

Arab Forum on Asset Recovery

To the attention of:

HE Mr Abdelilah Benkirane, Chief of Government, Kingdom of Morocco

HE Mr Dominic Grieve, Attorney General, United Kingdom

25 October, 2013

Proposals for improving asset recovery efforts

Dear Mr Benkirane, Chief of Government of the Kingdom of Morocco,

Dear Mr Grieve, Attorney General of the United Kingdom,

On the occasion of the second session of the Arab Forum on Asset Recovery, taking place in Morocco, 26 - 28 October 2013, the UNCAC Coalition is seeking your support for proposals to assist asset recovery efforts in the region and beyond. The UNCAC Coalition is a network of over 350 civil society organisations in more than 100 countries promoting implementation of the UN Convention against Corruption (UNCAC).

In the wake of the Arab Spring, asset recovery became an important issue in the Middle East and North Africa, whether in Egypt, Iraq, Libya, Tunisia or Yemen. Citizens in various parts of the Arab world have been deprived of their national wealth for too long, and they legitimately want it to be repatriated now. This is an opportunity for the international community to show its commitment to ensuring the return of stolen assets in the Arab region.

We believe that specific steps are needed within the framework of the UNCAC to remove barriers to asset recovery. Some priority steps are identified in the UNCAC Coalition's attached statement for the 5th UNCAC Conference of States Parties (COSP) taking place in Panama in November 2013.

The proposals in the Coalition's statement build on UNCAC provisions and experience from previous asset recovery cases. They aim to ensure effective asset recovery through (1) proactive enforcement action; (2) compensation; (3) information exchange and (4) transparency and accountability. These four areas for actions are expressed in Points 12-15 of the Coalition statement and are crucial to furthering progress on asset recovery.

We believe that the work of the Arab Forum on Asset Recovery could be advanced through robust decisions at the upcoming 5th COSP in Panama and that your meeting in Morocco offers a unique opportunity to discuss, review and - we hope - endorse the Coalition's proposals, which are explained further in the second attachment to this letter.

We thank you for taking the time to consider the views of the UNCAC Coalition on these important issues. We would be grateful if you would circulate this letter and its attachments to the participants in the Arab Forum's second session.

Yours sincerely,



Vincent Lazatin
Chair



Saad Filali Meknassi
MENA Regional Coordinator

Two attachments

Attachment 1

**MAKING UNCAC WORK: COALITION STATEMENT AHEAD OF THE
5th CONFERENCE OF STATES PARTIES IN PANAMA**

Recalling that corruption weakens public institutions and the rule of law, damages the competitive and private investment climate, jeopardizes sustainable development and fosters instability;

Reminding States Parties of their commitments under the UN Convention against Corruption (UNCAC) to promote and strengthen measures to prevent and combat corruption more efficiently and effectively and their obligation to ensure implementation;

Considering that nearly ten years after the Convention was adopted there remains impunity for corruption crimes and this cannot be allowed to continue;

The UNCAC Coalition therefore calls on UNCAC States Parties to adopt resolutions at the 5th session of the UNCAC Conference of States Parties and for the Implementation Review Group and Working Groups to report to the 6th COSP on the following:

On ratification

1. Urging countries that have not yet become parties to the Convention to take the necessary steps without any further delay. In particular, urging Germany and Japan to uphold their G20 commitment made in the G20 Anti-Corruption Action Plan 2013 – 2014 to “lead by example” and to ratify the UNCAC “as soon as possible”.

On prevention

2. Concerning UNCAC chapter II, especially Articles 5(1), 9, 10 and 13, reminding States Parties that access to information is essential for corruption prevention and calling on them to adopt and implement comprehensive access to information legislation.
3. Concerning UNCAC Article 12 (c) and building on Resolution 4/4, calling for the collection of beneficial ownership information through national-level public registers of companies and trusts maintained with updated current information. Notwithstanding the requirements to register beneficial ownership information, calling for customer due diligence obligations, including beneficial ownership, to be required from service providers, including lawyers and trust and company formation providers, and actively enforced.
4. Concerning UNCAC Article 12(d), requesting the Working Group on Prevention to convene an expert meeting to discuss guidelines for the prevention and sanctioning of corruption in the award of loans, subsidies and commercial licences.
5. Concerning UNCAC Article 14 and others, calling for States Parties to publish information on Politically Exposed Persons through national-level public registers as well as to require their Politically Exposed Persons at all levels of government to file comprehensive asset declarations and make them publicly available. Also calling for regulators in States Parties to require banks to integrate corruption risk into their risk assessment programmes.

On criminalisation and enforcement

6. Concerning UNCAC Article 33, requesting UNODC to prepare a thematic report and guidelines on whistleblower protection.

