



# 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 16 and 17 December 2010

### 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. Also in its resolution 3/3, the Conference requested the Working Group to consider the existing and developing body of studies for the development of best practices in asset recovery, including but not limited to, the studies of the Stolen Asset Recovery (StAR) initiative. The Conference also decided that the Working Group should continue its work to advise and assist the Conference in the implementation of its mandate on the return of the proceeds of corruption and should hold at least two meetings prior to the fourth session of the Conference, within existing resources.

### II. Conclusions and recommendations

3. The Open-ended Intergovernmental Working Group on Asset Recovery agreed on the following conclusions and recommendations at its fourth meeting in Vienna on 16 and 17 December 2010:
  - (a) The Working Group reaffirmed the provisions of Conference resolution 3/3 and also reaffirmed the return of assets as one of the main objectives and a fundamental principle of the United Nations Convention against Corruption;
  - (b) The Working Group also underscored the relevance of its previous recommendations, as contained in the relevant documentation prepared by the



Secretariat,<sup>1</sup> and took note with interest of the progress made in the implementation of those recommendations;

(c) Recognizing that chapter V of the Convention would be reviewed during the second cycle of the Implementation Review Mechanism, the Working Group stressed the importance of preparing States parties for the review of implementation of that chapter and structuring its work accordingly;

(d) For that purpose, the Working Group recommended that the Secretariat develop, through the StAR initiative or other relevant initiatives, a multi-year workplan for consideration by the Working Group at its next meeting;

(e) In addition, States parties, with the support of the Secretariat, should strive towards early completion of section IV of the self-assessment checklist, focusing on the assessment of existing measures, the compilation of good practices and the identification of technical assistance needs;

(f) The Working Group agreed to submit identified technical assistance needs and priorities relating to chapter V to the Implementation Review Group with a view to their consideration by the Conference within the context of the technical assistance requirements for the implementation of the Convention as a whole;

(g) The Working Group, reiterating the need for a global network of asset recovery focal points with technical expertise, requested the Secretariat to resend to Member States its note verbale of 15 September 2009 in which it requested them to nominate asset recovery focal points. The Working Group stressed the importance of regional networks and the need for collaboration and coordination with such networks. The Secretariat should prepare a background paper on existing networks of focal points, including the database of asset recovery focal points under the StAR initiative, for consideration by the Working Group within the context of implementation of operative paragraphs 5 and 6 of Conference resolution 3/3;

(h) The Working Group stressed the necessity to provide practitioners with specialized training on asset recovery and requested the Secretariat to organize such training using, inter alia, innovative technology such as electronic learning programmes;

(i) The Working Group further requested the Secretariat to send a note verbale to Member States requesting those that had not yet done so to designate a central authority responsible for requests for mutual legal assistance in accordance with article 46, paragraph 13, of the Convention. A list of central authorities would be made available to the Conference;

(j) With regard to the development of cumulative knowledge, the Working Group requested the Secretariat to continue its work to expand the Mutual Legal Assistance Request Writer Tool;

(k) Highlighting the usefulness of the existing knowledge products of the StAR initiative in building national capacity, the Working Group requested the Secretariat to prepare a list of such products ordered according to the provisions of chapter V of the Convention, to ensure the widest possible dissemination of those

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<sup>1</sup> CAC/COSP/WG.2/2009/3 and CAC/COSP/2009/7.

products and to promote ways and means for Member States to request technical assistance from the StAR initiative at both the national and regional levels;

(l) The Working Group requested the Secretariat to continue to ensure that all activities of the StAR initiative comply strictly with the legal framework and international standards established by the Convention. It also requested the Secretariat to continue to report to it and to the Conference on the activities of the StAR initiative on a regular basis;

(m) The Working Group requested the Secretariat to continue its efforts, in consultation with Member States, to compile asset recovery cases with a view to preparing an analytical study of such cases. The Working Group encouraged interested Member States to contribute voluntarily to such efforts, including through the self-assessment checklist and with due regard to the confidentiality of sensitive information;

(n) The Working Group emphasized the need for the Secretariat to further strengthen its work with regard to building trust and confidence and nurturing and further strengthening the political will of States parties in ensuring asset recovery, including in its work with other intergovernmental organizations and in the context of the Group of 20;

(o) The Working Group recommended that the Secretariat continue to promote partnerships with the private sector, in particular with financial institutions, with a view to asset recovery. The Working Group encouraged States parties to support such efforts, inter alia by developing such partnerships at the national level.

