



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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Draft report

Addendum

VI. Forum for discussions on practical aspects of asset recovery, including challenges and good practices

1. The Group addressed practical aspects of asset recovery through a panel discussion on selected issues.
2. The panellists from Belgium stressed the importance of information sharing and swift action with regard to asset recovery. The multiplication of parallel national and international procedures in each case complicated effective asset recovery. Therefore, an international standard procedure based on the principles of State responsibility, ethics, confidence, and reasonable delay was considered the most efficient way to ensure successful asset recovery. The process would consist of three phases: the alerting stage, the investigation phase, and the return phase. The first phase would consist of an international alert sent by an international body such as the United Nations or the StAR Initiative to the States' Financial Intelligence Units (FIUs). Based on this alert, States could take temporary freezing orders. The second phase, the investigation phase, would draw from the recent Belgian experience with the creation of a pilot online database established specifically to pursue, together with all the countries involved, asset recovery with regard to a multi-jurisdictional case originating in Tunisia. This database, set up on an ad hoc basis through a secure system provided by INTERPOL, and updated by a focal point in each involved country, allowed online access to the information for all parties. The importance of respecting the highest standards with regards to the rule of law was stressed. This third phase, the return of assets, would follow the principles of integral return of assets and legality of proceedings. The use of a standard procedure during this phase would help to tackle the obstacles currently arising from lack of coordination between a multiplicity of parallel proceedings. It was stressed that all States would participate in the cooperation based on their sovereignty and in the



framework of their national law, and that no deadlines would be set for the different actions in the framework of the proposed cooperation.

3. The panellist from Iran (Islamic Republic of) provided an overview of practical aspects of asset recovery. Highlighting the estimated volume of bribery globally as well as the portion of illicit funds transferred to other jurisdictions, the panellist emphasized the relatively limited success of asset recovery efforts to date. He recalled that the Convention provided for a comprehensive set of avenues and tools to trace, seize, confiscate and return the proceeds of corruption, including international cooperation for the purpose of the recovery of assets in criminal and in non-conviction based forfeiture proceedings, as well as direct recovery by means of private civil litigation. However, this innovative legal regime had only partially resulted in assets being successfully recovered, with the total estimated volume of assets being returned to requesting countries not exceeding 5 billion US \$. Against this background he underscored that the most effective mechanism for protecting public funds remained prevention, including the adoption of codes of conduct, establishment of income and asset declaration systems, public access to information, active involvement of all stakeholders, in particular civil society in corruption prevention, systems allowing for the identification of beneficial owners of assets and in general terms monitoring of compliance of private sector entities as well as public officials with existing regulatory frameworks and the introduction of effective sanctions for respective violations.

4. He further highlighted practical, procedural and substantive barriers to the successful pursuit and recovery of assets and provided some suggestions for the removal of such barriers. At the domestic level, he stressed the strategic importance of article 31 paragraphs 7 and 8 of the Convention with a view to ensuring the efficient access by law enforcement to records held by financial institutions as well as the shifting of the burden of proof on the owner of the assets with regard to their licit origin. At the national or multi-lateral levels, he identified as major impediments to asset recovery the lack of direct and open channels of communication among jurisdictions as well as among different agencies domestically, including the absence of a network of national asset recovery focal points. He also underscored challenges in terms of delays in responding to requests for mutual legal assistance, the lack of informal cooperation in preparation of MLA requests, and the frequent requirement of requested countries of mutual legal assistance treaties as well as the excessive use of grounds for refusal. He also perceived a certain reluctance by financial institutions to effectively prevent the laundering of the proceeds of corruption and to cooperate in the tracing of such proceeds. With a view to tackling some of these challenges, he proposed to fast-track the establishment of a network of asset recovery focal points, to strengthen the role and powers of FIUs in exchanging information, to enhance informal channels of communication and networking among asset recovery practitioners. He called for enhanced support by UNODC and StAR for the creation of an asset recovery network for the MENA region, as well as the development and delivery of training programmes specifically designed to build skills and knowledge of asset recovery practitioners in developing countries and countries in transition.

5. The panellist from Guernsey outlined some of the challenges and good practices that he had encountered carrying out asset recovery, noting that it was a remedy in the context of economic and financial crime. The speaker referred to

three aspects: the quality of information, the mechanisms for the transmission of such information, and possible impediments to transmission. On the first aspect, the importance of determining the origin of the assets, namely which bank accounts had been used to acquire them, as well as the beneficial ownership of such accounts were the main types of information needed. The speaker stressed that if jurisdictions were fully compliant with the Financial Action Task Force Recommendations and had the requisite regulatory oversight and enforcement regimes, such information should be readily available. Secondly, mechanisms for the transmission of such information were to be viewed both at the domestic and international levels. Information was to be shared legally at the domestic level and internationally several avenues for transmission existed, *inter alia*, from police to police (through INTERPOL), among Financial Intelligence Units (through the Egmont Group), IOSCO, the Tax Information Exchange Agreement, and, mutual legal assistance. Thirdly, the speaker highlighted possible impediments, namely the incompatibility of legal frameworks, issues concerning *in rem* as well as value-based confiscation, and challenges in carrying out mutual legal assistance.

6. The speaker noted that the work undertaken by the Stolen Asset Recovery Initiative was fundamental in providing a knowledge base that assisted with making informed decisions on how to refine processes and systems for asset recovery. Entities such as the Camden Asset Recovery Inter-Agency Network (CARIN) were crucial to exchanges between experts in the field. Direct communication among practitioners from different jurisdictions working on a related case at an early stage could enable them to fully understand what the different boundaries and requirements were and to tailor their work accordingly. He stressed that there was a need to respect the rule of law and one's own domestic procedures. Risks could be incurred in terms of costs as well as reputational damage, and investigation and prosecution services needed to be provided with the requisite level of resources to ensure equality of arms. The speaker stressed that most complex corporate structures are used for legitimate purposes. It was therefore crucial for asset recovery practitioners to understand these structures with a view to being able to identify their potential illicit use through proper and informed investigations requiring a high degree of expertise and competence.

7. In the ensuing discussion, various speakers expressed their interest in the initiative of Belgium and discussing it further in future meetings of the Group. They thought that the approach could enhance information-sharing and case coordination while providing for flexibility due to the *ad hoc* nature of the cooperation. With regard to the alerting function, it was pointed out that it would not fall under the current mandate of UNODC or the StAR Initiative.

8. Several speakers presented their national system and shared their experience with regards to practical aspects of assets recovery. The issue of the lack of responsiveness in certain cases by requested countries was also raised, as well as on the integral return of assets. Several speakers also referred to the exchange of information on transactions, bank accounts and records above a certain value. It was noted that transparency and information sharing on transfer of funds was also necessary as a preventive measure. The link between good governance, prevention, participation of all stakeholders, capacity building and a human-rights-based approach were also raised as means to ensure the best conditions for the return of the assets to be successful. OHCHR informed the Group that on the basis of the

Human Right Council Resolution 19/38, an Independent Expert had been nominated to conduct a study on the negative impact of non-repatriation of funds of illicit origin to the countries of origin, with special attention paid to developing countries and countries with economies in transition burdened by foreign debt. A seminar would be conducted in September in this framework.

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

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12. [..].
13. [..]

VIII. Adoption of the report

14. On 31 August 2012, the Working Group adopted the report on its meeting (CAC/COSP/WG.2/2012/L.1 and Add.1-3).
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