

**USA Response: Collection of Information Prior to the  
Tenth Intersessional Meeting of the  
Open-Ended Intergovernmental Working Group on Asset Recovery  
Established by the Conference of States Parties to the  
UN Convention against Corruption**

In response to the Secretariat's request for information contained in Note Verbales CU 2017/131/DTA/CEB/CSS and CU 2017/125/DTA/CEB/CSS, the United States is pleased to provide the following response.

**Information requested from States parties in relation to the proactive and timely sharing of information to enable States parties to take appropriate action, in accordance with article 56 of the Convention.**

The United States cooperates by proactively and timely sharing information on asset recovery cases. The Federal Bureau of Investigation (FBI) and Department of Homeland Security's Homeland Security Investigations (HSI), for instance, have specialized investigative units of dedicated financial investigators assigned to specifically combat global corruption. Each of these agencies have representatives posted in many U.S. embassies around the world who can facilitate assistance in support of foreign investigations, particularly by sharing information and by reaching back to their colleagues in other foreign posts and in U.S. offices. Practitioners from other jurisdictions can contact the FBI or HSI agents working in their country through the U.S. embassies in their countries to make inquiries or discuss their cases before making any formal request. This approach is particularly effective when accessing information from public or voluntary sources or when employing non-coercive investigative techniques to obtain evidence.

For compulsory action, such as the collection of financial records or compulsory witness statements, a mutual legal assistance (MLA) request pursuant to a multilateral or bilateral treaty or agreement, or a letter rogatory/letter of request, is usually required..

The U.S. Department of Justice's (DOJ) Money Laundering and Asset Recovery Section (MLARS) is the lead litigating agency on asset recovery in kleptocracy matters. DOJ's Office of International Affairs (OIA) is the central authority for the United States and is authorized to receive and execute or assign for execution all formal requests.

The United States welcomes and encourages inquiries outside MLA channels because substantial information can be exchanged without compulsory measures. A country that needs to verify financial intelligence it has on the location of property or other illegally obtained assets located in the United States generally need not make a MLA request for such a routine investigative measure. Other routine measures include voluntary witness interviews, visual surveillance, and public record searches, such as corporate formation data or real estate records. Confirming information before preparing and transmitting a MLA request for restraint or confiscation is often helpful in order to avoid delays caused by the need to supplement requests to ensure compliance with the requirements of the Convention or other multilateral or bilateral treaty or agreement.

When a foreign jurisdiction requests MLA from the United States, they must state in the MLA request the legal basis on which the request is made. Usually the MLA request is made pursuant to either a bilateral or a United Nations or other multilateral treaty. The United States has MLA treaties with more than 70 jurisdictions.<sup>1</sup> OIA lawyers will work with their foreign counterparts to prepare or execute MLA requests.

The United States is also a member of several investigative networks. Through these networks, the United States can often discuss cases and share information informally. The United States is currently a member of the Camden Asset Recovery Inter-Agency Network (“CARIN”), The Global Focal Point Network on Asset Recovery, and the Egmont Group.

**Information requested from States parties in relation to identifying victims of corruption and the parameters for compensation; and the use of settlements and other alternative mechanisms and analysis of the factors that influence the differences between the amounts realized in settlements and other alternative legal mechanisms and the amounts returned to affected States.**

### Identifying Victims of Corruption

Where possible and consistent with UNCAC requirements, we seek to use confiscated property to ameliorate some of the harm caused by criminal conduct. Chapter V considers asset recovery and particularly disposition within the framework of confiscation, and we also consider disposition within that

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<sup>1</sup> For a list of countries with whom the U.S. has a treaty for mutual legal assistance please go to: <http://www.state.gov/j/inl/rls/nrcrpt/2015/vol2/239045.htm>.

context. The United States notes that neither the UNCAC nor the *Travaux Préparatoire* reference the term “victim”, and the interpretation of this term is appropriately defined by domestic law.

Through its Kleptocracy Initiative, the United States continues to take measures, consistent with UNCAC requirements to ensure that, whenever appropriate, we are disposing of confiscated assets in such a manner that benefits those harmed by the corruption, whether that is a state or citizens of a state. A key objective of the Kleptocracy Initiative is to recover assets linked to foreign government embezzlement schemes and in the form of bribes paid to corrupt officials. The United States believes this is the most effective way to sustainably address the consequences/harmful impact of public official corruption.

