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**State of implementation of the United Nations
Convention against Corruption**

Implementation of chapter V (Asset recovery) of the United Nations Convention against Corruption

Thematic report prepared by the Secretariat

Summary

The present report contains a compilation of the information on successes, good practices, challenges and observations identified during the second cycle of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption focusing on the implementation of chapter V (Asset recovery) of the Convention.



I. Scope and structure of the report

1. The present thematic report contains a compilation of the most relevant information on successes, good practices, challenges and observations contained in the executive summaries and country review reports, in accordance with paragraphs 35 and 44 of the terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption.

2. This report contains information on the implementation of chapter V (Asset recovery) of the Convention by States parties under review in the second cycle of the Implementation Review Mechanism. It is based on the information included in 53 executive summaries and country review reports that had been completed as at 20 May 2021. The report focuses on the existing trends and examples of implementation and includes cumulative tables and figures depicting the most common challenges and good practices.

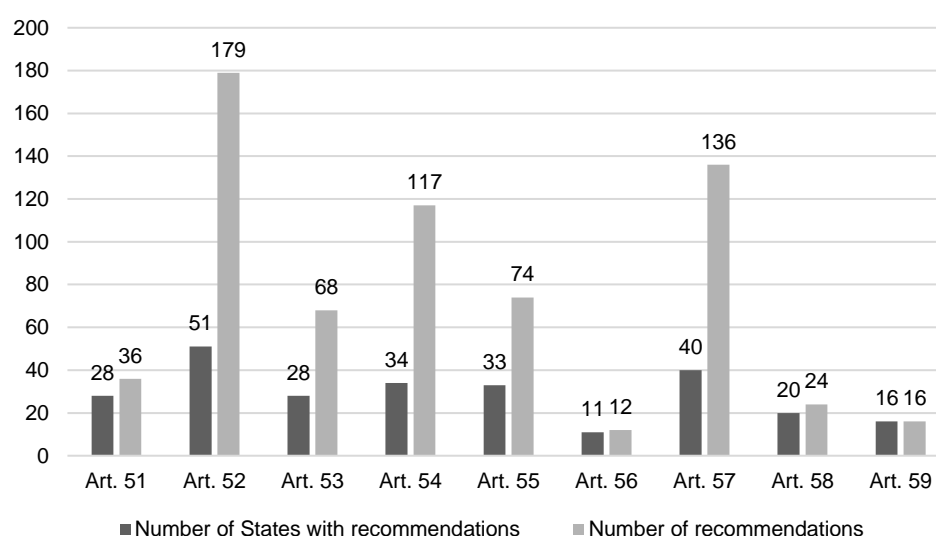
3. The structure follows that of the executive summaries and thus clusters together certain articles and topics that are closely related. Regional differences were reflected as appropriate.¹ The report is complemented by the regional report on the implementation of chapter V (CAC/COSP/IRG/2021/8), in which further analysis of implementation of article 52, paragraphs 5 and 6, and article 53 of the Convention, disaggregated by regional groups, is provided. Further related information, such as on financial disclosure obligations and on anti-money-laundering, can be found in the thematic report on chapter II on Preventive measures (CAC/COSP/IRG/2021/3).

II. General observations on challenges and good practices in the implementation of chapter V of the Convention

4. The following figures and tables provide an overview of the most prevalent challenges and good practices in the implementation of chapter V, organized by article of the Convention.

Figure I

Challenges identified in the implementation of chapter V of the Convention, by article



¹ The present report is based on 19 completed reviews for the Group of African States, 14 for the Group of Asia-Pacific States, 10 for the Group of Western European and other States, 5 for the Group of Latin American and Caribbean States and 5 for the Group of Eastern European States. The number of recommendations and good practices identified for a regional group is thus not intended for comparison with the other regional groups.

Table 1
Most prevalent challenges in the implementation of chapter V of the Convention

<i>Article of the Convention</i>	<i>Number of States receiving recommendations</i>	<i>Number of recommendations issued</i>	<i>Most prevalent challenges in implementation (in order of article of the Convention)</i>
Article 51	28	36	Inadequate legislation and/or procedures for mutual legal assistance; insufficient institutional arrangement and ineffective interagency coordination; complicated asset recovery procedures; lack of capacity of competent authorities
Article 52	51	179	Identification of foreign and domestic politically exposed persons and beneficial owners; reporting of foreign interests; inadequate issuance of advisories; ineffective financial disclosure system; prohibition of shell banks; lack of resources of competent authorities
Article 53	28	68	Lack of mechanisms or legal basis for foreign States to establish title or ownership of property, be awarded compensation or damages or be recognized as legitimate owner of property in foreign confiscation proceedings
Article 54	34	117	No direct enforcement of foreign confiscation orders or exclusion of certain Convention offences; no or insufficient mechanisms for preservation of property for confiscation; no or limited non-conviction-based confiscation; no measures to freeze or seize upon an order or request by a foreign State;
Article 55	33	74	Lack of mechanisms to give effect to foreign order or obtain a domestic order for search, seizure or confiscation; no obligation to give, before lifting any provisional measure, the requesting State party an opportunity to present its reasons in favour of continuing the measure; Convention could not be used as treaty basis
Article 56	11	12	Insufficient measures and lack of authority for the spontaneous transmission of information; transmission of information regarding proceeds of certain categories of offences to only a limited range of countries
Article 57	40	136	Insufficient legislative or other measures for the return of proceeds to requesting States; no regulation of costs or means of deducting expenses in the course of mutual legal assistance proceedings; no protection of the rights of bona fide third parties in return proceedings
Article 58	20	24	Lack of emergency freezing powers for financial intelligence units; inadequate allocation of resources, independence and

