



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

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Open-ended Intergovernmental Working Group on Asset Recovery

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Thematic discussions: common challenges and barriers, as well as best practices in recovery and return of proceeds of crime, with a particular focus on the enforcement of criminal confiscation orders in foreign jurisdictions and differences in evidentiary requirements and standards of proof between legal systems

Collection of information from States parties on international asset recovery, including reported challenges and barriers

Note prepared by the Secretariat

I. Introduction

1. In its resolution 8/1, entitled “Strengthening of international cooperation on asset recovery and of the administration of frozen, seized and confiscated assets”, the Conference of the States Parties to the United Nations Convention against Corruption decided that the Open-ended Intergovernmental Working Group on Asset Recovery should continue its work by, inter alia, continuing its efforts to collect information on challenges and barriers that States parties face, as well as best practices in recovery and return of proceeds of crime, with a view to proposing possible recommendations for the full and effective implementation of chapter V of the Convention.
2. In its resolution 8/9, entitled “Strengthening asset recovery to support the 2030 Agenda for Sustainable Development”, the Conference of the States Parties, inter alia, recognized that, since 2014, when the study entitled *Few and Far – the Hard Facts on Stolen Asset Recovery* had been concluded, further work to enhance the recovery of assets had been done, and welcomed the most recent initiative of the Stolen Asset Recovery (StAR) Initiative of the World Bank and the United Nations Office on Drugs and Crime to update and collect relevant data regarding asset recovery cases.
3. In the same resolution, the Conference requested the Secretariat and invited the StAR Initiative to, inter alia, collect information from States parties on international asset recovery cases in relation to offences established in accordance with the Convention, including on volumes of assets frozen, seized, confiscated and returned,

* CAC/COSP/WG.2/2020/1.



to report on the findings to the Working Group and the Conference at their next sessions, and to update the Asset Recovery Watch database.

4. Also in the same resolution, the Conference also requested the Secretariat and invited the StAR Initiative, in consultation with States parties, and taking into account, inter alia, the information gathered during the first and second review cycles of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption, and by panels and studies, to continue to collect information on the legal frameworks, legal procedures and judicial actions taken by States to recover proceeds of crime derived from offences established in accordance with the Convention, and to collect information from States parties on the most common challenges in the judicial process with regard to asset recovery and provide an analytical report to guide technical assistance.

5. In order to facilitate the implementation of those mandates, the Secretariat sent States parties a note verbale dated 24 April 2020 inviting them to complete a questionnaire prepared by the StAR Initiative on the topic of international asset recovery efforts.

6. The Secretariat has prepared the present note with the aim of facilitating the thematic discussion to be conducted on the aforementioned topic during the fourteenth meeting of the Working Group. The note draws on the information received in response to the note verbale sent by the Secretariat in April.¹

II. Main goals of the data collection exercise

7. Most information on actual practices in international asset recovery is based on a few prominent cases of asset repatriation. The report entitled *Few and Far – The Hard Facts on Stolen Asset Recovery*,² published by the StAR Initiative and the Organization for Economic Cooperation and Development (OECD), represents the most recent attempt to collect information systematically through a questionnaire sent to national authorities. The report contains an analysis of data based on responses from eight OECD countries that reported having pursued international asset recovery cases between 2010 and June 2012. No such information is available for the period since 2012 or for non-OECD countries.

8. The aim of the data collection exercise, which was undertaken pursuant to the mandates in resolution 8/9, was to fill that gap by gaining a better understanding of actual practices used by States parties to recover and return proceeds of corruption, and of the quantities of assets frozen, confiscated and returned to requesting States, prior owners or victims of corruption. Another aim was to understand how many countries are or have been actively involved in international asset recovery besides a few major international financial centres that are involved in well-known asset returns. The data collection activities are also designed to give more visibility to countries that are making the recovery and repatriation of proceeds of corruption a priority, as envisaged under chapter V of the Convention, and to identify the most important remaining barriers to international asset recovery.