7. Concerning UNCAC Articles 15, 16, 18, 23 and 26 requesting UNODC to organize expert discussions on liability of parent companies for acts of subsidiaries and their agents and on criminal enforcement experience regarding payments to political parties and organizers of electoral campaigns intended to improperly influence decision-making by public officials.
8. Concerning UNCAC Articles 26(4) and 30(1), mandating UNODC to work with States Parties to develop common guidelines for settlements in corruption cases. These should, inter alia: (i) generally be reached only where guilt is admitted; (ii) include publication of the agreements, with their justification as well as publication of the details on the actual performance of the agreement; (iii) be subject to a judicial hearing and court approval; (iv) provide for effective, proportionate and dissuasive sanctions that exceed estimated profit from the wrongdoing; (v) provide for compensation to those harmed by the offense, including victims in other countries; (vi) make available evidence to enforcement authorities in other relevant jurisdictions; and (vii) if reached with companies, should leave open the possibility of prosecution of individuals, with no employer contribution to their fines.
9. Concerning UNCAC Article 30(2), calling for States Parties to ensure that immunities for public officials are strictly limited and there are transparent and effective procedures for suspending immunities for public officials as well as ensuring that immunities are not used to shield individuals from being held to account for corruption offences. Also requesting the IRG to build on the thematic report by UNODC and in consultation with an expert group develop standards on this subject for approval at the 6th COSP.
10. Concerning UNCAC Articles 34 and 35 on the consequences of corruption and compensation for victims, calling for States Parties to ensure that these articles have been fully implemented, including recognition of public interest litigation.
11. Concerning UNCAC Article 36, calling on States Parties to ensure the operational independence of specialised enforcement bodies and their resourcing. States Parties should also ensure independence and resourcing for the judiciary pursuant to UNCAC Article 11.

On asset recovery

12. Calling on States Parties to deny safe haven to proceeds of corruption by introducing legal frameworks enabling them to take legal action in the absence of a request from another country.
13. Referring to UNCAC Articles 35, 53(b) 57 (3)(c), calling on States Parties to recognize the damage caused by corruption and to ensure compensation to states harmed by it. Further referring to UNCAC Articles 53 and 56, calling on States Parties to facilitate the direct recovery of property by notifying affected states of their right to claim for damages or ownership as part of any corruption-related legal proceedings or settlements.
14. Reminding States Parties that asset recovery can serve as an important source of financing for development and mandating international organisations such as STAR to work with States Parties to help ensure that the return of assets pursuant to UNCAC Article 57 and their subsequent use are managed in a transparent and accountable manner in line with Article 9 of the Convention.
15. Referring to UNCAC Articles 53 - 57 and Resolution 4/4, calling on States Parties to mandate UNODC and the Stolen Assets Recovery Initiative to complete guidelines relating to the issues in points 12 - 14 above at the latest by the time of the 6th Conference of States Parties.

On the UNCAC review process

16. Consistent with UNCAC Article 63 (4), (5), (6) and (7) adding a process for follow-up on the recommendations in country reviews. The follow-up should include civil society participation.

17. Establishing a transparent and inclusive 2nd cycle of the UNCAC review process that includes country visits, civil society participation in the review process; and publication of the full country reports as well as of the lists of focal points and updated individual country review timetables. Also confirming that COSP rules of procedure 2 and 17 allow civil society organisations to participate in both the IRG and in any UNCAC Working Groups.

On supplementary procedures

18. Concerning UNCAC Article 63(7), requesting the IRG to prepare for the 6th COSP (1) terms of reference for a communications and reporting procedure for serious non-compliance and lack of effective enforcement of UNCAC obligations and (2) a report on the advisability and practical feasibility of establishing an international anti-corruption authority.

September 2013

Attachment 2

Explanation of Proposals 12--15 in the UNCAC Coalition Statement

Proposal 12: PROACTIVE ENFORCEMENT ACTIONS

One of the main questions arising after the Arab Spring was, why did countries that had been receiving stolen assets freeze and investigate them only when the governments — in Egypt, Tunisia or Libya — began to collapse? Why were no enforcement actions taken before the governments began to collapse, even though it is well-known that the longer one waits, the harder it is to recover stolen assets?

There is no doubt that asset recovery is particularly complex when there is no judicial cooperation from the victim state. However, experience has shown that such cases can be pursued if legal tools are in place. This dynamic is confirmed by a recent joint publication from the World Bank and the Organisation for Economic Co-operation and Development (OECD), which says that “[donor] countries with successful returns have been proactive in initiating domestic cases.” In other words, rather than waiting for a request for mutual legal assistance to arrive, recipient countries have initiated their own cases.ⁱ

States should create and implement appropriate legal frameworks so that they can initiate enforcement themselves whenever there is credible information that assets located within their jurisdiction might be proceeds from corrupt activities. The frameworks should include such measures as expanding the scope of the money laundering offence, introducing non-conviction-based confiscation systems and establishing presumptions.

Proposal 13: COMPENSATION

To date, victim states are rarely compensated for the harm that is caused to them by corruption. This represents a failure to implement UNCAC. In the asset recovery context, the convention does not distinguish between damages and stolen or embezzled property. Both are assets that should be returned to the countries from which they originated. States should be called upon to follow UNCAC provisions regarding damages.

Proposal 14: SYSTEMATIC-INFORMATION EXCHANGE

Although it is crucial to enable States to take action towards the direct recovery of property, information about such cases is often not easily accessible to enforcement authorities in other countries. The UNCAC Coalition believes that this situation can be resolved through the recognition of obligations, anchored in the UNCAC, for systematic-information exchange.

Proposal 15: TRANSPARENCY AND ACCOUNTABILITY

The UNCAC includes specific provisions relating to the mechanics of the return of assets (Article 57). More general UNCAC provisions, such as UNCAC Article 9, establish transparency and accountability requirements relevant for the return of assets. It is clear from past asset recovery cases that such principles are critical to the credibility of the whole recovery process.

ⁱ Tracking Anti-Corruption and Asset Recovery Commitments: A Progress Report and Recommendations for Action: the StAR Initiative and the OECD (2011).