Article of the Convention	Number of States receiving recommendations	Number of recommendations issued	Most prevalent challenges in implementation (in order of article of the Convention)
Article 59	16	16	insufficient capacity of financial intelligence units, including in the area of interagency and international cooperation Insufficient ability to use the Convention as a treaty basis; lack or shortage of bilateral or multilateral agreements or arrangements

Figure II
Good practices identified in the implementation of chapter V of the Convention, by article

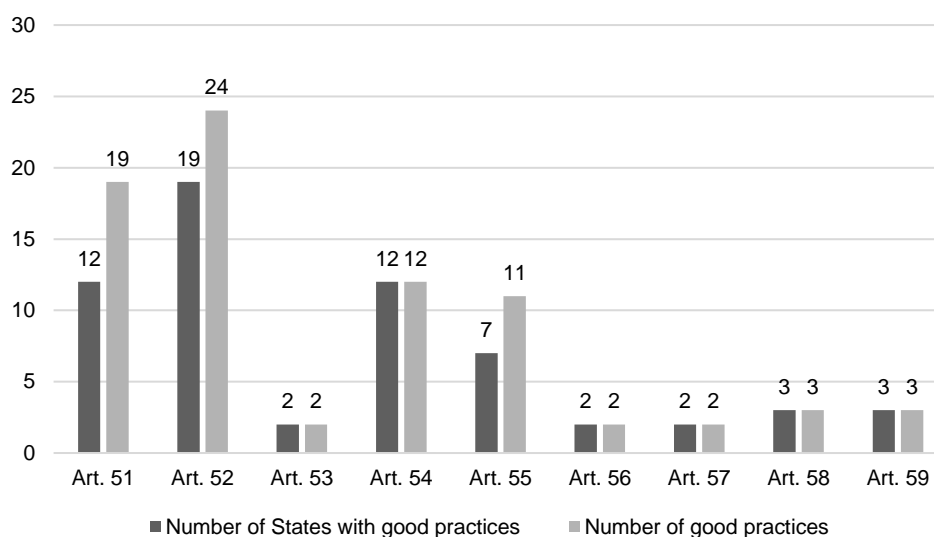


Table 2
Most prevalent good practices in the implementation of chapter V of the Convention

Article of the Convention	Number of States with good practices	Number of good practices	Most prevalent good practices (in order of article of the Convention)
Article 51	12	19	Active engagement in the development and promotion of international cooperation; robust institutional arrangements, including sound inter-agency coordination, and issuance of guidance for asset recovery
Article 52	19	24	Definition of politically exposed persons includes domestic politically exposed persons; establishment of registry of bank accounts or of beneficial owners; sharing of financial intelligence with other States; effective asset declaration system
Article 53	2	2	Foreign States treated like any other legal person when initiating civil action in courts of another jurisdiction to establish title to or ownership of property acquired through a corruption offence, or to claim compensation or damages when harm is caused by such an offence.

<i>Article of the Convention</i>	<i>Number of States with good practices</i>	<i>Number of good practices</i>	<i>Most prevalent good practices (in order of article of the Convention)</i>
Article 54	12	12	Establishment of non-conviction-based confiscation or ability to enforce foreign non-conviction-based confiscation orders; proactive issuance of freezing orders; establishment of specialized asset recovery units
Article 55	7	11	Infrastructure to facilitate successful asset recovery, such as guidance, specialized units or bank registers; close cooperation and consultations between requesting and requested States; use of the Convention as legal basis for mutual legal assistance
Article 56	2	2	Spontaneous sharing of information with a wide range of counterparts; placement of overseas liaison officers to facilitate information-sharing
Article 57	2	2	Return of property to bona fide third parties; establishment of confiscated assets fund for victim compensation
Article 58	3	3	Close cooperation with foreign financial intelligence units; report issued by the financial intelligence unit can be incorporated into a judicial proceeding as evidence
Article 59	3	3	Use of various networks and agreements to facilitate international cooperation; use the Convention as a legal basis or directly apply the self-executing provisions of the Convention

III. Implementation of chapter V of the Convention

A. General provision; special cooperation; bilateral and multilateral agreements and arrangements (articles 51, 56 and 59)

1. General provision (article 51)

5. Almost all States had relevant frameworks or arrangements for asset recovery (art. 51), but relevant measures at the regulatory, institutional and operational levels varied significantly.

6. At the regulatory level, several States had enacted a dedicated legislative instrument, while others could apply various procedures prescribed in different sources of domestic legislation, such as in the laws governing criminal procedure, mutual legal assistance, anti-money-laundering or anti-corruption, or the recovery of assets. In the latter case, where the procedures were governed in different legislation, some States could provide mutual legal assistance in relation to asset recovery to designated foreign States only in relation to limited underlying offences, or subject to strict application of dual criminality requirements, which were identified as challenges. In a number of States, the asset recovery regime was found to be in the early stages of development. One State reported that there were no concrete provisions in the domestic law referring to the concept of asset recovery or return.

7. Most States did not make cooperation for the purposes of confiscation conditional on the existence of a treaty but could provide such assistance on the basis of reciprocity, domestic legislation, or both. In many States, the Convention or regional treaties were directly applicable, and some States had successful experience with the direct application of the Convention, including on asset return. One State that could directly apply the Convention as a legal basis could also apply the laws of the requesting State in providing mutual legal assistance, on the basis of an international agreement. However, for several States, although the Convention could be used as a legal basis for cooperation, those States had to additionally designate States under domestic legislation for such cooperation, which may not cover all States parties of the Convention. Two States that could directly apply the Convention referred to the difficulties of such application given the absence of clear domestic policy and procedure. In those cases, recommendations were issued accordingly.

