



# 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 3 and 4 September 2015

### I. Introduction

1. In its resolutions 1/4, 2/3, 3/3, 4/4 and 5/3, in which it established and continued the work of the Open-ended Intergovernmental Working Group on Asset Recovery, the Conference of the States Parties to the United Nations Convention against Corruption 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. In its resolution 5/3, the Conference decided that the Working Group 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 ninth meeting in Vienna on 3 and 4 September 2015.
5. The meeting of the Working Group was chaired by Ignacio Baylina Ruíz (Spain). In opening the meeting, the Chair recalled the mandate of the Working Group and noted the fact that the Working Group would conclude its multi-year workplan at its ninth session. He highlighted resolution 5/3, entitled “Facilitating international cooperation in asset recovery”, adopted by the Conference of the States Parties to the United Nations Convention against Corruption at its fifth session, held in Panama City from 25 to 29 November 2013. The Chair recalled



that the present meeting would be the last before the sixth session of the Conference and before the launch of the second cycle of the Implementation Review Mechanism. He encouraged the Working Group to consider the future of its work in this light.

6. The Secretary of the Working Group recalled the multi-year workplan that the Working Group had adopted at its 6th meeting to prepare States parties for the review of implementation of chapter V of the Convention. The present meeting would conclude that workplan with a discussion of article 57 of the Convention, which was of great practical importance to the Convention and its overall architecture. The Secretariat provided a brief introduction to the documentation. It had also made arrangements for panel discussions to facilitate consideration of the agenda items by focusing on practical and operational exchanges. The Secretary expressed satisfaction that the Working Group had increasingly become a forum where practitioners could exchange views, experience and good practices, as well as a platform for addressing practical and operational challenges through side meetings, case discussions and the exchange of operational information. The Secretary referred to the upcoming adoption of the sustainable development goals and, in that context, highlighted the inclusion of specific references to the recovery of stolen assets that underlined the importance of the work carried out by the Conference and the Working Group. In addition, the conclusions and recommendations regarding the issue of illicit financial flows during the Third International Conference on Financing for Development, held in Addis Ababa in July 2015, could be taken into account by the Working Group in the preparations for the sixth session of the Conference. He called upon Governments that wished to hold special events on the margins of the sixth session of the Conference to register by 18 September 2015.

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

7. On 3 September 2015, 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 at the previous session.
  5. Thematic discussions on article 57 (Return and disposal of assets) and other relevant articles of the Convention.
  6. Forum for discussions on capacity-building and technical assistance.
  7. Adoption of the report.

### C. Attendance

8. The following States parties to the Convention were represented at the meeting of the Working Group: Afghanistan, Algeria, Angola, Argentina, Armenia, Australia, Austria, Bahamas, Bahrain, Belgium, Bolivia (Plurinational State of), Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Canada, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Ecuador, Egypt, El Salvador, Finland, France, Gabon, Germany, Ghana, Guatemala, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Italy, Kenya, Kuwait, Lebanon, Libya, Liechtenstein, Luxembourg, Malaysia, Mexico, Morocco, Namibia, Netherlands, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, State of Palestine, Sudan, Sweden, Switzerland, Thailand, Timor-Leste, Tunisia, Turkey, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela (Bolivarian Republic of), Viet Nam and Yemen.

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

10. The following States signatories to the Convention were represented by observers: Japan and New Zealand.

11. 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, and other entities, were represented by observers: United Nations Environmental Programme, United Nations Interregional Crime and Justice Research Institute, International Institute of Higher Studies in Criminal Sciences, World Bank and Basel Institute on Governance.

12. The following intergovernmental organizations were represented by observers: Asian-African Legal Consultative Organization, Europol, Inter-American Drug Abuse Control Commission, International Anti-Corruption Academy, International Criminal Police Organization (INTERPOL), Organization for Security and Cooperation in Europe and Red Iberoamericana de Cooperación Jurídica Internacional.

