country or in the other 14 countries which participated in the platform.

#### **IV. Forum for advancing practical aspects of asset recovery, including challenges and good practices**

23. The representative of Switzerland presented a draft federal act on the freezing and restitution of assets of politically exposed persons obtained by unlawful means. He explained that the new act was intended to codify the existing practice and to complement the existing legal framework. He noted the innovative nature of the act, which would send a clear signal about the will to fight abuses of the country's financial centres.

24. The representative of Spain presented a white paper on best practices in asset recovery prepared by the Centres of Excellence in Asset Recovery and Training (CEART). The CEART project was carried out in cooperation between academic institutions, EUROPOL and the asset recovery offices of various European countries in a participatory process that made use of innovative technology such as cloud computing. As a result, capacity in the participating institutions was developed, and best practices were identified.

25. Other speakers gave an overview of national anti-corruption strategies, legislative projects and recent experiences in asset recovery and money-laundering cases. Several speakers emphasized the challenges faced by asset recovery efforts and underlined the need for cooperation and building trust. Further challenges identified were the complex nature of financial investigations and detailed requirements for the identification of banking information in some jurisdictions. It was noted that the Convention could serve as the legal basis for mutual legal assistance, and States were encouraged to provide mutual legal assistance on that basis. Fast-track seizure and freezing mechanisms were considered paramount for the success of asset recovery cases in the early stages. One speaker called for the development of specific rules that took into account countries in exceptional circumstances such as in situations of radical political change. Also raised was the issue of double nationality as a potential barrier to successful asset recovery schemes.

26. The coordinator of the StAR Initiative explained that while the Initiative had previously concentrated on developing knowledge products, it was now taking stock of what had been done and the focus was shifting towards translation and dissemination of those products.

#### **V. Forum for updates on and developments relating to thematic discussions of the previous session**

27. The representative of Belgium, recalling the delegation's presentation at the sixth meeting of the Working Group, reported on progress made on the proposal of standardizing good practices in asset recovery, which had been supported by other countries. The delegation's proposal addressed good practices at different stages of

a typical asset recovery case. During the investigation phase, information exchange between the requesting State and the requested State was considered crucial. The representative therefore proposed exploring the feasibility of a secure database managed by INTERPOL for police-to-police information exchange. According to the representative of Belgium, mutual legal assistance was the tool to provide the evidence in a case, but informal cooperation would provide the information to obtain the evidence.

28. Another speaker reported on progress made in a specific case.

## **VI. Thematic discussions**

### **(a) Thematic discussion on article 56 (Special cooperation), article 58 (Financial intelligence unit) and other relevant articles of the Convention**

29. A representative of the Secretariat provided an overview of the relevant part of the discussion guide contained in document CAC/COSP/WG.2/2013/2.

30. The panellists from Liechtenstein and Kyrgyzstan jointly presented a successful experience of cooperation between financial intelligence units in tracing and freezing proceeds of corruption in line with the Convention. The presentation highlighted the importance of the spontaneous sharing of information as called for in article 56 of the Convention.

31. The case described involved the cooperation of several financial intelligence units in pursuit of the embezzlement of a value of several million dollars from a public company in Kyrgyzstan. Several spontaneous exchanges of information enabled the freezing of relevant bank accounts and assets, including an account in Liechtenstein. The mutual legal assistance request for the freezing of the latter account was based on article 54, subparagraph 2 (b), of the Convention against Corruption and drafted with the support of an expert funded by Switzerland who also represented Kyrgyzstan in the court in Liechtenstein.

32. The panellists highlighted the importance of, inter alia, the following:

(a) Spontaneous transmission of information in accordance with article 56 of the Convention;

(b) The participation of financial intelligence units in networks such as the Egmont Group, which considerably facilitated information exchange;

(c) Direct contact between financial intelligence units in line with articles 58 and 59 of the Convention;

(d) Timely tracing of assets in different jurisdictions (art. 58);

(e) Effective coordination between financial intelligence units as a source of information and between the financial intelligence units and law enforcement bodies (art. 38);

(f) Granting financial intelligence units the power to obtain information and to suspend transactions and freeze bank accounts;

(g) Collecting financial intelligence before starting formal mutual legal assistance procedures;

(h) Support from donors, where relevant;

(i) Ensuring that the communication lines remain open throughout the process.

33. The Executive Secretary of the Egmont Group highlighted the importance of the financial intelligence units in the asset recovery process and the role of the Egmont Group in promoting effective communication and information-sharing between them.

34. He also provided a briefing on the approval by the Egmont Group of a document that would allow for closer cooperation with the observers to the Group, including UNODC, and outlined a white paper on the role of the financial intelligence units in anti-corruption and asset recovery efforts.