¹ As at 18 September 2020, the Secretariat had received responses from Algeria, Armenia, Australia, Austria, Bahrain, Bangladesh, Belarus, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Chile, China (including Hong Kong Special Administrative Region and Macao Special Administrative Region), Costa Rica, Czechia, Egypt, Finland, France, Greece, Guatemala, Guinea-Bissau, the Holy See, Hungary, India, Iraq, Ireland, Italy, Jordan, Latvia, Lebanon, Lesotho, Lithuania, Malaysia, Mauritius, Mexico, Mongolia, Morocco, New Zealand, North Macedonia, Oman, Pakistan, Panama, Paraguay, the Philippines, Poland, Portugal, Qatar, the Republic of Korea, Romania, the Russian Federation, Serbia, Seychelles, Singapore, South Africa, the State of Palestine, Switzerland, Tunisia, Turkmenistan, Ukraine, the United Kingdom of Great Britain and Northern Ireland (including Guernsey, the Isle of Man and Jersey), Venezuela (Bolivarian Republic of) and Viet Nam.

² Available at <https://star.worldbank.org/publication/few-and-far-hard-facts-stolen-asset-recovery-0>.

III. Contents of the questionnaire and criteria for case selection

9. The questionnaire contains sections on case statistics on international asset returns, asset confiscations and asset freezes (related to corruption offences established in accordance with the Convention), on barriers to international asset recovery and on the policy, legal and institutional framework for asset recovery. States parties that were or had in the past been involved in international asset recovery cases between 2010 and 2019 were invited to complete all sections of the questionnaire. States parties that had not been involved in any international asset recovery cases were invited to complete only the sections on barriers and on the policy, legislative and institutional framework.³

10. States parties were invited to share information on the overall volumes of assets frozen, seized, confiscated and returned, as well as information on asset recovery cases that involved:

(a) Proceeds of corruption in accordance with articles 15 to 25 of the Convention;

(b) An international element (i.e., cases involving at least two countries and a completed or planned transfer of proceeds of corruption to a requesting State, prior legitimate owner or victim harmed by corruption).

IV. Summary of responses received

11. By 31 August 2020, the Secretariat and the StAR Initiative had received 67 responses to the questionnaire, with 50 respondents reporting involvement in at least one international asset recovery case involving proceeds of corruption (i.e., return, confiscation or freezing of assets) during the period 2010–2019. The remaining 17 responses did not include any asset recovery cases and contained responses only to the sections of the questionnaire on barriers to asset recovery and/or on the policy, legislative and institutional framework.

12. There were two main reasons why some States parties did not include any case statistics in their responses: at least four confirmed that they had not been involved in any international efforts to recover corruption proceeds within the scope of the study during the period 2010–2019. More frequently, States parties reported that such cases did (or might) exist, but that no systematic information was collected by any government agency.

13. Around 20 States parties confirmed that their data collection process was ongoing and requested an extension for submitting the questionnaire. This includes a number of States parties that are (or have been) involved in a large number of international recovery efforts, either as requesting or requested States. The Secretariat and the StAR Initiative are therefore continuing to collect outstanding responses from States parties pursuant to Conference resolution 8/9.

14. The responses received by 31 August 2020 included a total of 286 reported cases (92 completed returns, 34 confiscations and 160 freezes/seizures).⁴ The majority of those cases were reported by States of asset location (60 per cent), some 20 per cent of cases were reported by States of origin of assets, and another 20 per cent were reported by States that played a different role or countries that had acted as States of asset location in some cases and States of origin in others. Nearly half (31) of the jurisdictions that submitted responses reported involvement in at least one completed asset return during the period 2010–2019, while 18 States reported asset confiscations of proceeds of corruption and 43 States reported asset freezes.

³ Available at https://star.worldbank.org/sites/star/files/star-questionnaire-english-updated_me.pdf.