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

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

14. The Secretariat provided an overview of the progress made in the implementation of the asset recovery mandates. The mandate of the Working Group covered three main themes: (a) developing cumulative knowledge; (b) building confidence and trust between requesting and requested States; and (c) technical assistance, training and capacity-building. With regard to the development of cumulative knowledge, several knowledge products had been finalized, including a study by the joint United Nations Office on Drugs and Crime (UNODC)/World

Bank Stolen Asset Recovery (StAR) Initiative entitled *Public Wrongs, Private Actions: Civil Lawsuits to Recover Stolen Assets*, which for the first time gave step-by-step guidance on the use of civil remedies for the recovery of stolen assets. Another knowledge product that had been finalized was a joint study with the Organization for Economic Cooperation and Development (OECD) under the title *Few and Far: the Hard Facts on Stolen Asset Recovery*, which looked at the most recent performance data of 34 OECD countries regarding the freezing, seizure, confiscation and return of stolen assets. UNODC had also published the *Digest of Asset Recovery Cases*, which compiled cases submitted by States parties and obtained from Asset Recovery Watch, a database maintained by the StAR Initiative. The Secretariat also gave an update on the work being carried out to strengthen confidence and trust between requesting and requested States through the use of practitioners' networks, and to provide country-specific technical assistance in the field of asset recovery, in particular through the StAR Initiative.

15. The representative of the Group of African States emphasized that asset recovery is a fundamental aspect of the Convention, in particular the tracing, freezing and unconditional return to their States of origin of assets, as well as the disposal of such assets. He emphasized the need for States to make political commitments, ensure that national laws supported asset recovery, simplify procedures to assist in tracing, confiscation and asset recovery, and eliminate safe havens and bank secrecy. The importance was noted of having adequate capacity and technical assistance, as facilitated through the Mechanism for the Review of Implementation of the Convention in accordance with Conference resolution 3/1. The Working Group looked forward to the commencement of the second review cycle that would encompass the review of all articles of chapters II (Preventive measures) and V (Asset recovery) of the Convention.

16. The representative of the European Union reported on new developments in relation to directive 2014/42/EU of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union. That directive had expanded police and judicial powers on tracing, freezing and confiscation, while ensuring that fundamental rights were respected. He also reported that cooperation among European Union member States had improved and time frames for responding to requests had shortened following the establishment of national asset recovery offices.

17. Several speakers stressed that significant challenges remained and only limited recoveries had been achieved so far. They noted in some cases the lack of trust and political will between requesting and requested countries and of effective communication between them, challenges in achieving a timely exchange of information, and the lack of familiarity with each other's legal requirements. Several speakers highlighted difficulties in freezing and tracing assets, caused in particular by cumbersome evidentiary and overly strict dual criminality requirements and, in some cases, problems encountered in domestic regimes regarding the tracing and freezing of assets. Speakers also noted the importance of interpreting national legal requirements in light of international obligations. Speakers further highlighted the excessive delays in the asset recovery process between requesting and requested countries.

18. Several speakers reported on possible ways to address those challenges, such as the thorough country-specific asset recovery guides that had been developed by

some countries, and the easing of the procedures for the recognition and direct enforcement of foreign freezing and confiscation orders. In that context speakers also referred to the Lausanne process for the development of practical guidelines for efficient asset recovery, supported by the Government of Switzerland in cooperation with the StAR Initiative and the International Centre for Asset Recovery. Sharing information spontaneously in accordance with article 56 of the Convention was also considered important. Some speakers highlighted the need to develop an asset recovery manual or step-by-step guide with practical aspects for advancing asset recovery processes. One speaker emphasized the need to protect requested States against possible adverse consequences of their freezing action, and noted that arrangements could be made such as indemnification by requesting States for potential claims by third parties. The speaker also noted that criminals could use various avenues to protect themselves, such as using the provisions of investment protection treaties. The need to adhere to time frames for responding to requests was also noted. One delegate emphasized the need to incorporate suitable provisions in the self-assessment checklist for the second cycle with a view to further enhancing international cooperation in dealing with the menace of corruption and unaccounted-for money found in safe havens.

19. A number of speakers emphasized the progress made in the implementation of relevant provisions of the Convention. They presented information on current asset recovery efforts, successes, and recent institutional and legal reforms, and reported on the practical aspects of asset recovery. In particular, they highlighted new legislation on seizure and confiscation, including non-conviction-based forfeiture, value-based confiscation and enlarged confiscation, and the designation of specialized bodies or inter-institutional teams tasked with asset recovery. Some speakers shared their experiences with involving a broad range of stakeholders in their asset recovery efforts, including stakeholders from the private sector and civil society.