8. In addition to legislation, States also relied on guidance provided by requested States when seeking assistance. Seven States had already formulated or were about to develop an asset recovery guide, while another six States had issued or were in the process of finalizing guidelines for the provision of mutual legal assistance. Some States had also developed model forms for mutual legal assistance requests. The issuance of these guidance documents was identified as a good practice to facilitate the asset recovery process. In addition, one State placed specialists and liaison prosecutors in other countries to facilitate asset recovery, and another State mandated its asset forfeiture unit to provide guidance to States seeking to recover assets, regardless of whether a mutual legal assistance request had been submitted.

9. At the institutional level, States parties differed in using either a centralized or decentralized approach. A small number of States had designated or were in the process of establishing a dedicated entity for the recovery of assets, while others engaged multiple agencies for that purpose. Inter-agency coordination posed practical challenges in many States. One State had created a specialized asset recovery task force to provide a coordinated and integrated approach, which was identified as a good practice.

10. At the operational level, States varied in their experiences of dealing with mutual legal assistance in relation to asset recovery. While a number of States had reported a considerable number of successful cases, some States indicated that they had never received a request in relation to asset recovery despite the fact that possible legal avenues were available in their jurisdictions (see section D, on article 57, below, for more information). Nine States indicated that they had never formally refused an asset recovery-related request.

11. In terms of regional trends, almost all States of the Group of Eastern European States and more than half of the States in the Group of African States, the Group of Asia-Pacific States and the Group of Western European and other States received recommendations, including on enhancing legislative and other measures in relation to asset recovery and strengthening institutional arrangements and the capacities of practitioners in this area.

2. Spontaneous transmission of information (article 56)

12. Almost all States allowed for the spontaneous transmission of information, although some of them indicated that such transmissions needed prior approval. A number of States stipulated the respective legal basis in their anti-money-laundering, mutual legal assistance or anti-corruption legislation, while several others provided for such transmission pursuant to bilateral or multilateral mutual legal assistance treaties or on the basis of the Convention. Several States also referred to memorandums of understanding concluded between their financial intelligence units and foreign counterparts for the proactive transmission of information. On many occasions, such transmission was subject to confidentiality requirements. In one State, guidance for proactive information-sharing was provided in its mutual legal assistance guidelines. States without specific legislation either had an existing

practice on the spontaneous transmission of information or indicated that there was no legal prohibition of such practices.

13. In addition, another trend identified was the spontaneous transmission of information through practitioners' networks or platforms. Most States empowered their financial intelligence units to exchange financial intelligence without prior request by virtue of their membership in the Egmont Group of Financial Intelligence Units. Furthermore, more than half of States could use law enforcement channels or asset recovery networks to proactively share information. Channels provided by the International Criminal Police Organization (INTERPOL), the Camden Asset Recovery Inter-Agency Network and regional asset recovery inter-agency networks had played a significant role in facilitating such transmissions and were relied on for asset recovery in general. Nevertheless, in two States, spontaneous information-sharing was not possible.

14. Almost half of the countries in the Group of African States and one third of countries in the Group of Asia-Pacific States received recommendations on the spontaneous sharing of information, in particular on granting such power to a wider range of national agencies and sharing information with a larger number of foreign States.

3. Bilateral and multilateral agreements and arrangements (article 59)

15. Almost all States had agreements or arrangements to enhance international cooperation undertaken pursuant to chapter V. One State had concluded 160 bilateral treaties, whereas another State reported that no bilateral treaties or agreements on criminal matters had yet been concluded. One State highlighted the data-sharing agreements and memorandums of understanding used by its law enforcement agencies in international cooperation, while a number of others cited the memorandums of understanding concluded between specialized agencies, such as financial intelligence units or anti-corruption agencies, and their foreign counterparts.

16. Compared with other regional groups, a higher percentage of States in the Group of Asia-Pacific States received recommendations in relation to concluding bilateral or multilateral agreements or arrangements.

B. Prevention and detection of transfers of proceeds of crime; financial intelligence unit (articles 52 and 58)²

1. Prevention and detection of transfers of proceeds of crime (article 52)

17. All States parties had taken a variety of measures for the prevention and detection of transfers of proceeds of crime. A risk-based approach was widely used by States in their anti-money-laundering regimes. Almost all States had, to varying degrees, requirements in their anti-money-laundering laws or other financial legislation to conduct customer due diligence in line with article 52, paragraph 1. A small number of States also applied administrative or criminal sanctions under certain circumstances for violations of customer due diligence requirements. Furthermore, all but two States had measures in place for the determination of the identity of beneficial owners. However, some States had encountered challenges in the identification of beneficial owners in practice, in particular in relation to complex legal structures. Some States had not defined "high-value accounts" but could apply enhanced customer due diligence when a higher risk of money-laundering was identified.

² Given the close links between article 52 and article 14 (on measures to prevent money-laundering), as well as article 8, paragraph 5 (in relation to the financial disclosure systems), readers may wish to refer to the relevant information in the thematic reports on the implementation of chapter II (Preventive measures) of the Convention.

18. Almost all States had measures in place for conducting enhanced scrutiny of accounts sought or maintained by or on behalf of politically exposed persons and their family members and close associates. Some States also provided screening tools for reporting entities to identify politically exposed persons. However, States differed in defining the scope of the definition of politically exposed persons: some applied the same standards for both domestic and foreign politically exposed persons, while others distinguished between foreign and domestic politically exposed persons by only including either one in their definition of politically exposed persons. The divergent approaches may be attributed to the different opinions of States on the risks posed by domestic versus foreign politically exposed persons. In addition, the scope of the definition of family members and close associates was not clear in several States, and some States could not even include family members and close associates in the ambit of enhanced scrutiny on politically exposed persons. However, in one State close associates of politically exposed persons also included legal entities in which a politically exposed person held a position of administrative control, was a shareholder or had a financial interest.