### **III. Organization of the meeting**

#### **A. Opening of the meeting**

4. The meeting of the Working Group was opened by the Chair, Dominika Krois (Poland). The Chair recalled the mandate of the Working Group to assist the Conference in developing cumulative knowledge, encourage cooperation, facilitate the exchange of information and identify capacity-building needs. She highlighted the need to identify ways and means of continuing the implementation of the recommendations and to identify future priorities, in particular with regard to asset-tracing and the establishment of a global network of focal points.

5. The Deputy Director of the Division for Treaty Affairs of the United Nations Office on Drugs and Crime (UNODC) highlighted the progress achieved in implementing chapter V of the Convention since the Convention's entry into force and since the beginning of the work of the Working Group. He made reference to the activities undertaken to implement the recommendations of the Working Group through UNODC and the StAR initiative, specifically the development of knowledge products and practitioners' tools, capacity-building and technical assistance. He called upon the Working Group to provide further guidance on specific activities such as the establishment of a global network of asset recovery focal points, the expansion of the UNODC Mutual Legal Assistance Request Writer Tool, the development of model provisions on asset recovery and the compilation of asset recovery cases.

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

6. On 16 December 2010, 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. Implementation of resolution 3/3 of the Conference of the States Parties and of the recommendations of the Working Group since its first meeting.
  3. Working towards a global network on asset recovery: thematic discussion.
  4. Financial investigations and asset-tracing: thematic discussion.
  5. Future priorities.
  6. Adoption of the report.

## **C. Attendance**

7. The following States parties to the Convention were represented at the meeting of the Working Group: Algeria, Angola, Argentina, Australia, Austria, Azerbaijan, Belarus, Belgium, Benin, Bolivia (Plurinational State of), Brazil, Brunei Darussalam, Burkina Faso, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Croatia, Cuba, Cyprus, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Finland, France, Gabon, Greece, Haiti, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Italy, Jordan, Kazakhstan, Kenya, Kuwait, Lebanon, Libyan Arab Jamahiriya, Malaysia, Mali, Mexico, Mongolia, Namibia, Netherlands, Nicaragua, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Togo, Tunisia, Turkey, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia and Zimbabwe.
8. The European Union, a regional economic integration organization that is a party to the Convention, was represented at the meeting.
9. The following States signatories to the Convention were represented by observers: Czech Republic, Germany, India, Ireland, Japan and Thailand.
10. The following observer States were also represented: Andorra and Oman.
11. Palestine, an entity maintaining a permanent observer mission to the United Nations, was represented.
12. The International Narcotics Control Board, the United Nations Interregional Crime and Justice Research Institute and the World Bank were represented by observers.

13. The following intergovernmental organizations were represented by observers: Asian-African Legal Consultative Organization, European Police Office (EUROPOL), Financial Action Task Force on Money Laundering, International Criminal Police Organization (INTERPOL), International Organization for Migration, Organization for Security and Cooperation in Europe and World Intellectual Property Organization.

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

#### **IV. Implementation of Conference resolution 3/3 and of the recommendations of the Working Group**

15. Speakers noted with appreciation the background documents prepared by the Secretariat, as those documents provided the Working Group with useful and clear information as to how its recommendations were implemented. It was also noted that the Working Group should consider how best to structure its work and determine priorities with a view to helping the Conference and States parties to prepare for the review of implementation of chapter V during the second cycle of the Implementation Review Mechanism.

16. The Minister for Legal Defence of the Plurinational State of Bolivia addressed the Working Group. She highlighted the negative impact of the diversion of public funds into other jurisdictions on the development of the countries of origin concerned and the importance of technical assistance and capacity-building in asset recovery.

17. The representative of Switzerland presented the Restitution of Illicit Assets Act, which had been adopted by that State in 2010 and was expected to enter into force in early 2011. The Act provided for the return of assets of politically exposed persons that were proceeds of corruption to the country of origin in cases in which a request for mutual legal assistance had been unsuccessful because the requesting State was unable to take the required steps. The Act provided for reversal of the burden of proof in cases of extraordinary enrichment of the politically exposed person involved and a high level of corruption in the country of origin. The representative also highlighted the expected preventive and deterrent effects of the Act.

18. In the ensuing interactive dialogue, the representative of Switzerland highlighted that his country had implemented high standards of banking supervision and anti-money-laundering measures. He clarified that the new Act provided for an administrative confiscation procedure that did not require a criminal conviction; rather, it required that the underlying offence be punishable both under Swiss law and under the domestic law of the State requesting assistance. The criterion of a high level of corruption in the country of origin would be determined on the basis of publicly available assessments by international and civil society organizations. The Act did not provide for asset-sharing. When asked for clarification about possible conditions applicable to the return of assets, the representative highlighted that the Act did not establish such conditions explicitly; however, returns would be carried out in a transparent and accountable way and were intended to improve living conditions or strengthen the rule of law in the country of origin.