20. In referring to the findings of the StAR Initiative study *Left out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery*, one speaker stressed that only a fraction of settlement proceeds had been returned to the countries where the corruption offences had occurred. The speaker proposed that the Working Group consider producing guidance on parameters for the recognition of victims of corruption offences in accordance with article 57, and to develop protocols for the proactive and timely sharing of information between jurisdictions.

21. Speakers underlined that no progress would be made without a strong political will, and that direct cooperation and the direct exchange of good practices between authorities could lead to good results. A number of speakers also referred to their support for Conference resolution 5/3 and the Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation, adopted by the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice. In that context, one speaker proposed to create a global virtual network to build direct contacts among competent asset recovery and law enforcement authorities.

22. A number of speakers made reference to international initiatives such as the StAR Initiative and the Arab Forum on Asset Recovery. They also referred to practitioner networks such as the Camden Assets Recovery Interagency Network

and the Global Focal Point Initiative established by INTERPOL and the StAR Initiative. Finally, in the area of money-laundering, they mentioned the Financial Action Task Force and the Egmont Group of Financial Intelligence Units. Such channels offered an opportunity to identify needs for capacity-building and establish trust through direct contacts and the discussion of concrete cases.

23. The need was emphasized to share good practices and enhance capacity-building activities. One speaker noted that the transparent return of assets was an important factor in ensuring that such assets would contribute to sustainable development.

24. One speaker noted cumbersome and costly mutual legal assistance procedures as a general problem. The speaker further noted that article 57 of the Convention may be interpreted in different ways and could create problems in practice by giving discretionary powers to requested States regarding the return of assets. He therefore called for appropriate action to ensure that the objectives of chapter V would be fully achieved. Furthermore, one speaker emphasized the need to pay particular attention to chapter V in the next review cycle. Another speaker emphasized the need to draw up guidelines for recognizing victims of corruption and parameters for compensation in accordance with article 53 of the Convention, especially where corruption offences undermined accountability systems and eroded public confidence.

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

25. The panellist from China referred to amendments to the criminal procedure law made in 2012 in line with the Convention. The amendments came into force in January 2013 and established a special procedure for the confiscation of illicit assets of suspects and defendants in criminal proceedings who evade justice or have died. The procedure applied in cases of corruption, terrorism and other serious offences. Chinese judicial and law enforcement bodies, together with the National People's Congress, had clarified the application of the new procedure. Challenges were noted that related in part to international cooperation for the purpose of asset recovery. Among those challenges were differences between the domestic confiscation regime on one hand and international standards including the Convention on the other, cooperation with States that have different legal systems, and the fact that the special procedure was new and domestic law enforcement and judicial bodies were not fully familiar with it yet.

26. The panellist from France highlighted two success factors in his country's experience with asset recovery, namely the role of civil society, especially non-governmental organizations (NGOs), in initiating proceedings in corruption cases, and the important role of French liaison magistrates posted abroad who facilitate international cooperation. As regards the first factor, until 2010, only the direct victims of an offence and the public prosecutor were authorized to initiate proceedings. This changed following a ruling of the Court of Cassation in 2010, which permitted an NGO to initiate proceedings in a corruption case because the alleged conduct caused harm that directly related to its statutory objectives. This legal rule was enshrined in the legislation in 2013; NGOs that met the relevant

requirements gained the right to initiate proceedings related to an exhaustive list of offences: the NGO must be in compliance with the law on organizations, be registered in France, and have been in existence for more than five years. The panellist also highlighted the important role of civil society in linking criminal proceeds to specific corruption offences, and referred to a case in which French authorities investigated assets of foreign origin following an investigation initiated by NGOs. During the discussion, the panellist indicated that when an NGO initiated proceedings, it became a party to the case in question, had access to the case documents and had the right to appeal decisions and request damages. The panellist then underlined the important role of French liaison magistrates posted abroad. Currently, France had 15 such liaison magistrates; the most recent appointment was that made in 2013 to assist Tunisia in its asset recovery efforts. The most important role of liaison magistrates consisted in facilitating international cooperation, exchanging knowledge regarding legal procedures and assisting requesting States in drafting requests for mutual legal assistance. The panellist also indicated that in 2010, France established a special agency that dealt with the management of seized and confiscated assets (Agence de gestion et de recouvrement des avoirs saisis et confisqués).