19. The majority of States parties had issued advisories or guidelines for reporting entities, including financial institutions, to apply enhanced scrutiny (article 52, para. 2). Those guidelines were generally issued by the financial supervisory authorities, financial intelligence units or law enforcement bodies. In addition, one State mentioned that its financial intelligence unit could issue a warrant to reporting entities for the monitoring of clients, while a number of others obliged their financial institutions to exercise enhanced due diligence with regard to business relations and transactions with persons from high-risk jurisdictions. However, more than one third of States, mostly of the Group of African States, the Group of Asia-Pacific States and the Group of Latin American and Caribbean States, received recommendations in their implementation of this provision.

20. All States parties had legislation that provided for the maintenance of adequate records of accounts and transactions by financial institutions (art. 52, para. 3). The maintenance period varied among States; 5, 7, 10 or 15 years, or even up to 25 years. Some States also prescribed different maintenance periods for various records, depending on the sensitivity of the information. The maintenance requirement always starts at the termination of the business relationship or completion of the transaction. Only a small number of African and Asia-Pacific States received recommendations in relation to the implementation of this provision.

21. Most States parties had measures in place intended to prevent the establishment of banks that had no physical presence and were not affiliated with a regulated financial group (shell banks), in line with article 52, paragraph 4, of the Convention. In many States, financial institutions were obliged to refuse entering into relationships with such shell banks. More than two thirds of States parties also reported their measures on prohibiting the continuation of a correspondent banking relationship with such institutions, or other foreign financial institutions that permitted their accounts to be used by shell banks. A higher number of recommendations were issued for Asia-Pacific States and Latin American and Caribbean States.

22. The majority of States parties had in place financial disclosure systems for certain levels of public officials (art. 52, para. 5). However, the categories of officials subject to disclosure obligations and the scope of assets subject to declaration varied. For example, some States extended the disclosure obligation to all public officials, while several others confined it to leaders, ministers or other senior officials or personnel holding public positions considered especially vulnerable to corruption. A number of States also required selected public officials to declare the assets of their close family members, such as spouses and children. Several States required a wide range of assets to be declared, including financial interests, directorships, shareholdings, investment property, public appointments, income and liabilities.

23. Some variation could be observed regarding the effectiveness of the financial disclosure systems. With regard to the frequency of submission, some States parties

obliged their public officials to submit financial disclosure statements upon assuming and leaving office, while a number of other States additionally required such submissions to be made every few years or whenever a substantial change occurred. Nevertheless, one country reported that “substantial change” was not defined in its legislation, which gave rise to difficulties in the implementation. Variance was also identified concerning the verification of the information submitted. Some countries designated a central agency to verify all declarations, while a number of others authorized different bodies to verify declarations submitted by different categories of public officials. In practice, only a limited number of States could use electronic tools for submission and verification. In addition, about half of the States provided sanctions for non-compliance with respect to financial declarations, including false declarations, such as fines, deduction of salary, imposition of taxes on the undeclared portion of income and imprisonment. However, the enforcement of those sanctions was always found to be a challenge in practice.

24. In relation to the public accessibility of asset declarations, some States required declarations to be submitted in paper form and remain sealed unless a criminal investigation was opened. A small number of States provided asset declarations to the public in part, in summary form or through a public register or a dedicated website, while some other States granted access to the declarations only to law enforcement authorities, or made the declarations accessible only upon request or consultation or subject to approval.

25. Only a few States could share such information with the competent authorities in other States parties. In one State, the public official concerned had to be informed of whom the information would be shared with and be given an opportunity to object within 14 days, while two other States indicated that information contained in the declarations could be shared with foreign authorities only when a domestic investigation had been opened or in criminal proceedings.

26. With respect to regional differences, challenges were identified in the majority of States from all regional groups except the Group of Western European and other States and the Group of Latin America and Caribbean States.

27. A limited number of States had measures in place to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts (art. 52, para. 6). Although some States had legislation requiring such reporting, implementation was found to be rather difficult. As an alternative to fulfilling this provision, two States required their public officials to declare their worldwide income, assets and accounts in their tax declaration, while two States prohibited public officials from opening, operating or controlling a foreign bank account without the approval of relevant authorities. Most States received recommendations in relation to their implementation of this provision.

28. Regarding regional trends, all States in the Group of Latin American and Caribbean States and more than half of the States in the other regional groups were found to have challenges in their implementation.

2. Financial intelligence units (article 58)

29. All States had financial intelligence units responsible for receiving, analysing and disseminating to competent authorities reports of suspicious financial transactions (art. 58). In almost 80 per cent of States, the financial intelligence units were members of the Egmont Group of Financial Intelligence Units. Seven of the 11 States that had not acquired membership in the Egmont Group for their national financial intelligence unit were from Africa.

30. Some variation existed regarding the functions of the financial intelligence units, although they were generally autonomous or independent. Some units had both administrative and investigative mandates, while others were mainly performing administrative functions. In this regard, one State indicated that its financial

intelligence unit was housed within the national crime agency and accredited law enforcement officials had direct access to the database maintaining suspicious transaction reports. Moreover, the financial intelligence units in some States parties had the power to take interim measures in emergency cases, such as freezing assets or suspending transactions for up to 48 or 72 hours, or even 7 or 14 days in urgent situations. In one State, the financial intelligence unit was obliged to inform a judge of such interim measures within 24 hours. There was also a range of challenges identified, in particular in African and Eastern European States, including insufficient allocation of resources for the financial intelligence unit, inadequate internal coordination and international cooperation and a lack of freezing powers granted to the financial intelligence unit.

C. Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (articles 53, 54 and 55)

1. Direct recovery of property (article 53)

31. In the vast majority of States under review, foreign States could initiate civil action to establish title to or ownership of property (art. 53, para. (a)) or claim compensation or damages for harm caused by a Convention offence (art. 53, para. (b)) on the basis of domestic substantive law. In one sixth of the States of the Group of African States and the majority of States of the Group of Western European and other States, foreign States had initiated civil action in domestic courts. In addition to civil litigation, prior legitimate ownership could often be determined and/or compensation be ordered in criminal proceedings, through filing civil claims in criminal court or joining civil suits with pending criminal proceedings. In one State that reported the option for foreign States to either litigate claims through civil proceedings or file them as part of the criminal trial, criminal courts were allowed to defer minor material claims to civil courts, but a tendency had evolved whereby courts allowed State entities to participate as civil plaintiffs before a criminal court in corruption proceedings. Reviewers of a Pacific State highlighted the possibility of pecuniary penalty orders, including in cases of unexplained wealth, as a potential additional means of seeking compensation for damages.

32. One State of the Group of Asia-Pacific States and three African States had established explicit jurisdiction over civil actions brought by other States parties to the Convention regarding compensation or the recognition of property rights over property acquired through acts of corruption, but in the above-mentioned State in Asia, jurisdiction was conditional upon the recognition by its president of the foreign State, with the domestic procedures for this process being unclear. In many States, legislation granted locus standi to legal persons, the definition of which included States. In States where no regulation existed, primarily in common law countries in all regions, foreign States were usually entitled to pursue contract or tort claims under the general principles of civil litigation. Several States referred to the need for domestic civil procedure to be observed, including the hiring of local counsel, the demonstration of a legitimate interest or the payment of a deposit prior to a lawsuit being heard. In only three States did foreign States have no possibility to sue for compensation or damages; in one of those two, there was also no way to recognize another State's claim of legitimate ownership. One of these States limited locus standi to foreign individuals, organizations or entities, but excluded States from filing a civil suit and instead referred them to their rights as victims in criminal proceedings.

33. Consistent with the trend of not differentiating between States and other legal persons, many States referred to the general rights of victims or bona fide third parties in criminal proceedings as sufficient measures to permit courts or competent authorities to recognize another State party's claim as a legitimate owner of property when having to decide on confiscation (art. 53, para. (c)). Means in this regard

included the possibility of filing civil claims in criminal proceedings to initiate ancillary proceedings over confiscated assets; the possibility for the court to award property to a prior legitimate owner by way of exempting their property from confiscation or ordering its return upon confiscation; and providing prior legitimate owners with the right to appeal confiscation orders.

34. Owing to the absence of explicit legislation, cases and practical experience, it usually remained unclear what was required domestically to establish a State's good faith and/or prior legitimate ownership in criminal or restitution proceedings. Of the States that described specific mechanisms for the recognition of foreign States' claims, one State, when no doubt about the ownership existed, allowed for restitution to victims at any stage of the recovery proceedings, even when no claim of ownership had been made, during the investigation phase or when confiscation was non-conviction-based. In another State, pending or intended civil litigation could be taken into account when deciding on a confiscation order, and a foreign State, upon showing that the property was not the proceeds of crime, could apply for the transfer of their property. In one State not only victims but also their representatives and heirs could initiate criminal proceedings with the aim of having their legitimate ownership recognized. In turn, for a number of States there was no domestic means for foreign States to have their legitimate ownership recognized in confiscation proceedings, with one State stating that a legislative reform in this regard was under way.

35. Only a few States described specific ways of giving notice to prospective victims or legitimate owners of property to allow them to demonstrate their ownership during asset recovery proceedings. In one State, when the owner of property was unknown or could not be found, a notice had to be published in two daily newspapers of wide circulation in an effort to locate possible bona fide third parties. Five States required publication in the gazette of notices of confiscation or restraint orders to notify any party with a prospective interest in the property involved.

36. While only two States of the Group of Western European and other States and about half of the States of the Group of Asia-Pacific States received recommendations on article 53, two thirds of States in the Group of Eastern European States and the Group of African States and four fifths of the States of the Group of Latin American and Caribbean States received recommendations to specify in the law, or ensure in practice, recovery mechanisms for injured parties to establish title or ownership of property, and for those parties to be awarded compensation or damages for injuries through domestic proceedings, or to adopt measures to allow for another State's claim of legitimate ownership to be recognized during confiscation proceedings.

2. Recovery of assets through international cooperation in confiscation (articles 54 and 55)

(i) Confiscation through adjudication of money-laundering offences (article 54, paragraph 1 (b))

37. The legislation in the vast majority of States provided for the confiscation of property of foreign origin through criminal proceedings and convictions for money-laundering in accordance with domestic law. Only five States were found to be unable to confiscate such property by adjudication of an offence of money-laundering or similar offences, while an additional State had jurisdiction only over predicate offences committed by its own citizens but not those committed by foreigners.

(ii) Confiscation without a criminal conviction (article 54, paragraph 1 (c))

38. The majority of States had taken measures to allow for confiscation without a criminal conviction, either through confiscation in rem as part of criminal proceedings, or through civil forfeiture, which had the advantage of a lower burden of proof. Several States had the options of non-conviction-based confiscation in cases where a person absconded or died, as well as of civil forfeiture in cases of serious crime or property considered tainted.