We have been successful in our efforts to ensure that recovered assets are disposed of consistent with the aims of the Kleptocracy Initiative and our obligations under UNCAC. For instance, the U.S. Department of Justice MLARS transferred over \$1 million in corruption proceeds to Korea in connection with the Chun Doo Hwan matter. The United States also brought confiscation proceedings to recover millions of dollars’ worth of assets allegedly derived through corruption involving Teodoro Nguema Obiang, the Vice President of Equatorial Guinea. In 2014, we entered into a settlement through which Obiang’s \$30 million Malibu mansion and other properties in the United States were liquidated. Under the agreement, approximately \$20 million of the recovered funds will be designated to a charity to benefit the people of Equatorial Guinea, and \$10.3 million has been forfeited to the United States. We also anticipate that the confiscated funds will be disposed of in a manner that benefits the people of Equatorial Guinea. In another case, the United States consented to the transfer of more than \$115 million in recovered stolen assets to the BOTA Foundation, which was created by the governments of Kazakhstan, the United States, and Switzerland to dispose of these assets in a manner that directly benefitted the citizens of Kazakhstan who were harmed by public official corruption in that country. When funds are repatriated, it is crucial that they be transferred and administered in a public, transparent, and accountable manner in order to ensure that they benefit the people harmed by the abuse of office and to reinforce the anticorruption message from public awareness of successful asset recovery actions. Promoting transparency and accountability also helps ensure that repatriated assets are not re-stolen by the same or different corrupt individuals or entities.

The United States’ ability to identify those harmed by foreign official corruption is in large part dependent on the support and cooperation received from foreign

jurisdictions where the corrupt activity has occurred. Often evidence, including financial records and witness information, establishing criminal activity is best developed through a jurisdiction's own investigation and prosecution of criminal activity. Access to such evidence substantially furthers our ability to identify persons or entities harmed by public official corruption.

In addition to the resources devoted to asset recovery and related money laundering investigations, the United States also devotes significant resources in criminal and civil enforcement of its Foreign Corrupt Practices Act ("FCPA"), which generally addresses the conduct of bribe payers with certain connections to the United States laid out in the Act. The goal of these enforcement actions is generally to punish and deter bribe payers from engaging in corrupt conduct, as well as to disgorge profits to remove incentives to violate the Act and to require measures to ensure future compliance. These types of fines and penalties are not focused on asset recovery and do not fit within the UNCAC asset recovery chapter or the provisions on disposition of confiscated assets embodied in Article 57. Nevertheless, FCPA investigations can uncover important evidence that can be used in support of U.S. asset recovery actions or mutual legal assistance to foreign investigations.

### Use of Settlements

Cases involving civil or criminal confiscation have also been resolved through settlement agreements in the United States. In these cases, assets are repatriated as they would be in cases where the court enters a final confiscation judgment at the end of the litigation. Assets recovered in this manner are disposed of consistent with UNCAC obligations and U.S. law. We note that the settlement of the Obiang and Giffen confiscation proceedings did not impede the United States' ability to dispose of confiscated proceeds in a manner that benefitted those harmed by the underlying criminal activity. Settlement in the Obiang matter also allowed for a procedure aimed at benefitting the people of Equatorial Guinea. Implementation of this settlement is ongoing. The aforementioned resolutions were each *sui generis* thus further demonstrating the infeasibility of "guidelines" or one singular approach to corruption-related asset recovery resolutions.

To combat corruption we also recognize the need to investigate and punish bribe payers, as well as to ensure that they take appropriate steps to safeguard against their employees committing further bribery offenses. This is done in the United States largely through enforcement actions brought pursuant to the FCPA. The U.S. DOJ and Securities and Exchange Commission (SEC) are responsible for

enforcing the FCPA. Punitive actions against companies or bribe payers are not 'asset recovery' actions, and thus fines and disgorgement judgments do not fall within the categories of assets to be shared or returned under UNCAC. Because corporations cannot go to jail, punitive sanctions are frequently resolved through the use of a guilty plea, Deferred Prosecution Agreements (DPAs), or Non-Prosecution Agreements (NPAs). These 'settlements' (via plea, DPA, NPA) can include, *inter alia*, admission of guilt in a written statement of facts, criminal fine, disgorgement of corporate profits, remediation, and continued cooperation with DOJ in the ongoing criminal investigations into individuals. DOJ also investigates and prosecutes responsible persons involved in these U.S. law violations. Although these resolutions are not contemplated by Article 57, we recognize that evidence obtained from the bribe payer in these actions may provide important support for related asset recovery actions (e.g., confiscation) contemplated by the Asset Recovery Chapter of UNCAC.

### Future Considerations

We recognize that there is much work to be done to prevent corruption and better recover assets derived from corruption-related offenses using our existing UNCAC tools. In this vein, we note that effective intergovernmental cooperation is crucial to our efforts and thus the working group should work more aggressively to identify and address existing gaps and obstacles to our cooperation in asset recovery cases, e.g., disparate central authority capacities and practices, varying skill capacities in complex financial investigations matters, needs to improve the efficiency and effectiveness of informal communication networks, and gaps in the mutual recognition of restraint orders and judgments, including judgments and orders derived from non-conviction-based proceedings.

The United States cannot report on the use of alternative legal mechanisms, as this term is not clearly defined in Resolution 6/2, nor is a definition contained in UNCAC. It is therefore unclear what specific mechanisms should be considered.