27. The panellist from South Africa discussed practical aspects of asset recovery and presented the framework his country had established for that purpose. Regarding the institutional framework, the speaker highlighted the need to develop specialized expertise for asset recovery, and explained that in his country a group of prosecutors and financial investigators had been pooled under a dedicated asset recovery office within the national prosecuting authority. He emphasized how important it had been for his country to establish a specialized body, while at the same time integrating it into the existing law enforcement structure. An effective, comprehensive conviction-based and non-conviction-based forfeiture system, including evidentiary presumptions and broad concepts of realizable property, had been a further precondition for success. The availability of non-conviction-based forfeiture powers had also greatly helped his agency to cooperate more effectively internationally, since it was now able to initiate freezing and confiscation actions without depending on a foreign freezing or confiscation order or a request for mutual legal assistance. He further stressed that in pursuing international asset recovery cases, it had proved crucial for his agency to be able to share information informally with foreign counterparts. Moreover he highlighted the ability to recognize and directly enforce foreign freezing and confiscation orders as an important tool to expedite asset recovery cases. The panellist noted the importance of an effective central authority and good relations and cooperation with other stakeholders, such as tax authorities, financial intelligence units, banking and financial services regulators, and the judiciary. Sufficient financial resources for asset recovery and the management of frozen, seized and confiscated assets were also required.

28. The panellist from the Czech Republic presented his country's experience in asset recovery. He highlighted the institutional framework, which encompassed prosecutors at the national, regional and district levels. The framework also included a department for serious economic and financial crime under the Supreme Public Prosecutor's Office, which also served as the contact point for the protection of the financial interests of the European Union (such contact points are known as anti-fraud coordination services). The legal regime for asset recovery had been

enhanced through recent legislative amendments to the penal code, the law on criminal liability of legal persons, the law on international judicial cooperation in criminal matters and improvements to the criminal procedure code. A new internal framework for public prosecutors encompassed prosecutors' general guidelines on the criminal liability of legal persons, the establishment of a network of public prosecutors specialized in asset recovery issues, and an agreement on joint actions with the customs and tax authorities and the police. Domestically these measures had resulted in increasing amounts in seized and recovered assets. The panellist emphasized the importance of close international cooperation and coordination of activities among the relevant authorities, including among financial intelligence units, tax and customs offices, and asset recovery and prosecutors' offices. Such cooperation could entail regular operational and tactical meetings, common training, informal contacts, the sharing of good practices and joint investigations.

29. The panellist from Mexico introduced a differentiated analysis on barriers to international asset recovery. He proposed a classification that differentiated between core barriers and secondary barriers. Core barriers impeded any further steps ahead and should be addressed with particular effort by all States parties. The panellist identified four core barriers: (a) the lack of mutual trust, which was the first and crucial element in the framework of international cooperation; trust could not be imposed, it should be built between the individuals in charge of asset recovery proceedings; (b) the lack of clearly identified focal points in requesting and requested countries; the authorities authorized to make key decisions in national proceedings have to be involved in responding to requests in order to have effective and expedited asset recovery procedures; (c) the lack of knowledge in requesting countries of the legal systems and procedures of the requested countries; overcoming this factor would make the parties aware of each other's limitations and of alternatives that can be used when obstacles come up in responding to requests; and (d) the shortcomings in responding to requests for mutual legal assistance; this is a key issue that has a significant impact on the progress of the asset recovery strategy and process. The panellist highlighted that without taking the necessary steps to improve the framework to address requests for mutual legal assistance, international asset recovery cannot be improved. The panellist then presented his country's experience in using tax and financial crime offences and related investigative powers as effective tools to combat corruption, especially in tracing assets. He gave an example in which, even though there was a successful asset recovery of funds of the State of Coahuila by another State party, a plea agreement granted by that State party had complicated the return of the public funds to Coahuila because of deficiencies in the mutual legal assistance process. The panellist underscored the importance of separating the legal and the operative aspects of the problem, emphasizing the critical importance of the latter. He added that countries should consider conducting statistical analyses to harmonize their approaches when dealing with requests for mutual legal assistance and to collect data for the effective evaluation of international cooperation through mutual legal assistance.