35. The panellist highlighted the importance of cooperation and synergies between financial intelligence units and anti-corruption agencies. In the context of asset recovery cases, he emphasized the benefits of sharing information before starting formal mutual legal assistance procedures.

36. In response to several questions, he explained the procedures for financial intelligence units to become members of the Egmont Group.

37. In the ensuing debate, speakers agreed on the importance of spontaneous disclosure of information at all stages of the asset recovery process and on the crucial role of financial intelligence units in the anti-corruption framework.

38. Some speakers mentioned the challenges that their financial intelligence units faced in international cooperation, including bank secrecy, the use of offshore companies and the reluctance of some financial intelligence units to cooperate unless the information was available in their database.

39. The observer for INTERPOL provided an update on the Global Focal Point Initiative established by INTERPOL and StAR and progress made in building a secure network for exchanging information on asset recovery cases. He explained that the network allowed focal points to exchange secure e-mails to share investigative details and provided for secure storage capacity.

**(b) Thematic discussion on cooperation in freezing and seizure: article 54 (Mechanisms for recovery of property through international cooperation in confiscation), article 55 (International cooperation for purposes of confiscation) and other relevant articles of the Convention**

40. A representative of the Secretariat provided an overview of the relevant part of the discussion guide (CAC/COSP/WG.2/2013/2).

41. The panellist from Switzerland gave a presentation on the asset recovery regime in Switzerland. He characterized the Swiss regime as being flexible, simple and of long duration. He emphasized the importance of freezing and provisional measures, pointing out that freezing was always the first step in the procedure and that the amount frozen was generally all the authorities ended up recovering. He then explained the conditions for obtaining the freezing of assets in Switzerland and underlined that the Swiss authorities normally opted for direct enforcement of the foreign order. No additional evidence was required for the freezing of assets. The Swiss authorities would act on the basis of the statements in the request and relied

on the description of the facts in the foreign order. Finally, the Swiss authorities could keep the freezing order in place for a very long time if needed, including until a final order of confiscation had been issued in the requesting State.

42. The panellist from the United Kingdom described challenges faced in asset recovery cases and proposed solutions and best practices to overcome them. The first challenge was the knowledge gap with respect to the procedural and substantive legal requirements for seeking mutual legal assistance in the requested State. There was typically little or no contact between officials of the requesting State and the requested State prior to the submission of the formal request. Regular dialogue between the officials of the two States using all means of communication and personal meetings was important for the success of mutual legal assistance requests. That lack of knowledge could also create false expectations on both sides and cause delays when formal requests did not include information required to satisfy the requested State's laws. He advised that Requests should be focused and not be made in respect of a large number of individuals if they lacked information as to the basis for suspicion. The panellist recommended forming a task force in order to foster cohesion between domestic agencies and clarify which one had the lead. Finally, he referred to the use of non-conviction based forfeiture.

43. The panellist from Lebanon shared good practices that her country had developed in the area of asset recovery. She explained that Lebanese law allowed for the enforcement of foreign civil decisions. To enforce a foreign civil ruling or the part of a foreign criminal decision with civil effects, an application for enforcement must be made to the president of the competent court of appeal. A certified copy of the foreign judgement and evidence that the decision was enforceable and had acquired *res judicata* had to be appended. Moreover, the rights of the defendant must have been respected and reciprocity was required. The panellist then presented a recent successful example of asset recovery, where the Lebanese authorities, upon request from Tunisia, had restituted 28 million dollars that had been traced by the Special Investigation Commission (the Lebanese financial intelligence unit).

44. In the ensuing discussion, speakers highlighted helpful practices and challenges in procedures for the freezing and seizure of assets.

45. Several States parties expressed gratitude for the cooperation received from other States in asset recovery cases. In response to the presentation of the panellist from Switzerland, the legislative regulation of spontaneous disclosure and the absence of pre-established time limitations on freezing orders in Swiss legislation were noted positively. Some speakers reported on the establishment of national task forces or inter-agency offices for asset recovery that furthered swift national coordination and direct liaison with international counterparts. Cooperation agreements between counterpart institutions in two States were reported to be useful in clarifying and expediting cooperation, especially in the absence of bilateral mutual legal assistance treaties. One speaker mentioned a case in which mutual legal assistance was provided in criminal proceedings against a legal person and another case in which recoveries were achieved on the basis of a pretrial settlement. Another speaker reported that in his jurisdiction officials had been assigned to assist in responding to requests from the "Arab spring" countries. Some countries reported on positive experience in their cooperation with non-governmental organizations on asset recovery cases, especially regarding cases against high-level officials.