19. Recognizing the importance of asset recovery as one of the fundamental goals of the Convention, speakers reported on their countries' efforts to implement chapter V of the Convention and to carry out successful mutual legal assistance and asset recovery activities. They emphasized the need to equip their legal systems with adequate measures for asset recovery and to further strengthen capacity-building, technical assistance and cooperation with the private sector.

20. Speakers noted that, since the review of chapter V would begin in 2015, the Working Group should to take an active role in preparing States parties for the review process. In that regard, speakers stressed the usefulness of States parties' early self-assessment of their implementation of chapter V. It was proposed that the Working Group structure its deliberations according to the articles contained in that chapter.

21. It was stressed that the building of trust and confidence was a crucial component of the work on asset recovery, particularly as a means of increasing political will. In that regard, speakers noted the ongoing work of the Secretariat with other intergovernmental organizations and in the context of the Group of 20 and encouraged further efforts in that direction.

22. Several speakers noted the work undertaken by the Secretariat to compile cases relating to asset recovery. To date, 10 States parties had submitted information on such cases to the Secretariat. It was noted that the compilation and analysis of cases was useful in enabling States to exchange experience and learn from the judicial practice of other States.

23. Speakers considered the possibility of developing model provisions corresponding to the articles of chapter V of the Convention, noting that while such model provisions could provide guidance to States, differences between in and the complexities of legal systems needed to be taken into account in order to ensure that the use of such provisions was effective. The need to engage in a consultative process for the development of such models was emphasized.

24. Speakers noted the initial work of the Secretariat to expand the Mutual Legal Assistance Request Writer Tool to include requests for asset recovery. Speakers called for the continuation of that work, bearing in mind the need to ensure translation of the tool into all official languages. It was noted that the tool was a software package delivered to States that wished to use it and that storage of the information contained in the requests would be the sole responsibility of the States availing themselves of the tool.

25. An observer of the World Bank, in his capacity as coordinator of the joint secretariat of the StAR initiative, provided a progress report on the work of the initiative since its establishment in September 2007. He emphasized the Convention's central role in the initiative and the equal role played by both UNODC and the World Bank as partner organizations in decision-making, all activities being subject to approval by a management committee comprising senior representatives of both organizations. He added that, in carrying out the work of the initiative, the World Bank and UNODC had worked in joint teams on nearly all activities, bringing to bear the specialized expertise and capacity of both organizations. Concerning results to date, the Working Group was informed that a wide variety of assistance had been provided to 23 countries, of which 10 were pursuing ongoing asset recovery cases, six had frozen assets, five were engaged in mutual legal

assistance activities and two had requested the assistance of the StAR initiative as an honest broker. In terms of capacity-building, StAR had organized 10 regional events for 74 countries and nearly 500 participants. There had been eight country training events for more than 230 participants. The observer informed participants that StAR had developed a total of six knowledge products and tools, and that seven more were under way. He pointed out that StAR was coming to the end of its initial two-year work programme and that an external review of the initiative had recently been conducted, resulting in a number of key recommendations that included a longer-term mandate of five years with annual benchmarks, clarification of objectives and indicators of success and focus on a smaller number of countries that demonstrated commitment and needed assistance in specific cases. He invited feedback from the Working Group on priority areas that should be undertaken by the initiative.

26. Speakers expressed their appreciation for the work of the StAR initiative and recognized the important impact of the initiative in building cumulative knowledge, raising awareness and building capacity in the area of asset recovery. Several speakers stressed the importance of the Working Group's role in providing guidance to the StAR initiative and affirmed the distinct role of the Secretariat in relation to the implementation of the mandates provided by the Conference of the States Parties and the Working Group.

27. In response to queries by delegations, the Secretary of the Conference clarified that the United Nations Convention against Corruption remained the only legal framework for the StAR initiative. He further clarified that all States parties to the Convention were equally eligible for technical assistance under the initiative. Furthermore, the activities carried out under the initiative were conducted by the Secretariat with a view to fulfilling the mandates given to it by the Conference of States Parties and the Working Group. Reference was made to the documents regulating the partnership between the two organizations, those documents being publicly available on the StAR initiative website. Several speakers considered the visibility of UNODC in the StAR initiative to be disproportionate to its contribution. One speaker proposed as an immediate measure to place all StAR publications on the UNODC website.