39. The scenarios allowing for non-conviction-based confiscation ranged from the death or flight, and sometimes the mere absence or unknown identity, of the offender, to the very broad description of “other appropriate cases”, “any other reason whatsoever” or “adequate grounds” for confiscation or forfeiture. One WEOG State had established mandatory confiscation for persons considered “generally dangerous”, including persons suspected of defrauding public funds, persons considered to be “habitual bribers” or persons “used to living with the proceeds of illegal activities”; heirs to the property were excluded from third-party protection rights in these cases. Similarly, in addition to allowing the confiscation in cases where conviction was statute-barred, in one State belong to the Group of Western European and other States, assets could be confiscated if seized for the suspicion of serious crime, such as money-laundering, in cases where there was no proof of a specific offence but where the court was satisfied that the proceeds were of criminal origin. If the court established that there was a major disparity between the value of the assets and the legal income of the accused, the burden of proof was shifted to the accused regarding the legitimate origin of the asset. Likewise, another State allowed for the forfeiture of unexplained assets determined by a court to have been acquired through acts of corruption or economic crime, and another State allowed its independent anti-corruption commission to initiate non-conviction-based forfeiture proceedings regarding assets illicitly acquired by public officials and anchored that right in the Constitution. Similarly, a State of the Group of Asia-Pacific States had introduced an administrative procedure whereby the anti-corruption authority could order confiscation without any involvement of judicial authorities in cases of illicit enrichment, or death, absconding or unknown identity of an offender. Another State of the Group of Asia-Pacific States could use its recently introduced criminal offence of unexplained wealth in combination with non-conviction-based ex parte forfeiture orders to increase the efficiency of asset recovery.

40. Almost a quarter of States had not established non-conviction-based confiscation or forfeiture, while five States limited it to proceeds or instrumentalities of “serious crime-related activity”, money-laundering, illicit enrichment or non-corruption offences. Roughly half of the States of the Group of African States, the Group of Eastern European States and the Group of Asia-Pacific States, four fifths of States of the Group of Latin American and Caribbean States and one State belonging to Group of Western European and other States received recommendations to consider the introduction or expansion of a non-conviction-based confiscation regime. One Eastern European State reported that it had considered but rejected the introduction of non-conviction-based confiscation, while one State belonging to Group of Western European and other States could not order confiscation in the absence of a domestic criminal conviction, but in certain cases could execute foreign non-conviction-based confiscation orders.

(iii) *Enforcement of foreign confiscation orders and foreign requests for confiscation (articles 54, paragraph 1(a), and article 55, paragraph 1)*

41. While several States had never received requests for the execution of a foreign confiscation order, confiscation orders issued by a court of another State party could be enforced or given effect in most States. The vast majority of States required exequatur proceedings in the form of registration, review and validation of enforceability by domestic authorities – usually the court, or sometimes the central authority or attorney-general. The exequatur then led to the order being enforceable as or like a domestic confiscation order. One State applied a mixed approach, allowing for direct enforcement of confiscation orders from States with which a treaty existed, while requiring an exequatur procedure for orders from other States, which in turn had to be designated under domestic legislation. States members of the European Union were obliged to mutually recognize and execute, without further formality, both freezing and confiscation orders. Three States of the Group of African States, four States of the Group of Western European and other States, one State of the Group of Latin American and Caribbean States and two States of the Group of Asia-Pacific States also permitted the direct enforcement of foreign non-conviction-based

confiscation orders. One of those two Asia-Pacific States allowed for the enforcement of foreign non-conviction based orders without any domestic exequatur proceedings, which was noted by the reviewers as a potential threat to the domestic rule of law and a possible obstacle to the enforcement by other States of requests sent by this State.

42. Five States could enforce foreign confiscation orders, including non-conviction-based orders, only when they related to cases of money-laundering (and sometimes cases of the financing of terrorism) and, in one State, related predicate offences. One of those States, in all other cases, could obtain a domestic order instead. Similarly, two States limited enforceable confiscation orders to those issued on the basis of an underlying “serious offence” according to the receiving State’s domestic legislation. One of those two States accepted a certificate issued by an appropriate foreign authority stating that a foreign forfeiture order was in force and was not subject to appeal as sufficient proof for the registration of the foreign confiscation order, whereas the other State had announced amendments to ensure the possibility of enforcing foreign orders for other offences.

43. Three States parties could not enforce foreign confiscation orders and a domestic confiscation order had to be obtained. In several States, it remained unclear whether the possibility of a domestic order existed in lieu of giving effect to foreign orders or what the required procedure would entail, often owing to a lack of experience or any requests being received. In turn, several States had the option of either directly enforcing a foreign order or obtaining a domestic one on the basis of the foreign confiscation request. In two States where foreign orders were directly enforceable, domestic confiscation proceedings would often be opened in parallel in order to accelerate the process, with the foreign request being attached to an affidavit and used as evidence. In one of those States, search, seizure or even confiscation was then possible within 24 hours.

44. Recommendations were issued to a third of States of the Group of African States, half the States of the Group of Asia-Pacific States and the Group of Eastern European States, four fifths of States of the Group of Latin American States and one State of the Group of Western European and other States relating to the ability to give effect to foreign orders, to not limit this ability to certain predicate offences or to consider extending it to non-conviction-based orders.

(iv) *Enforcement of foreign freezing or seizure orders or interim measures based on foreign requests (article 54, paragraph 2, and article 55, paragraph 2)*

45. Most States could execute freezing or seizure orders issued by a foreign court or sometimes even by another competent authority, could freeze or seize assets upon request from another State, or do both. Execution was possible either directly, sometimes after a domestic exequatur decision based on domestic evidentiary standards, or indirectly through the issuance of a corresponding domestic order. For several States, the same set of measures and procedures available in domestic criminal proceedings, including those relating to the tracing, freezing, seizure and confiscation of property, were available in international cooperation. Legal bases for cooperation included treaties, bilateral agreements, domestic legislation or reciprocity.