⁴ This figure may include some double-reporting by different countries involved in the same cases.

15. While most States parties are primarily engaged in international asset recovery on one side of the process, either as a requested or requesting jurisdiction, the responses showed that a subset (9 of the 50 States parties that have reported cases thus far) have been involved on both sides of international asset recovery efforts involving proceeds of corruption – as a State of asset location in some cases and as a State of origin in others. While this finding is not surprising given the diversification of international destination countries for proceeds of crime, it nonetheless rarely receives much attention in the asset recovery community, where debates are typically shaped by the sometimes conflicting interests of States of origin and States of asset location. Engaging more with those States that are both countries of location and countries of origin could potentially yield benefits in the discussions on putting chapter V of the Convention into practice, although further analysis is needed.

16. Reported cases of assets returned during the period 2010–2020 involved a total of around \$2.4 billion.⁵

17. The data collected thus far, though not comprehensive, indicate a trend towards a marked increase in the amounts and frequency of international returns of proceeds of corruption from 2017 onwards. By a wide margin, the largest overall amount of assets returned to any country of origin during that period was reported by Malaysia in relation to the misuse of the 1MDB State investment fund, which involved a total of nearly \$740 million in 2019 and 2020.⁶

V. Challenges and barriers to asset recovery

18. The StAR questionnaire included a list of 25 factors that may represent barriers to international asset recovery across different stages of the asset recovery process.⁷ States were asked to evaluate, on the basis of experience in their respective jurisdictions, the degree to which those factors represented barriers to the successful recovery of proceeds of corruption. Among the submissions received by 31 August 2020, 57 States responded to the section on barriers to asset recovery.

19. Tables 1 to 4 below show the factors from the questionnaire that were ranked as the most significant barriers for all countries and within specific groups of countries. Factors were rated on a scale of 1 to 5, with 1 representing no barrier at all and 5 representing a major barrier. The rankings in the tables are based on the average scores among States that responded to the respective question. A higher ranking means that more States considered the factor to be a significant barrier to their asset recovery efforts.

20. For tables 2 to 4, States that completed the section on barriers to international asset recovery were grouped by their role in the asset recovery process. A total of 19 States reported involvement in cases as a State of asset location, 14 reported involvement as a State of origin, and 14 States did not report any involvement in international asset recovery cases. The remaining 10 States that completed the section on barriers could not be classified in the subcategories shown in tables 2 to 4, or they reported involvement in asset recovery efforts both as a State of asset location and as a State of origin.

⁵ This figure is preliminary, based only on responses received as at 18 September 2020, and it does not account for historical exchange rates. A number of large, well-known asset returns are not yet included owing to ongoing data collection efforts and the finalization of responses from States parties.

⁶ This figure includes \$438.5 million returned as a result of a settlement agreement with the United States of America (in two phases in 2019/20), \$49 million returned as a result of a different settlement with the United States in 2020 and \$251.7 million from three returns by Indonesia, Singapore, and the United States in 2019.

⁷ The StAR initiative previously produced a publication entitled *Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action*, which contains a discussion of the main challenges in the process of asset recovery and policy recommendations to tackle them. See <https://star.worldbank.org/publication/barriers-asset-recovery>.

21. The two factors that were, on average, ranked most consistently as major barriers, regardless of the respondents' role in the asset recovery process, were the enforcement of non-conviction-based confiscation orders in other jurisdictions and problems with identifying and verifying beneficial ownership of suspected corruption proceeds.