30. During the ensuing discussion, a number of speakers emphasized the progress made in the implementation of relevant provisions of the Convention. They presented information on recent national reforms and initiatives and reported on their experience with institutional and legal reforms and the practical aspects of asset recovery. In particular they highlighted new legislation on seizure,

confiscation and international cooperation, the establishment of central anti-corruption bodies and specialized courts, and the designation of special agencies tasked with asset recovery.

31. Many speakers underlined the transnational aspect of asset recovery and the need to strengthen communication, cooperation and the international exchange of information. They re-emphasized the lack of trust between requesting and requested countries, the lack of political will, and the differences in the legal systems as the main challenges to asset recovery.

32. Several speakers underlined the importance of civil forfeiture and other forms of non-conviction-based confiscation regimes. One speaker requested the Secretariat to develop further knowledge on how to deal with requests based on non-conviction-based forfeiture orders, in particular where the requested country's legal regime did not provide for such orders.

33. Several speakers noted the role of existing international initiatives, in particular the StAR Initiative, in providing knowledge products, tools, capacity-building and other resources in support of countries' efforts to trace, recover and return stolen assets.

34. Some speakers highlighted the complexity of asset recovery cases, which is mainly the result of the complexity of procedures for mutual legal assistance and the difficulty of establishing the link between ill-gotten proceeds and corruption offences committed abroad.

35. A number of speakers stressed the importance of technical knowledge and specialized skills to the successful mounting and sustainment of asset recovery efforts. Others underscored the important role financial intelligence units can play in the cross-border exchange of information. They also underscored the usefulness of anti-money-laundering provisions in tracing, seizing and confiscating the proceeds of corruption.

36. Informal assistance in gathering information and taking preventive measures, in addition to timely responses to requests for mutual legal assistance, were also mentioned as crucial to an effective recovery of assets. One speaker suggested the establishment of specific time frames in which such requests should be responded to.

37. Several speakers indicated that countries needed to strengthen their domestic legislation in accordance with the Convention. They also noted that an asset recovery request should be preceded by domestic information-gathering and informal international consultations among practitioners. One speaker stressed the need to cover the various provisions of chapter V of the Convention in detail in the comprehensive self-assessment checklist to ensure the in-depth assessment of States parties' legal and institutional frameworks and operational capacities in light of the requirements of the Convention.

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

38. One speaker emphasized that civil and administrative proceedings had proved to be a very efficient way of prosecuting corruption offences. The speaker further noted the importance of international cooperation in civil and administrative proceedings for asset recovery, and in that context made a reference to conference room paper CAC/COSP/WG.2/2015/CRP.1.

39. A representative of the Russian Federation updated the Working Group on the preparations of the sixth session of the Conference to take place in St. Petersburg, Russian Federation, from 2 to 6 November 2015. The representative noted that the host country agreement between UNODC and the Russian Federation had been signed on 31 August 2015. She also highlighted the steps undertaken by the national organizing committee of the Russian Federation to ensure proper preparations for hosting the event and referred to the official website containing essential up-to-date information about the Conference (<http://uncorruption.ru/en/>).

## **VI. Thematic discussion**

### **Thematic discussion on article 57 (Return and disposal of assets) and other relevant articles of the Convention**

40. A representative of the Secretariat provided an overview of the relevant part of the discussion guide for the thematic discussion on article 57 contained in document CAC/COSP/WG.2/2015/2.

41. The panellist from Brazil presented details of the recent Carwash case, which had involved a high number of judicial proceedings and in which numerous requests for international cooperation had led to a major breakthrough in asset recovery. The panellist highlighted the factors contributing to the success achieved in the case, including the momentum created by cooperating defendants, which led to admissions of guilt, restitutions, fines and settled penalties. Other factors were fast-track procedures for requesting the transfer of funds and cooperation received from Switzerland, which had opened parallel investigations.