46. As with confiscation orders, six States limited the ability to give effect to search and seizure orders to only those involving certain underlying offences, such as money-laundering and bribery, or those considered “serious” under the requested State’s domestic legislation; one of those States could in addition give effect to search and seizure orders only from specified States. Another State restricted assistance to the issuance of a search warrant. In a few States, usually common law jurisdictions, the taking of measures regarding the execution of requests for interim measures was to be done at the discretion of the domestic authorities. Two States, while being able to obtain and execute a domestic search or seizure order based on a foreign order, had no mechanism in place to freeze or seize property on the basis of a request from another State.

47. Several States did not require diplomatic channels for mutual legal assistance requests regarding freezing or seizure of assets, and accepted informal cooperation such as police-to-police cooperation or cooperation between financial intelligence units or asset recovery offices. One State described that during an initial investigation based merely on an informal request, possible property of the offender was discovered in two other States and the information was forwarded to the requesting State party. Another State described successful cooperation with another State party through informal modes of communication such as email and by telephone, which had led to the successful forfeiture of assets in the requested State.

48. While most States had regulations in place to facilitate the execution of mutual legal assistance requests for search, seizure or confiscation (art. 54 and art. 55, paras. 1 and 2), many States indicated that no requests to enforce foreign orders had been received to date or that there was little experience in general with respect to mutual legal assistance requests, including for the recovery of assets. Thus, the implementation of article 55, paragraphs 1 and 2, could not be assessed in some States.

49. Nineteen States received recommendations under articles 54, paragraph 2, and articles 55, paragraphs 1 and 2, to bring their systems in line with the Convention regarding the execution of foreign requests or orders for seizure or freezing.

(v) *Additional measures for preservation of property (article 54, paragraph 2 (c))³*

50. Eight States could issue domestic freezing or preservation orders proactively, without a request or foreign court order, on the basis of media reports, or a foreign arrest, criminal investigation or charge. One State, in which an electronically submitted foreign seizure request sufficed, gave its financial intelligence unit the power to issue an account freezing order for up to seven days without a court order, and authorized law enforcement authorities to freeze or seize property without a court order for up to 14 days. In another State, if a request for legal assistance did not meet the legal requirements, the competent authority could nevertheless take interim measures to avoid irreparable harm until the request had been amended.

51. Roughly two thirds of the Group of Asia-Pacific States, half of the Group of Eastern European States, a third of the Group of African States, one State of the Group of Western European and other States and one State of the Group of Latin American and Caribbean States received recommendation to introduce or strengthen existing mechanisms for the preservation of property pending confiscation.

(vi) *Prerequisites and content required for mutual legal assistance requests (article 55, paragraphs 3 and 4)*

52. All but one State had domestically regulated the content required for mutual legal assistance requests (art. 55, para. 3), and the rendering of assistance was subject to domestic procedural law or bilateral or multilateral agreements or arrangements (art. 55, para. 4). The content required for requests included information to satisfy the dual criminality requirement, or a proportionality review in practice, information about the non-appealability of an order or the time limit for carrying out the request. Two States required a statement specifying the measures taken by the requesting State to give appropriate notice to bona fide third parties and to ensure due process, while two other States reserved the right to hear persons potentially affected by the enforcement matter, such as the convicted person or any person having rights in the property. Two States required translation of the request into one of their official languages, with one of those States requiring that the translation be verified by a certified court interpreter. Another State allowed for the request and accompanying

³ As the management of seized or confiscated assets was reviewed under the first cycle and is not covered by the scope of second cycle reviews, and in order to allow for more in-depth analysis of the implementation of other provisions, the measures voluntarily reported by States on asset management were excluded from this edition of the thematic report but will be included in future editions of the thematic report.

documents to be expressed either in the language of the requesting party or the requested party.

(vii) *Grounds for refusal of mutual legal assistance requests (article 55, paragraphs 4 and 7)*

53. All but three States listed grounds for the refusal of incoming mutual legal assistance requests. Many States could provide assistance regardless of the value of the property, while some States listed a de minimis value or the imposition of an excessive burden on the requested State's resources as possible reasons for refusal. Sufficient evidence was needed by most States in order to execute a mutual legal assistance request, but States would generally ask the requesting State to present such evidence prior to lifting provisional measures or refusing assistance. Two States of the Group of African States and two States of the Group of Asia-Pacific States indicated that no request for cooperation regarding the recovery of assets had ever been denied. One State, if it did not receive the requested additional information within a reasonable period of time, would provisionally close the case and reopen it upon receipt of the information.

54. Other reasons cited by States for the refusal of requests included an inability to prosecute the underlying offence in the requested State, whether for lack of dual criminality, a conflict with a domestic investigation, prosecution or judicial proceeding, an undue delay by the requesting State or the expiration of the statute of limitations in the requesting or requested State. Problems with dual criminality requirements arose in States that had not adequately criminalized basic offences such as bribery or had not established liability for participation in criminal offences or liability of legal persons, which would lead to a denial of mutual legal assistance requests given the domestic non-criminalization of underlying offences. Additional grounds for refusing requests were potential prejudice or threat to the requested State's public order, sovereignty, security or fundamental principles of law; possible risk to the safety of any person or to human rights; and the prosecution of offences of a political character or prosecution considered discriminatory against a person's race, gender, religion, nationality or political views. Violation of the *ne bis in idem* principle was grounds for refusal where asset recovery proceedings were considered punitive in nature. One State could refuse requests if the foreign decision had been issued under conditions that did not offer sufficient guarantees with regard to the rights of the defence, and another State could refuse assistance if the underlying evidence had been acquired through a criminal offence, or if the proceedings had violated basic human rights or the rule of law.