Table 1

Most significant barriers to asset recovery: all responses (total: 57)

<i>Rank</i>	<i>Factor (average score)</i>
1	Problems related to the enforcement of non-conviction-based confiscation orders in a foreign jurisdiction (3.3)
2	Non-responsive or overly broad mutual legal assistance refusals by countries of asset location (3.2)
3	Difficulties in identifying and verifying beneficial ownership of suspected corruption proceeds (3.1) Inability to execute foreign non-conviction-based orders because of a lack of domestic non-conviction-based confiscation (3.1)
4	Problems related to the enforcement of criminal confiscation orders in a foreign jurisdiction (3.0)

Table 2

Most significant barriers to asset recovery: States of asset location (19 responses)

<i>Rank</i>	<i>Factor (average score)</i>
1	Difficulties in identifying and verifying beneficial ownership of suspected corruption proceeds (3.1)
2	Difficulties in proving the link between assets and criminal offences (2.9)
3	Differences in evidentiary requirements and standards of proof between legal systems (2.8) High costs of asset management during the recovery process (2.8) Problems related to the enforcement of non-conviction-based confiscation orders in a foreign jurisdiction (2.8)

Table 3

Most significant barriers to asset recovery: States of origin (14 responses)

<i>Rank</i>	<i>Factor (average score)</i>
1	Difficulties in identifying and verifying beneficial ownership of suspected corruption proceeds (3.6) Problems related to the enforcement of non-conviction-based confiscation orders in a foreign jurisdiction (3.6)
2	Problems related to the enforcement of criminal confiscation orders in a foreign jurisdiction (3.5)
3	Differences in evidentiary requirements and standards of proof between legal systems (3.4)
4	Non-responsive or overly broad mutual legal assistance refusals by countries of asset location (3.3) Difficulties in proving the link between assets and criminal offences (3.3)

<i>Rank</i>	<i>Factor (average score)</i>
	Inability to execute foreign non-conviction-based orders because of a lack of domestic non-conviction-based confiscation (3.3)
	Absence of a plea-bargaining mechanism (3.3)

Table 4

Most significant barriers to asset recovery: States without involvement in international asset recovery cases (14 responses)

<i>Rank</i>	<i>Factor (average score)</i>
1	Non-responsive or overly broad mutual legal assistance refusals by countries of asset location (3.1) Lack of available options that reduce the risk of returned assets being “re-corrupted” (3.1) Problems related to the enforcement of non-conviction-based confiscation orders in a foreign jurisdiction (3.1)
2	Inability to execute foreign non-conviction-based orders because of a lack of domestic non-conviction-based confiscation (3.0)
3	Difficulties in negotiating mutually acceptable terms for an agreement under article 57 (5) of the Convention or an asset-sharing agreement (2.9) High costs of asset management during the recovery process (2.9) Lack of capacity for asset management (2.9)
4	Problems related to the enforcement of non-conviction-based confiscation orders in a foreign jurisdiction (2.8)

VI. Challenges in data collection on international asset recovery

22. States parties reported that they faced significant challenges in collecting the information required to complete the questionnaire. In many States, no centralized statistics are maintained in this area, and no designated government agency bears responsibility for the collection of data on international asset recovery. Available data are often dispersed across different agencies and often not readily available even within a single agency. Several States parties outlined extensive efforts undertaken in requesting information from different governmental, judicial and prosecutorial authorities that did not yield any relevant information, leading them to presume – but leaving them unable to confirm – that the State had not been involved in any international efforts to recover proceeds of corruption since 2010. Other States parties indicated that they were engaged in such efforts but unable to provide any information owing to a lack of data.

23. Where statistics are maintained centrally, the overall quantities of assets frozen, seized and confiscated are not always distinguished by the type of offence or by the involvement of an international element, making it difficult to identify the quantities of proceeds related to corruption offences in accordance with the Convention that would fall within the scope of this exercise. Furthermore, in many countries the collection of information for the questionnaire was interrupted or delayed by the coronavirus disease (COVID-19) pandemic.

VII. Next steps

24. The Secretariat is grateful for the efforts of all States parties that have completed the questionnaire thus far and will continue to collect additional data from States parties whose responses are still under preparation.

25. Additional, updated findings will be provided to the Working Group in order to further inform the discussions on challenges and barriers to asset recovery and on emerging good practices. The final outcomes will be made available in a publication by the StAR Initiative.