42. The panellist also referred to the management of returned assets in Brazil. In the case referred to, the judge recommended that part of the funds be used to strengthen internal compliance mechanisms of the public entity involved. The panellist also referred to some of the lessons learned from previous cases, including the need to draw on international experiences for the prevention of corruption, the need to improve the system of political financing, and the need for legal reform in areas of criminal and criminal procedure laws.

43. The panellist from Switzerland focused on three areas: challenges in asset recovery; two examples of experiences with consultation processes between requesting and requested States in the course of asset recovery cases and in returning the assets in question (issues (e) and (f) in the discussion guide); and, finally, some of the lessons learned.

44. The panellist referred to the practical problems of recovering assets stolen under a previous political regime. In connection with building confidence and partnerships, the panellist highlighted two examples involving Angola and Kazakhstan, where new arrangements had been put in place for the management of returned assets.

45. The panellist from Peru highlighted some of the lessons learned from major asset recovery cases conducted in his country. He gave an overview of the legal framework for asset recovery, which had been in place since 2004 and provided for non-conviction-based forfeiture. The two purposes of the current asset recovery regime were to compensate for damage suffered by the victims of corruption and to recover illicit funds. The turning point, which led to later legal reforms, came in 2001 and 2002, when the Venero case was pursued. That case ultimately led to the recovery of \$17 million from the United States.

46. Good practices highlighted by the panellist included a robust methodological framework that included working with financial investigators to establish the link between crimes and assets, strong domestic cooperation between authorities, and direct collaboration between central authorities under articles 46, 54 and 55 of the Convention.

47. The panellist from the United States focused on her country's approach to asset disposal through remission, restoration and sharing. She referred to the good cooperation with Peru in the Venero case, where evidence and financial records provided by Peru had been crucial in obtaining non-conviction-based confiscation orders in the United States. The guiding principles for reaching an agreement on asset return were transparency, accountability, and ensuring that assets were disposed of to the benefit of those harmed by corruption.

48. Finally, the panellist from Nigeria highlighted some practical considerations in pursuing the recovery of stolen assets, *inter alia* the deduction of reasonable expenses incurred in investigations, prosecutions and judicial proceedings which has to be agreed upon by both parties at the beginning of the process; ways to reduce the overall cost of asset recovery, including the most cost-effective venue for initiating asset recovery proceedings; alternative means for producing materials that reduce costs; the skilful management of legal fees; the use of forensic accountants; taking into account the nature of assets; and, wherever possible, reliance on the competent authorities of the requested State.

49. In the ensuing discussion, several speakers highlighted improvements made to their legal frameworks for the recovery of assets, and underlined their readiness for active cooperation with requesting States through both mutual legal assistance and informal networks. Speakers re-emphasized the principle of unconditional return of stolen assets enshrined in the Convention. One speaker noted that administrative authorities could usefully provide cooperation for the recovery of assets. He gave an update about a non-criminal asset recovery case that had been presented to the previous session of the Working Group as a practical example of administrative cooperation between two countries.

50. A number of speakers highlighted the challenges faced in asset recovery, such as delays, differences in legal systems, complexities of asset ownership, the lack of response from States to requests for information, and the lack of cooperation. Some speakers mentioned the simplification and streamlining of procedures and direct

communication between central and investigative authorities as good practices that helped to speed up the asset recovery process. They were especially helpful in obtaining timely decisions regarding mutual legal assistance and avoiding costly delays in proceedings. Other tools mentioned for expediting the process were non-conviction-based forfeiture and plea bargaining. One speaker stated that solutions should come from both requested and requesting States.

51. While acknowledging the principle of non-intervention in domestic affairs, some speakers mentioned the usefulness of voluntary agreements in channelling returned assets towards the achievement of specific development objectives with a view to compensating for the harm caused to society. One speaker underlined that voluntary agreements had to be the outcome of a process of mutual cooperation and strong partnership developed in the course of the proceedings.

52. A representative of the Organization of American States briefed the Working Group on the Organization's efforts to put in place confidence-building measures through technical assistance and training programmes and to disseminate good practices in asset recovery and in the administration of seized and confiscated assets.

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

53. The Secretariat provided an overview of the work that UNODC had started in early 2014 with the region of Calabria, Italy, with a view to developing relevant tools and guidelines on the issue of management, use and disposal of seized and confiscated assets, both at the domestic level and within the context of international asset recovery cases.