(viii) *Consultation with requesting party (article 55, paragraph 8)*

55. All States but nine indicated that consultations with a requesting State party would take place prior to the lifting of any provisional measure and that the requesting State would be given an opportunity to present its reason in favour of continuing the measure. States either had specific legislation on this issue, applied the Convention directly, included provisions in all their bilateral treaties or, in the case of 16 States, could consult as a matter of practice, such as on the basis of a policy of providing the widest measure of assistance possible. The States consulting as a matter of practice received the recommendation to make statutory amendments in that regard.

56. Consultations were considered mandatory in States where the Convention was self-executing. Where consultations were not mandatory or common, at the very minimum, notice was given to the requesting State prior to the lifting of any provisional measures. One State ensured that consultations were held even when circumstances allowed for the refusal of the request, and another State referred to a letter of refusal as the last resort and as a matter of practice always wrote to requesting States, identifying potential grounds for refusal and requesting the issuance of a new or supplementary request. The same State conducted regular formal and informal meetings with the diplomatic representatives of foreign requesting States to address issues regarding submitted mutual legal assistance requests. A few States encouraged

foreign authorities to submit draft requests for review prior to submitting the formal request to ensure that all necessary information was included. One State reported that discussions had been held with another State party over several months with respect to the form and content of a particular order, resulting in its successful registration. Another State used senior official meetings with States from the same region as a platform for discussion and coordination, while another State could allow the competent authorities of the requesting State to participate in the execution of a request.

D. Return and disposal of assets (article 57)

57. In line with the trend observed in previous thematic reports, few States had practical experience with the return of sizeable amounts of assets, while most States indicated that no return had taken place so far or no requests had been received or made.

58. In most States, assets became the property of the State when confiscated, but could subsequently be returned to or shared with the requesting State (art. 57, paragraphs 2 and 3), although some States required an ad hoc agreement with the requesting State to allow for the sharing of property or its value.

59. Some provisions on the return or disposal of assets were in place in most States, although the mandatory and unconditional return in cases of embezzlement of public funds or the laundering of those embezzled funds (art. 57, para. 3 (a)) was not foreseen under domestic legislation in any State. Only one State had legislation stipulating the mandatory transfer to the requesting State of any amount recovered in terms of a final and binding foreign confiscation order, albeit “subject to any agreement or arrangement with the requesting State”. In several States, confiscated property could be returned by direct application of the Convention. In all other States, return was usually at the discretion of the competent authorities, while those States in which the Convention was applicable directly indicated that discretion was bound by article 57, paragraph 3 (a). One State had specifically referenced the scenarios of article 57, paragraph 3, in its asset recovery guide for requests under the Convention, whereas for other cases it relied on asset-sharing agreements, but authorities were guided by compensation principles that helped identify cases where compensation to economic crime victims in other countries and the swift return of funds to affected countries, companies or people was called for.

60. Two States could return only on the basis of a bilateral treaty or arrangement and would otherwise retain any confiscated assets. In some States, asset return was foreseen only for certain offences, under narrowly defined procedural circumstances or at the discretion of the relevant minister. Three States had a legal basis only for returning seized assets but none for the return of confiscated assets. One of those States relied on asset-sharing agreements to transfer confiscated property, one State refrained from confiscation to be able to return seized objects, and for the third State the procedure for return of confiscated assets could not be clarified. The States members of the European Union applied a differentiated European Union internal framework for the return of confiscated assets which foresaw the 50/50 sharing by default over a certain threshold, while a State of the Group of Latin American and Caribbean States had bilateral treaties with four other States according to which recovered property would be shared in equal parts. Four States reported that amendment bills were being prepared to allow for the return of assets to a requesting State and ensure implementation of article 57.

61. In all but two States, the applicable legislation provided for the protection of the interests of bona fide third parties in recovery and return proceedings (art. 55, para. 9, and art. 57, para. 2). One State allowed for the direct transfer of confiscated assets to a victim in a foreign State even without a request by that State or a criminal conviction. In another State, assets could be returned solely upon sufficient demonstration of a reasonable basis for ownership by the requesting State. Another

State required the compensation of injured parties if they could show that they could not obtain full satisfaction of their claim through the enforcement of a title. Legislation in two States stipulated that seized items must be returned to those who had lost possession as a result of an offence. One of those States had set up a confiscated assets fund to satisfy the claim of a foreign jurisdiction in respect of confiscated assets based on a treaty or an asset-sharing agreement.

62. All States of the Group of Latin American and Caribbean States and the Group of Eastern European States, all but one State of the Group of Asia-Pacific States, roughly two thirds of the States of the Group of African States, and a third of the States of the Group of Western European and other States received recommendations regarding the return of assets, with a particular focus on mandatory return in cases of embezzlement of public funds, showcasing the significant gaps in the area of asset return.

63. Most States parties could deduct reasonable expenses incurred (art. 57, para. 4), although several States would usually return assets in full without any deductions, and three other States deducted expenses only in exceptional cases or shared them on the basis of reciprocity.

64. Most States parties could conclude, on a case-by-case basis, agreements or arrangements for the final disposal of confiscated property, and a few States had concluded such agreements or arrangements, leading to the successful or partial return of assets to the requesting State (art. 57, para. 5). In one State, taxpayers had been identified as victims of underlying corruption offences, and the funds returned to that State were invested in social projects benefiting society.

E. Outlook

65. The present report reflects the analysis of 53 completed executive summaries and more detailed information provided in the country review reports. The secretariat will continue the analysis as more data become available from completed country reviews.