



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

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**Open-ended Intergovernmental Working  
Group on Asset Recovery**  
**Fifth Meeting**  
Vienna, 25 and 26 August 2011

## **Draft report**

### **Addendum**

#### **IV. Asset recovery in practice: analysing asset recovery**

1. A representative of the StAR Initiative presented Asset Recovery Watch, a database of asset recovery cases initiated and maintained by the StAR Initiative. The database aimed at providing concrete examples to practitioners, thus helping trigger collective mobilization to recover stolen assets. The database contained 75 cases from 52 jurisdictions and spanning from the early 1980s till present. Information came exclusively from open and public sources, and was featured in the database in original languages. The database would be updated regularly, and be accessible through the UNODC TRACK and eventually linked to the Legal Library. At the request of the Group, an overview of a recent study on “Lowering Barriers to Asset Recovery” — one of the StAR Initiative’s products — was provided. The study identified difficulties faced by the practitioners from requesting countries when requesting cooperation. The study grouped the barriers in two categories, i.e. legal and operational barriers. A number of recommendations had been made accordingly, in a way to encourage States to look into the matter with a view to adjusting relevant domestic measures to, if not eliminate, at least lower barriers.

2. A representative of UNODC presented information to the Working Group on a concrete example of a case contained in the Asset Recovery Watch. The case involved several jurisdictions to locate assets and enable their seizure and recovery. As a result, cash was recovered through criminal forfeiture procedures, the requesting State was a party in a civil action, and non-conviction based forfeiture was possible based on foreign judgments. Lessons learned from this case were underlined, inter alia, the importance of international cooperation, the use of multiple legal approaches in one case, and the benefit of implementing all the provisions of Chapter V of the Convention.



3. The 2011 Asset Forfeiture Act of Mauritius was presented by the representative of the Office of the Director of Public Prosecutions of Mauritius. The Dangerous Drugs Act, which was drafted in broad consultation with law enforcement stakeholders, was adopted by Parliament in April 2001. The new law (2011 Asset Forfeiture Act) aimed at enabling the forfeiture of proceeds of crimes to compensate victims, whether it was the State or an individual. It contained provisions of both conviction-based and non-conviction based forfeiture. The law also set up an enforcement authority, as well as a recovered assets fund where forfeited assets could be placed.

4. In the ensuing discussion, speakers urged States Parties to redouble their efforts to remove barriers to asset recovery, including by fully implementing Chapter V of the Convention and applying it in practice. Speakers highlighted barriers experienced in cases in which their jurisdictions were involved. These included legal requirements such as strict conditions to mutual legal assistance, including related to dual criminality. Capacity issues with regard to mutual legal assistance and asset tracing continued to be an important impediment to effective recovery. One speaker stressed the need to take into account both short-term cooperation on specific cases and long-term training needs. Banking secrecy or banking notification requirements on ongoing inquiries still presented problems in asset recovery investigations. The lack of direct communication or trust between jurisdictions was highlighted repeatedly as a barrier to asset recovery, which could be overcome by the establishment and strengthening of networks, joint case meetings and the strengthening of direct pre-mutual legal assistance communication. Some speakers stressed that the complexity of asset recovery procedures resulted in high costs of legal representation. Misunderstandings on legal systems presented operational barriers; in this regard, an honest broker could contribute to a common understanding of the requirements for mutual legal assistance between the Parties.

5. Speakers stressed strong interest in strengthening analytical work on cases. They highlighted the need to collect and analyze both successful as well as unsuccessful cases with a view to determining factors contributing to successful cooperation. Speakers noted with appreciation the work undertaken by StAR and UNODC on the collection of cases. Speakers reiterated their request for an analytical study of cases, as well as for exploring the feasibility of e-learning tools on asset recovery.

6. Several speakers highlighted that the Working Group should continue to discuss cases and new legislative developments. Cooperation with the private sector, especially with financial institutions, was specifically mentioned in this regard.

7. The issue of balancing confidentiality requirements with the interest in learning from past experience and analyzing past cases was addressed. Information on cases submitted by States in the course of technical assistance delivery or through the self-assessment checklist were considered confidential unless otherwise specified by the involved State, with a view to protecting the interests of the countries involved and so as not to jeopardize ongoing cases. Speakers therefore urged States to share case experience, both on successful and unsuccessful cases. It was stressed that analytical work could be carried out in a meaningful manner without identifying individuals or jurisdictions involved, but that a critical mass of cases was needed.

8. The representative of Switzerland presented information and lessons learned from two asset recovery cases where Switzerland was the requested State. He underlined the importance of good cooperation between the requesting and requested States for setting up a determined team which would work together throughout the process of confiscation and recovery of stolen assets. He further updated the Group on the entry into force in February 2011 of the 2010 Return of Illicit Assets Act, which had been presented to the Working Group at its fourth session. Being a subsidiary law which could be used only when actions under the Mutual Legal Assistance Act had failed, the Return of Illicit Assets Act was expected to provide an effective framework for mutual legal assistance cases in asset recovery. He reported that Swiss authorities had initiated the first confiscation proceedings under this law in a case where mutual legal assistance had not been successful.

9. The representatives from the OECD (Organization for Economic and Co-operation Development) provided an overview of activities of their Organization with regard to asset recovery, illicit financial flows and financial crime. They briefed about the report entitled “Stolen Asset Recovery: Progress Report on Asset Recovery in 30 OECD Countries between 2006-2009”, to be launched at the OECD Fourth High Level Forum on Aid Effectiveness to be held from 29 November to 1 December 2011 in Busan, Korea. The report contained findings based on statistical data and information collected from 30 OECD countries, as well as recommendations for adopting and implementing comprehensive strategic policies and effective measures in asset recovery, and to strengthening the capacity of national authorities. With regard to the role of OECD in the area of tax administration in the fight against financial crime and corruption, the Group was informed about the OECD 2009 Recommendations on Tax Measures for Further Combating Bribery of Foreign Public Officials and the outcome of the Working Group that the Tax and Crime Conference, held in Oslo in March 2011, which called for increased cooperation between agencies in tackling financial crime domestically and internationally with particular focus on developing countries.

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