54. The representative of the StAR Initiative provided a briefing on technical assistance and capacity-building provided under the Initiative. He referred to the key objectives of the Initiative in the areas of sustaining political will, country engagement, international standards, innovation and knowledge, partnership and communication. He then focused specifically on country engagement, which included assistance regarding legal frameworks, setting up institutions, capacity-building in asset recovery and facilitating international cooperation.

55. The panellist from the Republic of Korea presented his country's technical assistance efforts, including activities by the Supreme Prosecutors Office and the Legal Research and Training Institute. He then highlighted the work of the Asset Recovery Inter-Agency Network for Asia and the Pacific, which had been set up in 2014 and for which the country's Supreme Prosecutor's Office served as the secretariat. The Network had held two training sessions and had already facilitated ten exchanges among its members.

56. The panellist from INTERPOL presented the proposed creation of a special notice for asset recovery. The notice was to target all types of criminal assets, and could be issued at the request of national and international entities in order to identify, locate, obtain information about, monitor discreetly and continuously, seize, freeze, or seek the confiscation of criminal assets. Once adopted by the

upcoming general assembly of INTERPOL, the notice would initially be implemented through a two-year pilot programme.

57. Speakers welcomed the information provided by the panellists and the technical assistance activities carried out. They reiterated that technical assistance and capacity-building was to be based on the specific needs of requesting countries. One speaker reported on his country's activities with regard to the management of seized and confiscated assets. Speakers referred to the upcoming second cycle of the Mechanism for the Review of Implementation of the Convention and the review for the provisions of chapter V, which would provide more information and would identify more technical assistance needs in the area of asset recovery and gaps in national legislation, so as to expedite the recovery of assets. Speakers emphasized the usefulness of networks of practitioners and informal contacts. One speaker also noted the need for capacity-building, not only for investigators and prosecutors, but also for those responsible for the management and disposal of assets.

## **VIII. Conclusions and recommendations**

58. The Working Group welcomed the progress that had been made in the implementation of chapter V of the Convention, while acknowledging the challenges still faced by both requesting and requested States and the need to maintain and strengthen further efforts towards asset recovery.

59. The Working Group also welcomed the progress that had been made in the implementation of resolution 5/3 adopted by the Conference at its fifth session and the updates provided on that topic.

60. The Working Group encouraged States to continue their endeavours to adopt new or improved legislation on seizure and confiscation, including non-conviction-based forfeiture, and on international cooperation in this area. States were also urged to set up or strengthen bodies or units tasked with asset recovery.

61. The Working Group re-emphasized the need for requesting and requested States to build trust and to expand close and sustained cooperation and partnership to advance the successful tracing, seizure, confiscation and return of assets.

62. The Working Group encouraged States to pursue all available avenues for asset recovery, including through civil remedies and non-conviction-based forfeiture, and to rely on all available national institutions and stakeholders, including financial intelligence units, to facilitate the cross-border exchange of information.

63. The Working Group recommended that UNODC should continue its support to States parties strengthening their implementation of chapter V, including through the joint UNODC/World Bank StAR Initiative.

64. The Working Group highlighted the need to continue the provision of technical assistance by UNODC to strengthen the implementation of chapter V, and called upon States parties and other donors to reconfirm their commitment to asset recovery.

65. The Working Group noted the usefulness of networks and groups of practitioners and similar regional networks in enhancing contact and informal cooperation between States.

66. The Working Group welcomed the preparation and dissemination of practical guides by States on their legal frameworks, mechanisms and procedures for asset recovery as a useful tool for requesting States.

67. The Working Group recommended the development of means and arrangements for the proactive and timely sharing of information to enable States to take appropriate action in line with article 56 of the Convention.

68. The Working Group urged States to consider ways to reduce the overall cost of asset recovery, including through the use of modern technology and means of communication.

69. The Working Group recommended to States parties and UNODC to continue sharing their experience on the management, use and disposal of frozen, seized and confiscated assets, and, building upon existing resources, to identify best practices in the administration of seized assets, and to consider developing non-binding guidelines on this issue.

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

70. On 4 September 2015, the Working Group adopted the report on its meeting (CAC/COSP/WG.2/2015/L.1 and Add.1-3).

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