46. Speakers also reported on the challenges encountered with regard to requests for freezing. In some jurisdictions, when requested States responded to mutual legal assistance requests, the competence of the requesting authority was verified by the requested State and could be considered grounds for refusal, which one speaker considered an unnecessary burden in proceedings on a provisional measure. Speakers also reported on challenges with the swift localization of real estate through registries. With regard to the ensuing confiscation and recovery of assets, a limiting factor for successful asset recovery was the delay due to a long duration of judicial proceedings prior to a firm and enforceable sentence. One speaker addressed the issue of the statute of limitations for predicate offences to money-laundering, which could create a limitation to confiscation of frozen assets in some jurisdictions. Problems in finding up-to-date information on legislation and requirements for mutual legal assistance through the relevant databases were mentioned, and States were called upon to make efforts to continuously update the information contained in the legal library of UNODC accessible through the TRACK online platform. Speakers highlighted tools available for information on requirements for mutual legal assistance, such as the country-specific guides published by the States members of the Group of Eight and the Group of Twenty.

47. Some speakers recommended developing standardized procedures for mutual legal assistance. Such standardization could create harmonized standards for the implementation of article 46 and chapter V of the Convention, in particular in the initial investigation stages of the procedure. Other speakers expressed the view that cooperation should rather be enhanced by a better mutual understanding of existing requirements and procedures within the framework of the Convention.

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

48. Speakers reinforced the importance and necessity of technical assistance and capacity-building for effective asset recovery efforts and stressed the importance of providing assistance in a result-oriented and practical manner. Several speakers presented their national experiences with capacity-building and technical assistance, both as requested States and as requesting States. One speaker highlighted the fact that technical assistance programmes were often one-off events, unconnected and without follow-up. The speaker suggested that technical assistance courses should build on each other and be tailored to a country's laws and procedures. In that context, consideration should be given to a curriculum approach and receiving countries should be more proactive in determining their needs. Those recommendations were found constructive and were supported by other speakers.

49. Several speakers emphasized the need for technical assistance in the process of drafting requests for mutual legal assistance. In addition to general capacity-building in that field, specific assistance in the context of pending cases by experts and mentors were mentioned. One speaker mentioned that his country had hired lawyers on behalf of a requesting country to assist in the preparation of mutual legal assistance requests and also for representation in domestic legal proceedings. The coordinator of the StAR Initiative noted the efforts to provide tailored training packages both at the generic capacity-building level and the case-specific level.

Several speakers highlighted the important role that UNODC and the StAR Initiative played in providing technical assistance in asset recovery.

50. The observer for the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora addressed the issue of money-laundering and asset recovery in the context of trading in endangered species, which has recently received more attention. A manual on countering money-laundering and asset recovery with the focus on the protection of wildlife was being developed by the International Consortium on Combating Wildlife Crime.

## **VIII. Conclusions and recommendations**

51. The Working Group called upon States parties to provide regular updates and expand, where appropriate, the information contained in the relevant databases of knowledge on asset recovery (e.g. TRACK and the Asset Recovery Watch).

52. The collection and systematization of good practices and tools in the cooperation for asset recovery should be further pursued, including the use and expansion of secure information-sharing tools with a view to enhancing early and spontaneous information exchange.

53. The use and expansion of relevant networks and their secure communication systems were encouraged. The Working Group recommended that States parties initiate the required proceedings for having their institutions apply for membership in the relevant networks. The Working Group stressed the importance of coordinating the use of different channels of information exchange (such as the Egmont Group, INTERPOL and others).

54. States parties should give urgent consideration to the implementation of article 46, paragraph 4, and article 56 of the Convention on the disclosure of information without prior request.

55. The Working Group recommended enhancing coordination and synergies between financial intelligence units and anti-corruption agencies.

56. The Group considered the following measures among others to be crucial elements of successful asset recovery procedures:

(a) Fast seizure and freezing mechanisms at the initial stages of an asset recovery case;

(b) The early communication and sharing of information before starting formal mutual legal assistance procedures;

(c) Case coordination meetings among the requested and requesting States;

(d) The exchange of experts.

57. The Working Group recommended States parties consider adopting a curriculum approach to technical assistance programmes, coordinating at the regional level, in order to ensure the most effective use of limited available resources.

## **IX. Adoption of the report**

58. Some States parties raised the issue of the participation of civil society in the Working Group, while others reiterated their objection to that discussion and its inclusion in the report.

59. On 30 August 2013, the Working Group adopted the report on its meeting (CAC/COSP/WG.2/2013/L.1 and Add.1-3).

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