## **V. Thematic discussion**

### **A. Working towards a global network on asset recovery**

28. The representative of UNODC for the StAR initiative briefed the Working Group on the meeting of asset recovery focal points under the StAR initiative held in Vienna on 14 and 15 December 2010. The meeting had been attended by focal points representing 42 countries that were part of the database of asset recovery focal points established under the StAR initiative in partnership with INTERPOL. The database had been launched in January 2009 and to date included information on focal points from 74 States. One of the participants in that meeting provided the Working Group with information on the discussions held and the recommendations made, which focused, inter alia, on enhancing informal and operational assistance, fostering direct contacts between law enforcement agencies and building

complementarity with regional networks. Speakers welcomed the establishment of the database and encouraged its use and regular updating.

29. The Working Group noted the important role of networks in exchanging experience, in informal communication prior to the submission of formal requests for mutual legal assistance and in capacity-building. Such networks would not substitute but rather facilitate the preparation and use of formal requests for mutual legal assistance. The Working Group highlighted the need to establish a global network of asset recovery focal points. Some speakers considered that such a network could be established using the database of asset recovery focal points as a starting point and platform. In any event, it was necessary to ensure that more asset recovery focal points were nominated by Governments. Speakers highlighted that any global network to complement and build on regional networks and their activities should be coordinated. One speaker suggested that such a network should focus on the exchange of experience, while regional networks could carry out operational assistance and capacity-building activities.

## **B. Financial investigations and asset-tracing**

30. The Working Group considered agenda item 4 on financial investigations and asset-tracing. Following an introduction by the UNODC representative for the StAR initiative, three presentations were delivered.

31. The representative of the United States provided the Working Group with information on his country's asset-tracing processes and experience of asset recovery actions and drew attention to the kleptocracy asset recovery initiative launched by the United States Attorney General. He stressed the crucial importance of identifying and tracing assets at the investigative stage and also identifying sources of evidence, witness and possible criminal actors. Asset-tracing was key to proving underlying offences and establishing grounds for confiscation and mutual legal assistance. He outlined the different roles in asset-tracing and the types of evidence to be used. Challenges included the complexity of international banking transactions, the use of trusts and corporate structures to frustrate investigations and the cost of financial expertise.

32. The representative of South Africa outlined her country's approach to financial investigations and asset-tracing, noting that the key to successful financial investigations was a strong relationship with financial service providers. She summarized the different steps to be followed in establishing financial profiles, the first of those steps being desktop searches for both open and closed sources and checks with financial intelligence units and banks. Once the asset base of the subject was established, a detailed financial investigation was launched, involving, inter alia, the issue of subpoenas and police requests. She emphasized the use of manuals, information technology tools and the Asset Recovery Inter-Agency Network of Southern Africa. Challenges included the lack of experienced financial investigators, the reluctance of banks to provide information without subpoenas and inadequate legislation. She stressed the opportunities offered by regional networks and the importance of capacity-building for investigators and prosecutors and joint training initiatives.

33. The observer for the World Bank delivered a presentation on a case study, emphasizing the importance of collecting evidence and securing the assets concerned. The study focused on a case involving a banking institution and strategies to recover commercial property following criminal prosecution and conviction of one of the bank's former senior managers. He stressed the work accomplished at the investigative phase in several jurisdictions to build a strong body of evidence and to trace the assets.

34. Speakers welcomed the changes to national legal frameworks that in recent years had contributed to making asset recovery less cumbersome. They stressed that the full implementation of chapter V was an ongoing process and that further efforts were needed to strengthen legal frameworks and build capacity. The crucial importance of ever-increasing political will and the development of a culture of mutual assistance and cooperation was highlighted. Speakers noted the particular challenges in asset-tracing faced by countries that lacked integrated and efficient information systems or sufficient specialized capacity to trace assets. It was further highlighted that one of the challenges in asset recovery cases was to determine the categories of information available to the requested State. More generally, speakers highlighted the need to find ways and means to overcome the obstacles to effective international cooperation that were created by the differences between States with regard to their legal and judicial systems.

## **VI. Future priorities**

35. The Working Group discussed further steps to be taken towards full implementation of its recommendations and possible future priorities in advising and assisting the Conference in the implementation of its mandates on asset recovery. The Working Group also discussed how it saw its role in supporting the full implementation of chapter V of the Convention, particularly in preparation for the review of implementation of that chapter during the next review cycle, which was scheduled to commence in 2015.

## **VII. Adoption of the report**

36. On 17 December 2010, the Working Group adopted the report on its meeting (CAC/COSP/WG.2/2010/L.1 and Add.1).

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